SB 142 by **Hays**; (Similar to H 0097) Sovereign Immunity for Dentists and Dental Hygienists

421220	A	S	RCS	AP, Hays	Delete L.31 - 59:	04/23 01:26 PM
110440	AA	S	RCS	AP, Gardiner	Delete L.21:	04/23 01:26 PM
962718	A	S	WD	AP, Gardiner	Delete L.46:	04/23 01:26 PM
979050	A	S	RCS	AP, Bean	btw L.63 - 64:	04/23 01:26 PM

SB 294 by **Hays**; (Similar to CS/CS/H 0175) Emergency Communication System

630790	A	S	RCS	AP, Hays	Delete L.528 - 529:	04/23 04:46 PM
195846	A	S	RCS	AP, Hays	Delete L.589 - 780:	04/23 04:46 PM
269546	A	S	RCS	AP, Hays	Delete L.832:	04/23 04:46 PM
490150	A	S	RCS	AP, Hays	Delete L.935:	04/23 04:46 PM
645826	A	S	RCS	AP, Hays	Delete L.1070 - 1081:	04/23 04:46 PM

CS/SB 312 by **CA, Simpson (CO-INTRODUCERS) Dean, Abruzzo, Garcia, Stargel, Sachs, Brandes**; (Compare to H 0121) Agriculture

832084	PCS	S	RCS	AP		04/24 01:57 PM
156972	PCS:A	S	RCS	AP, Galvano	Delete L.107 - 215:	04/24 01:57 PM
778398	PCS:A	S	RCS	AP, Ring	btw L.221 - 222:	04/24 01:57 PM

SB 388 by **Bean**; (Identical to H 0117) Public Retirement Plans

SB 444 by **Galvano**; (Similar to CS/CS/1ST ENG/H 0271) Workers' Compensation

314816	PCS	S	RCS	AP		04/25 03:37 PM
892866	PCS:A	S	RCS	AP, Galvano	Delete L.43:	04/25 03:37 PM
818218	PCS:A	S	RCS	AP, Galvano	Delete L.87 - 94:	04/25 03:37 PM
319214	PCS:A	S	RCS	AP, Galvano	Delete L.228 - 279:	04/25 03:37 PM

CS/SB 470 by **CA, Detert**; (Similar to CS/CS/H 0387) Malt Beverage Tastings

CS/SB 484 by **CM, Braynon (CO-INTRODUCERS) Brandes**; (Similar to CS/CS/1ST ENG/H 0343) Rental Car Sales and Use Tax Surcharges

350166	PCS	S	RCS	AP		04/23 02:32 PM

SB 550 by **Hukill**; (Similar to H 0427) Traveling Across County Lines to Commit a Felony Offense

435328	PCS	S	RCS	AP		04/24 04:27 PM
240590	PCS:A	S	WD	AP, Hukill	Delete L.38 - 40:	04/24 04:27 PM

CS/SB 582 by **CF, Clemens (CO-INTRODUCERS) Sachs**; (Compare to CS/CS/1ST ENG/H 0479) Substance Abuse Services

647088	D	S		AP, Smith	Delete everything after	04/21 09:58 PM
484920	AA	S		AP, Grimsley	btw L.4 - 5:	04/22 09:27 AM

CS/CS/SB 634 by **JU, CF, Brandes**; (Similar to CS/H 0635) Guardianship

569002	A	S	RCS	AP, Thrasher	Delete L.59:	04/23 04:34 PM

CS/SB 638 by **CM, Brandes**; (Similar to CS/CS/1ST ENG/H 0629) Charities

932242	PCS	S	RCS	AP		04/24 12:03 PM
590334	PCS:A	S	WD	AP, Hays	Before L.211:	04/24 12:03 PM
423540	PCS:A	S	RCS	AP, Galvano	Delete L.1157 - 1359:	04/24 12:03 PM
804678	PCS:A	S	RCS	AP, Galvano	Delete L.1465 - 1560:	04/24 12:03 PM

SB 640 by **Braynon**; (Similar to H 0531) Public Health Trusts

CS/SB 662 by **RI, HP**; (Similar to CS/1ST ENG/H 7077) Nonresident Sterile Compounding Permits

298952	A	S	RCS	AP, Bean	Delete L.28 - 151:	04/24 01:58 PM

CS/SB 698 by **CJ, Stargel**; (Similar to CS/H 0485) Sexual Misconduct with Students by Authority Figures

CS/SB 700 by **JU, Bradley (CO-INTRODUCERS) Detert**; (Similar to CS/CS/H 7055) Department of Juvenile Justice

582052	PCS	S	RCS	AP		04/23 04:44 PM

SB 712 by **Galvano (CO-INTRODUCERS) Gibson, Stargel, Abruzzo, Soto, Altman, Garcia**; (Identical to H 0847) Taxes on Prepaid Calling Arrangements

SB 734 by **Sobel (CO-INTRODUCERS) Abruzzo**; (Similar to CS/CS/H 0511) Cancer Control and Research

951274	PCS	S	RCS	AP		04/24 04:31 PM

CS/SB 742 by **GM, Sobel (CO-INTRODUCERS) Soto, Clemens, Abruzzo, Margolis**; (Compare to H 0933) Racing Animals

121868	A	S	OO	AP, Sobel	btw L.145 - 146:	04/24 01:03 PM
601026	AA	S		AP, Sobel	Delete L.56 - 86:	04/21 04:03 PM
487824	AA	S		AP, Sobel	btw L.86 - 87:	04/21 04:03 PM
961536	AA	S		AP, Sobel	Delete L.435 - 440:	04/22 09:28 AM
647280	AA	S		AP, Sobel	Delete L.496:	04/21 04:44 PM

CS/SB 744 by **CF, Detert**; (Compare to CS/H 0977) Motor Vehicle Insurance and Driver Education for Children in Care

CS/CS/CS/SB 746 by **CA, CJ, HP, Sobel**; (Similar to H 0959) Health Care Clinic Act

CS/CS/SB 768 by **JU, CJ, Braynon (CO-INTRODUCERS) Joyner**; (Compare to CS/CS/CS/1ST ENG/H 0989) Human Trafficking

578560	D	S	RCS	AP, Grimsley	Delete everything after	04/23 02:54 PM

CS/SB 780 by **CJ, Bradley**; (Identical to CS/H 0697) Controlled Substances

CS/CS/SB 798 by **JU, RI, Ring**; (Similar to CS/CS/CS/H 0807) Residential Properties

949318	A	S	RCS	AP, Ring	Delete L.348 - 371:	04/24 06:08 PM
775078	A	S	RCS	AP, Ring	Delete L.394:	04/24 06:08 PM
582410	A	S	RS	AP, Ring	Delete L.668 - 691:	04/24 06:08 PM
929482	SA	S	RCS	AP, Ring	Delete L.668 - 691:	04/24 06:08 PM

CS/SB 810 by **RI, Galvano**; (Similar to CS/CS/1ST ENG/H 0773) Pugilistic Exhibitions

CS/SB 872 by **HP, Richter (CO-INTRODUCERS) Soto**; (Similar to CS/CS/H 0709) Alzheimer's Disease

459540	A	S	RCS	AP, Richter	Delete L.49 - 71.	04/24 02:05 PM
196780	A	S	RCS	AP, Richter	Delete L.115:	04/24 02:05 PM
795936	A	S	RCS	AP, Richter	Delete L.253 - 254:	04/24 02:05 PM
910388	A	S	RCS	AP, Richter	Delete L.279:	04/24 02:05 PM
589436	A	S	RCS	AP, Richter	Delete L.334:	04/24 02:05 PM
569584	A	S	RCS	AP, Richter	btw L.343 - 344:	04/24 02:05 PM

CS/SB 876 by **TR, Galvano**; (Identical to CS/H 0863) Motor Vehicle Crash Reports

SB 886 by **Montford**; (Similar to CS/H 0337) Florida Teachers Classroom Supply Assistance Program

CS/CS/SB 898 by **CM, CU, Abruzzo (CO-INTRODUCERS) Soto**; (Similar to CS/H 0803) Communications Services Tax

933800	PCS	S	RCS	AP		04/24 01:08 PM

SB 914 by **Latvala**; (Identical to H 0953) State Contracting

CS/CS/SB 948 by **BI, GO, Ring**; (Similar to CS/CS/1ST ENG/H 0811) Foreign Investments

357722	A	S	RCS	AP, Ring	Delete L.348:	04/23 02:56 PM

CS/SB 950 by **ED, Stargel**; (Compare to CS/CS/1ST ENG/H 0433) Education

675198	PCS	S	RCS	AP		04/23 03:34 PM
589062	PCS:A	S	WD	AP, Latvala	btw L.72 - 73:	04/22 09:33 AM

CS/CS/SB 956 by **CA, EP, Bean**; (Similar to CS/CS/1ST ENG/H 0791) Coastal Management

640218	A	S	RCS	AP, Richter	btw L.22 - 23:	04/24 11:57 AM
481224	A	S	RCS	AP, Bean	btw L.83 - 84:	04/24 11:57 AM

CS/CS/SB 972 by **JU, CF, Galvano (CO-INTRODUCERS) Bradley**; (Similar to CS/CS/2ND ENG/H 0561) Attorneys for Dependent Children with Special Needs

670178	A	S	RS	AP, Galvano	Delete L.102:	04/24 07:56 PM
388572	SA	S	RCS	AP, Galvano	Delete L.102:	04/24 07:56 PM

CS/SB 1006 by **CJ, Hays**; (Similar to CS/CS/1ST ENG/H 0413) Consumer Collection Practices

CS/SB 1012 by **BI, Richter**; (Similar to CS/CS/H 0673) Financial Institutions

858846	A	S	RCS	AP, Richter	btw L.135 - 136:	04/23 04:49 PM
166230	A	S	RCS	AP, Richter	btw L.1055 - 1056:	04/23 04:49 PM
182806	A	S	RCS	AP, Richter	btw L.1055 - 1056:	04/23 04:49 PM

CS/SB 1018 by **CM, Detert**; (Similar to CS/CS/1ST ENG/H 7051) Department of Agriculture and Consumer Services

494376	A	S	RCS	AP, Richter	Delete L.353 - 356.	04/23 02:59 PM
365778	A	S	RCS	AP, Richter	Delete L.770 - 856.	04/23 02:59 PM
771774	A	S	RCS	AP, Richter	btw L.1090 - 1091:	04/23 02:59 PM

CS/SB 1030 by **HP, Bradley, Bean, Brandes (CO-INTRODUCERS) Galvano, Sobel, Soto, Gardiner, Stargel, Simpson**; (Compare to CS/CS/H 0843) Low-THC Marijuana and Cannabis

617332	D	S	RCS	AP, Bradley	Delete everything after	04/23 02:26 PM
379848	AA	S	RCS	AP, Bradley	Delete L.134:	04/23 02:26 PM

CS/SB 1032 by **CJ, Latvala**; (Similar to CS/CS/CS/H 0489) Subsurface Rights

804196	D	S	RCS	AP, Latvala	Delete everything after	04/23 04:40 PM

CS/CS/SB 1044 by **AG, CU, Simpson**; (Similar to CS/1ST ENG/H 7147) Energy Policies

788564	A	S	RCS	AP, Galvano	Delete L.153:	04/24 06:26 PM
810258	A	S	WD	AP, Bradley	btw L.234 - 235:	04/24 06:26 PM
331712	A	S	RCS	AP, Bradley	Delete L.347 - 352:	04/24 06:26 PM
725694	A	S	RCS	AP, Galvano	Delete L.361:	04/24 06:26 PM

CS/SB 1068 by **HP, Latvala**; (Similar to CS/1ST ENG/H 1065) Massage Therapy

CS/SB 1114 by **GO, CA**; (Similar to H 7173) Retirement

938756	A	S	WD	AP, Ring	Delete L.140 - 1791:	04/21 11:26 AM
343792	A	S	RCS	AP, Galvano	Delete L.140 - 1791:	04/23 02:16 PM
388390	AA	S	RCS	AP, Galvano	Delete L.14 - 15:	04/23 02:16 PM

CS/SB 1122 by **HP, Bean (CO-INTRODUCERS) Gibson, Bradley, Galvano**; (Similar to CS/CS/H 1131) Emergency Allergy Treatment

578150	PCS	S	RCS	AP		04/24 02:01 PM

CS/SB 1126 by **EP, Dean**; (Identical to CS/CS/H 0955) Fish and Wildlife Conservation Commission

638358	A	S	WD	AP, Margolis	btw L.77 - 78:	04/23 05:38 PM

CS/SB 1206 by **ED, Montford**; (Similar to CS/CS/CS/H 0487) Agricultural Industry Certifications

CS/CS/SB 1208 by **HP, CJ, Latvala**; (Similar to CS/H 0517) Fraudulent Controlled Substance Prescriptions

CS/SB 1212 by **HP, Bean**; (Similar to CS/CS/H 1085) Behavior Analysts

387820	D	S	RCS	AP, Bean	Delete everything after	04/23 04:38 PM
894736	AA	S	RCS	AP, Bean	Delete L.197 - 375:	04/23 04:38 PM

CS/CS/SB 1254 by **RC, HP, Grimsley**; (Similar to CS/1ST ENG/H 7105) Health Care Services

506302	A	S	WD	AP, Grimsley	Delete L.89 - 106.	04/21 11:09 PM
119536	A	S	RCS	AP, Bean	btw L.457 - 458:	04/24 01:53 PM
888440	A	S	RCS	AP, Grimsley	Delete L.507 - 508:	04/24 01:53 PM
978004	A	S	WD	AP, Grimsley	Delete L.1018 - 1111.	04/21 05:12 PM
780912	A	S	RS	AP, Grimsley	Delete L.1018 - 1111.	04/24 01:53 PM
661670	SA	S	RCS	AP, Grimsley	Delete L.1018 - 1030.	04/24 01:53 PM
556020	A	S	RCS	AP, Grimsley	Delete L.1195 - 1203:	04/24 01:53 PM

CS/SB 1260 by **BI, Brandes (CO-INTRODUCERS) Soto**; (Similar to CS/CS/1ST ENG/H 0565) Insurance

722116	PCS	S	RCS	AP		04/24 12:08 PM
524914	PCS:A	S	RCS	AP, Hays	Delete L.223:	04/24 12:08 PM
192956	PCS:A	S	RCS	AP, Richter	Delete L.1274 - 1298:	04/24 12:08 PM

CS/SB 1272 by **TR, Brandes**; (Compare to CS/CS/CS/H 0185) Transportation and Motor Vehicles

376118	PCS	S		AP		04/11 04:43 PM
390854	PCS:A	S	WD	AP, Hays	btw L.547 - 548:	04/24 01:43 PM
316646	PCS:A	S	WD	AP, Hays	btw L.547 - 548:	04/24 01:43 PM
501294	PCS:A	S	WD	AP, Hays	Delete L.15 - 27:	04/24 01:43 PM
489780	PCS:A	S	WD	AP, Bean	btw L.575 - 576:	04/24 01:43 PM
594154	PCS:A	S	RCS	AP, Bean	Delete L.866 - 896.	04/24 01:43 PM
156168	PCS:A	S	RCS	AP, Bradley	btw L.1125 - 1126:	04/24 01:43 PM
119252	PCS:A	S	RCS	AP, Bradley	Delete L.24:	04/24 01:43 PM
797362	PCS:A	S	RCS	AP, Montford	Delete L.1733 - 1736:	04/24 01:43 PM
417534	PCS:A	S	RCS	AP, Bradley	btw L.1895 - 1896:	04/24 01:43 PM
516902	PCS:A	S	WD	AP, Bradley	Delete L.9:	04/24 01:43 PM
755202	PCS:A	S	RCS	AP, Bradley	Delete L.9:	04/24 01:43 PM

CS/SB 1292 by **ED, Legg**; (Compare to CS/H 7165) Postsecondary Education

824504	A	S	OO	AP, Latvala	Delete L.368 - 410:	04/23 02:19 PM
444818	AA	S	WD	AP, Bradley	Delete L.9:	04/22 08:21 AM
579090	SA	S	WD	AP, Bradley	Delete L.368 - 410:	04/22 08:22 AM

CS/SB 1328 by **GO, Latvala**; (Similar to CS/CS/1ST ENG/H 1385) Inspectors General

296028	A	S	RCS	AP, Latvala	Delete L.14 - 27.	04/24 01:10 PM
563654	A	S	RCS	AP, Latvala	Delete L.124 - 127.	04/24 01:10 PM
492374	A	S	RCS	AP, Latvala	Delete L.222 - 224:	04/24 01:10 PM

CS/SB 1354 by **BI, Grimsley**; (Compare to CS/H 1001) Health Care

782304	D	S	RCS	AP, Grimsley	Delete everything after	04/23 03:47 PM

SB 1394 by **Legg**; (Compare to CS/H 7033) Education

672552	PCS	S	FAV	AP		04/23 04:10 PM
616272	PCS:A	S	WD	AP, Grimsley	Delete L.33 - 43:	04/23 04:10 PM
601364	PCS:A	S	WD	AP, Latvala	Delete L.44:	04/22 09:16 AM
745056	PCS:A	S	WD	AP, Bradley	Delete L.9:	04/22 08:27 AM
944838	PCS:S	S	WD	AP, Bradley	Delete L.44:	04/22 08:22 AM

CS/CS/SB 1474 by **CA, EE, Abruzzo**; (Similar to CS/CS/H 1315) Public Officers and Employees

SB 1486 by **Garcia**; (Similar to H 0799) Transitional Living Facilities

CS/SB 1512 by **ED, Stargel (CO-INTRODUCERS) Thrasher, Gardiner, Galvano**; (Compare to H 0895) Students with Disabilities

532862	PCS	S	RCS	AP		04/23 01:36 PM
910124	PCS:A	S	RCS	AP, Galvano	btw L.94 - 95:	04/23 01:36 PM
252548	PCS:A	S	RCS	AP, Gardiner	Delete L.105 - 171:	04/23 01:36 PM
359000	PCS:A	S	RCS	AP, Gardiner	Delete L.209 - 277:	04/23 01:36 PM
596022	PCS:A	S	RCS	AP, Gardiner	Delete L.324 - 338:	04/23 01:36 PM
827068	PCS:A	S	RCS	AP, Gardiner	Delete L.377 - 504:	04/23 01:36 PM
175992	PCS:A	S	RCS	AP, Gardiner	Delete L.505 - 535:	04/23 01:36 PM

CS/CS/SB 1576 by **AG, EP, Dean (CO-INTRODUCERS) Montford, Soto, Simmons, Hays, Altman, Abruzzo**; (Similar to H 1313) Springs

356190	D	S		AP, Montford	Delete everything after	04/21 09:10 AM
361488	AA	S	RCS	AP, Montford	Delete L.5 - 83.	04/24 12:58 PM
571098	AA	S	WD	AP, Montford	Delete L.71 - 75:	04/24 12:58 PM
103328	AA	S	WD	AP, Montford	Delete L.335 - 511:	04/24 12:58 PM
966234	AA	S	RCS	AP, Montford	Delete L.335 - 401:	04/24 12:58 PM
844544	AA	S	RCS	AP, Montford	Delete L.468 - 523:	04/24 12:58 PM
690158	AA	S	RCS	AP, Montford	btw L.606 - 607:	04/24 12:58 PM

SB 1582 by **Dean**; (Similar to CS/H 7093) Rehabilitation of Petroleum Contamination Sites

664100	PCS	S	RCS	AP		04/24 01:47 PM
414668	PCS:A	S	RCS	AP, Hays	Before L.24:	04/24 01:47 PM
935264	PCS:A	S	RCS	AP, Hays	Delete L.621 - 638:	04/24 01:47 PM

CS/CS/CS/SB 1630 by **CA, TR, AG, Montford**; (Similar to CS/H 7091) Department of Agriculture and Consumer Services

476562	A	S	WD	AP, Latvala, Galvano	btw L.2421 - 2422:	04/23 05:43 PM
952720	AA	S	FAV	AP, Sobel	After L.99:	04/23 05:43 PM

CS/CS/SB 1632 by **CA, EE, Stargel**; (Similar to CS/CS/CS/H 1237) Special Districts

704556	A	S	RCS	AP, Hays	Delete L.2309 - 2328:	04/23 03:39 PM
851674	A	S	RCS	AP, Galvano	btw L.2665 - 2666:	04/23 03:39 PM

CS/SB 1634 by **MS, CM**; (Compare to H 0611) Department of Economic Opportunity

878364	A	S	RCS	AP, Richter	btw L.220 - 221:	04/23 03:23 PM
103032	A	S	WD	AP, Richter	btw L.220 - 221:	04/23 03:23 PM
449296	A	S	RCS	AP, Richter	btw L.840 - 841:	04/23 03:23 PM
420500	A	S	TP	AP, Richter	btw L.1745 - 1746:	04/23 03:23 PM

SB 1666 by **CF (CO-INTRODUCERS) Sobel, Gibson**; (Compare to H 0431) Child Abuse and Child Welfare Services

616958	PCS	S		AP		04/04 04:39 PM
503878	PCS:A	S	WD	AP, Hays	btw L.2037 - 2038:	04/21 12:36 PM
543594	PCS:A	S	WD	AP, Latvala	Delete L.2583 - 3329:	04/23 04:12 PM
465622	D	S	RCS	AP, Sobel	Delete everything after	04/23 04:12 PM
502372	AA	S	RCS	AP, Sobel	btw L.1795 - 1796:	04/23 04:12 PM
525374	AA	S	RCS	AP, Richter	Delete L.1796 - 1831:	04/23 04:12 PM
481256	AA	S	WD	AP, Hays	Delete L.2665 - 2683:	04/21 09:02 PM
862870	AA	S	RCS	AP, Latvala	Delete L.3195:	04/23 04:12 PM
798384	AA	S	WD	AP, Latvala	btw L.3509 - 3510:	04/23 04:12 PM
560320	SA	S	WD	AP, Bradley	btw L.3509 - 3510:	04/22 08:21 AM

SB 1674 by **EP**; (Similar to H 7089) Ratification of Rules of the Department of Environmental Protection

SB 1702 by **ED**; (Similar to CS/CS/1ST ENG/H 7069) Education

576812	D	S	RCS	AP, Galvano	Delete everything after	04/24 11:51 AM
729886	AA	S	RCS	AP, Galvano	btw L.1722 - 1723:	04/24 11:51 AM

HB 5601 by **FTSC, Workman (CO-INTRODUCERS) Gaetz, Renuart**; (Compare to S 0134) Economic Development

477076	D	S		AP, Hukill	Delete everything after	04/09 05:01 PM
973828	AA	S	RE	AP, Galvano	Delete L.16 - 98:	04/25 03:24 PM
648522	AA	S	RE	AP, Ring	btw L.98 - 99:	04/25 03:24 PM
747306	AA	S	RE	AP, Lee	btw L.98 - 99:	04/25 03:24 PM
268468	AA	S	WD	AP, Galvano	btw L.98 - 99:	04/25 03:24 PM
281752	AA	S	RE	AP, Hukill	Delete L.99 - 135:	04/25 03:24 PM
316994	AA	S	WD	AP, Bean	btw L.219 - 220:	04/25 03:24 PM
758080	AA	S	RE	AP, Bradley	btw L.315 - 316:	04/25 03:24 PM
938816	AA	S	RE	AP, Bean	btw L.315 - 316:	04/25 03:24 PM
877542	AA	S	WD	AP, Richter	btw L.369 - 370:	04/25 03:24 PM
971444	AA	S	WD	AP, Bradley	btw L.369 - 370:	04/25 03:24 PM
341776	AA	S	WD	AP, Sobel	btw L.369 - 370:	04/25 03:24 PM
811482	AA	S	WD	AP, Bean	btw L.369 - 370:	04/25 03:24 PM
143508	AA	S	RE	AP, Bradley	btw L.369 - 370:	04/25 03:24 PM
965938	D	S	FAV	AP, Hukill	Delete everything after	04/25 03:24 PM
158978	A	S	WD	AP, Richter	Delete L.136 - 301:	04/09 05:27 PM
626840	A	S	WD	AP, Ring	btw L.239 - 240:	04/25 03:24 PM
416716	A	S	WD	AP, Galvano	btw L.301 - 302:	04/25 03:24 PM
350176	A	S	WD	AP, Lee	btw L.642 - 643:	04/25 03:24 PM
599428	A	S	WD	AP, Ring	Delete L.760:	04/09 11:28 AM
306866	A	S	WD	AP, Bean	Delete L.798 - 1089:	04/09 08:47 PM
808202	A	S	WD	AP, Ring	Delete L.1104 - 1128:	04/09 11:28 AM
829084	A	S	WD	AP, Bradley	Delete L.1229:	04/10 10:58 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Negron, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, April 22, 2014
TIME: 9:00 a.m.—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Negron, Chair; Senator Benacquisto, Vice Chair; Senators Bean, Bradley, Galvano, Gardiner, Grimsley, Hays, Hukill, Joyner, Latvala, Lee, Margolis, Montford, Richter, Ring, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 142** Hays (Similar H 97, Compare H 869, S 710)	Sovereign Immunity for Dentists and Dental Hygienists; Requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under specified provisions, as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S., etc. HP 10/08/2013 Favorable JU 01/14/2014 Favorable AHS 02/06/2014 Favorable AP 04/22/2014 Fav/CS	Fav/CS Yeas 18 Nays 0
	With subcommittee recommendation - Health and Human Services		
2	**SB 294** Hays (Similar CS/CS/H 175, Compare CS/H 177, Link CS/S 292)	Emergency Communication System; Revising provisions relating to oversight of certain fees by the Technology Program within the Department of Management Services; revising provisions for administration, distribution, and use of the E911 fee; providing that fees collected may not be included in the base for measuring any tax, fee, surcharge, or other charge; providing that the Department of Revenue is the agent for the E911 Board for purposes of collecting the prepaid wireless E911 fee; revising provisions for accounting, distribution, use, and auditing of the Emergency Communications Number E911 System Fund, etc. CU 01/14/2014 Favorable AFT 02/19/2014 Favorable AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0
	With subcommittee recommendation - Finance and Tax		

A proposed committee substitute for the following bill (CS/SB 312) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 312** Community Affairs / Simpson (Compare H 121, H 207, CS/H 575, CS/H 7091, CS/CS/CS/S 1630)	Agriculture; Providing that participation in certain dispersed water storage programs does not change a land's agricultural classification for assessment purposes; redefining the term "agricultural production" to include storage; expanding the exemption for certain farm equipment from the sales and use tax imposed under ch. 212, F.S., to include repairs of such equipment and trailers that are used for certain purposes, etc. AG 12/09/2013 Favorable CA 01/08/2014 Fav/CS AFT 04/02/2014 Fav/CS AP 04/22/2014 Fav/CS With subcommittee recommendation - Finance and Tax	Fav/CS Yeas 15 Nays 0
4	**SB 388** Bean (Identical H 117)	Public Retirement Plans; Providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law, etc. GO 01/16/2014 Favorable CA 02/04/2014 Favorable AFT 02/19/2014 Favorable AP 04/22/2014 Favorable With subcommittee recommendation - Finance and Tax	Favorable Yeas 16 Nays 0

A proposed committee substitute for the following bill (SB 444) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 444** Galvano (Similar CS/CS/H 271, Compare H 1007, S 1214)	Workers' Compensation; Revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising rate formulas related to the determination of compensation for disability and death, etc. BI 01/14/2014 Favorable AGG 02/06/2014 Fav/CS AP 04/22/2014 Not Considered With subcommittee recommendation - General Government	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/SB 470** Community Affairs / Detert (Similar CS/CS/H 387, Compare H 7075, CS/S 406, CS/CS/S 1714)	Malt Beverage Tastings; Removing the prohibition on beer samplings at the premises of vendors licensed for off-premises sales only; authorizing malt beverage tastings on the licensed premises of certain vendors, subject to certain requirements, limitations, liabilities, and penalties; providing construction with respect to special acts and ordinances; authorizing rulemaking; revising the prohibition on cooperative advertising with a vendor and prohibiting certain persons from naming vendors in advertising for malt beverage tastings, etc. RI 01/16/2014 Favorable CA 03/25/2014 Fav/CS AP 04/22/2014 Favorable RC	Favorable Yeas 16 Nays 0

A proposed committee substitute for the following bill (CS/SB 484) is available:

7	**CS/SB 484** Commerce and Tourism / Braynon (Similar CS/CS/H 343)	Rental Car Sales and Use Tax Surcharges; Providing that the surcharge for car-sharing services shall be imposed on an hourly basis rather than a daily basis; defining the term “car-sharing service”, etc. CM 02/10/2014 Fav/CS AFT 04/09/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 12 Nays 0

With subcommittee recommendation - Finance and Tax

A proposed committee substitute for the following bill (SB 550) is available:

8	**SB 550** Hukill (Similar H 427)	Traveling Across County Lines to Commit a Felony Offense; Defining the terms “county of residence” and “felony offense” for the purpose of the crime of traveling across county lines with the intent to commit a felony offense; providing a criminal penalty; adding the crime of traveling across county lines with the intent to commit a felony offense to the factors a court must consider in determining whether to release a defendant on bail, etc. CJ 03/17/2014 Not Considered CJ 03/24/2014 Favorable CA 04/01/2014 Favorable ACJ 04/09/2014 Fav/CS AP 04/22/2014 Not Considered	Not Considered

With subcommittee recommendation - Criminal and Civil Justice

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**CS/SB 582** Children, Families, and Elder Affairs / Clemens (Compare CS/CS/H 479)	Substance Abuse Services; Prohibiting a sober house transitional living home from operating in this state without a valid certificate of registration from the Department of Children and Families; requiring a sober house operator to annually apply for a certificate of registration with the department; requiring certain sober house transitional living homes to apply for a certificate of registration by a specified date; requiring the department to adopt rules pertaining to the application process for obtaining a certificate of registration, etc. CF 02/11/2014 Fav/CS CA 03/19/2014 Favorable AP 04/22/2014 Not Considered	Not Considered
10	**CS/CS/SB 634** Judiciary / Children, Families, and Elder Affairs / Brandes (Similar CS/H 635)	Guardianship; Revising the requirements and authorizations of the court to require specified guardians to submit to a credit history investigation and background screening; authorizing a clerk of the court to obtain and review records and documents relating to guardianship assets and to issue subpoenas to nonparties upon application to the court; providing for the removal of a guardian for a bad faith failure to submit records during an audit, etc. CF 02/11/2014 Fav/CS JU 03/04/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0

A proposed committee substitute for the following bill (CS/SB 638) is available:

11	**CS/SB 638** Commerce and Tourism / Brandes (Similar CS/CS/H 629)	Charities; Excluding charitable organizations or sponsors disqualified by the Department of Agriculture and Consumer Services from receiving certain tax exemptions; requiring that the financial statements of certain charitable organizations or sponsors be audited or reviewed; requiring each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor that conducts telephone solicitations to obtain a solicitor license from the department; increasing administrative fines for violations of the Solicitation of Contributions Act, etc. CM 02/10/2014 Fav/CS AFT 03/19/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 15 Nays 0

With subcommittee recommendation - Finance and Tax

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**SB 640** Braynon (Similar H 531)	Public Health Trusts; Authorizing public health trusts to lease certain real property, etc. HP 03/11/2014 Favorable CA 03/25/2014 Favorable AHS 04/09/2014 Favorable AP 04/22/2014 Favorable With subcommittee recommendation - Health and Human Services	Favorable Yeas 12 Nays 0
13	**CS/SB 662** Regulated Industries / Health Policy (Similar CS/H 7077)	Nonresident Sterile Compounding Permits; Expanding penalties to apply to injury to a nonhuman animal; deleting a requirement that the Board of Pharmacy refer regulatory issues affecting a nonresident pharmacy to the state where the pharmacy is located; requiring registered nonresident pharmacies and outsourcing facilities to obtain a permit in order to ship, mail, deliver, or dispense compounded sterile products into this state; authorizing the department to inspect nonresident pharmacies and nonresident sterile compounding permittees, etc. RI 03/13/2014 Fav/CS AHS 04/02/2014 Favorable AP 04/22/2014 Fav/CS With subcommittee recommendation - Health and Human Services	Fav/CS Yeas 16 Nays 0
14	**CS/SB 698** Criminal Justice / Stargel (Similar CS/H 485)	Sexual Misconduct with Students by Authority Figures; Citing this act as the "Sexual Misconduct with Students by Authority Figures Act"; providing for reclassification of specified sexual offenses committed against a student by an authority figure; providing for severity ranking of offenses; providing for application of the severity ranking chart of the Criminal Punishment Code, etc. CJ 03/31/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 15 Nays 0

A proposed committee substitute for the following bill (CS/SB 700) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**CS/SB 700** Judiciary / Bradley (Similar CS/CS/H 7055)	Department of Juvenile Justice; Allowing a child who has been detained to be transferred to the detention center or facility in the circuit in which the child resides or will reside at the time of detention; requiring the court to hold a hearing if a child is charged with direct contempt of court and to afford the child due process at such hearing; providing goals for the department's prevention services; prohibiting an employee from willfully and maliciously neglecting a juvenile offender, etc. CJ 02/17/2014 Favorable JU 03/04/2014 Fav/CS ACJ 03/12/2014 Temporarily Postponed ACJ 03/19/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 15 Nays 0
	With subcommittee recommendation - Criminal and Civil Justice		
16	**SB 712** Galvano (Identical H 847, Compare H 5601)	Taxes on Prepaid Calling Arrangements; Revising the definition of "prepaid calling arrangement" to clarify and update which services are included under that definition and subject to a sales tax, etc. CU 03/04/2014 Favorable AFT 04/02/2014 Favorable AP 04/22/2014 Not Considered	Not Considered
	With subcommittee recommendation - Finance and Tax		
	A proposed committee substitute for the following bill (SB 734) is available:		
17	**SB 734** Sobel (Similar CS/CS/H 511)	Cancer Control and Research; Revising the membership of the Florida Cancer Control and Research Advisory Council; requiring a statewide research plan; deleting the duties of the council, Board of Governors, and State Surgeon General relating to the awarding of grants and contracts for cancer-related programs; deleting council duties relating to the development of written summaries of treatment alternatives; deleting financial aid provisions and the Florida Cancer Control and Research Fund, etc. HP 03/11/2014 Favorable AHS 04/02/2014 Fav/CS AP 04/22/2014 Not Considered	Not Considered
	With subcommittee recommendation - Health and Human Services		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**CS/SB 742** Gaming / Sobel (Compare H 933)	Racing Animals; Revising the prohibition on the use of medication or drugs on animals; revising penalties for such use; revising procedures for testing animals for medication or drugs; requiring the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation to maintain records of greyhounds injured while racing; providing for the content of such records; providing fines for making false statements on an injury form, etc. GM 04/08/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 12 Nays 4
19	**CS/SB 744** Children, Families, and Elder Affairs / Detert (Compare CS/H 977, CS/H 7169, S 1668)	Motor Vehicle Insurance and Driver Education for Children in Care; Authorizing the court to consider the best interest of a child in removing specified disabilities of nonage for certain minors; directing the Department of Children and Families to establish a statewide pilot program to pay specified costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a child in licensed out-of-home care who meets certain qualifications; requiring the department to contract with a qualified not-for-profit entity to operate and develop procedures for the pilot program; providing for preferential enrollment in driver education for specified children in care, etc. CF 02/18/2014 Fav/CS TR 03/13/2014 Favorable BI 03/25/2014 Favorable AP 04/22/2014 Favorable	Favorable Yeas 14 Nays 0
20	**CS/CS/CS/SB 746** Community Affairs / Criminal Justice / Health Policy / Sobel (Similar H 959)	Health Care Clinic Act; Redefining the term “clinic”; exempting certain federally certified clinics from licensure under the act; providing that a clinic is subject to penalties if it engages physicians whose licenses have been suspended or revoked, etc. HP 03/11/2014 Fav/CS CJ 03/24/2014 Fav/CS CA 04/08/2014 Fav/CS AP 04/22/2014 Not Considered	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	**CS/CS/SB 768** Judiciary / Criminal Justice / Braynon (Similar CS/CS/CS/H 989, Compare H 1071)	Human Trafficking; Redefining the term "sexual abuse of a child" to include human trafficking; authorizing a defendant who has been charged with specified human trafficking offenses to apply for an order of disclosure of confidential and exempt information; providing an exception to ineligibility for victim assistance awards to specified victims of human trafficking; authorizing the Department of Legal Affairs to provide relocation assistance to a victim of specified human trafficking offenses, etc. CJ 03/24/2014 Fav/CS JU 04/08/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 14 Nays 0
22	**CS/SB 780** Criminal Justice / Bradley (Identical CS/H 697)	Controlled Substances; Adding to the list of Schedule I controlled substances specified materials, compounds, mixtures, or preparations that contain hallucinogenic substances, or any of their salts, isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; providing that a person who knowingly sells, purchases, manufactures, delivers, or brings into this state specified quantities of certain substances or who is knowingly in actual or constructive possession of such substances commits the offense of trafficking in Phenethylamines, a felony of the first degree, etc. CJ 03/03/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 15 Nays 0
23	**CS/CS/SB 798** Judiciary / Regulated Industries / Ring (Similar CS/CS/CS/H 807, Compare H 871, CS/S 1462)	Residential Properties; Providing that a condominium association that does not own any units classified as timeshare projects is not required to apply for or receive a public lodging establishment license; authorizing an association to inspect and repair abandoned condominium units; providing that in the absence of an insurable event, the association or unit owners are responsible for repairs; repealing provisions relating to the Community Association Living Study Council and its membership functions, etc. RI 03/06/2014 Fav/CS JU 04/01/2014 Fav/CS AP 04/22/2014 Not Considered	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
24	**CS/SB 810** Regulated Industries / Galvano (Similar CS/CS/H 773, Compare CS/CS/CS/H 775, Link CS/CS/S 808)	Pugilistic Exhibitions; Revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of commission proceedings; clarifying the commission's exclusive jurisdiction over approval of amateur and professional boxing, kickboxing, and mixed martial arts matches; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter, etc. RI 03/13/2014 Fav/CS GO 03/26/2014 Favorable JU 04/08/2014 Favorable AP 04/22/2014 Not Considered	Not Considered
25	**CS/SB 872** Health Policy / Richter (Similar CS/CS/H 709, Compare CS/CS/H 711, Link CS/S 840)	Alzheimer's Disease; Exempting grant programs administered by the Alzheimer's Disease Research Grant Advisory Board from the Administrative Procedure Act; requiring the Division of Emergency Management, in coordination with local emergency management agencies, to maintain a registry of persons with special needs; providing additional staffing requirements for special needs shelters; authorizing the Department of Health, in coordination with the division, to adopt rules relating to standards for the special needs registration program; establishing the Ed and Ethel Moore Alzheimer's Disease Research Program within the department, etc. HP 03/05/2014 Temporarily Postponed HP 03/19/2014 Fav/CS GO 04/03/2014 Favorable AP 04/22/2014 Fav/CS	Fav/CS Yeas 17 Nays 0
26	**CS/SB 876** Transportation / Galvano (Identical CS/H 863, Compare CS/CS/CS/H 865, Link CS/S 1046)	Motor Vehicle Crash Reports; Requiring a statement to be completed and sworn to for each confidential crash report requested within a certain time period, etc. TR 03/13/2014 Fav/CS ATD 04/02/2014 Favorable AP 04/22/2014 Not Considered With subcommittee recommendation - Transportation, Tourism, and Economic Development	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	**SB 886** Montford (Similar CS/H 337)	Florida Teachers Classroom Supply Assistance Program; Revising procedures for distributing program funds to classroom teachers, etc. ED 03/11/2014 Favorable AED 04/02/2014 Favorable AP 04/22/2014 Not Considered With subcommittee recommendation - Education	Not Considered

A proposed committee substitute for the following bill (CS/CS/SB 898) is available:

28	**CS/CS/SB 898** Commerce and Tourism / Communications, Energy, and Public Utilities / Abruzzo (Similar CS/H 803)	Communications Services Tax; Revising the definition of the term “information services” to include certain data processing and other services, etc. CU 03/04/2014 Fav/CS CM 03/24/2014 Fav/CS AFT 04/02/2014 Fav/CS AP 04/22/2014 Fav/CS With subcommittee recommendation - Finance and Tax	Fav/CS Yeas 16 Nays 0
29	**SB 914** Latvala (Identical H 953)	State Contracting; Revising the criteria for evaluating a proposal to include consideration of prior relevant experience of the vendor; revising the criteria for evaluating a response to an agency’s invitation to negotiate to include consideration of prior relevant experience of the vendor, etc. GO 03/13/2014 Favorable AGG 04/02/2014 Favorable AP 04/22/2014 Favorable With subcommittee recommendation - General Government	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	**CS/CS/SB 948** Banking and Insurance / Governmental Oversight and Accountability / Ring (Similar CS/CS/H 811)	Foreign Investments; Revising the percentage of investments that the State Board of Administration may invest in foreign securities; revising and providing definitions with respect to requirements that the board divest securities in which public moneys are invested in certain companies doing specified types of business in or with Sudan or Iran; requiring a domestic insurer to provide a list of investments that it has in companies on the State Board of Administration's lists of scrutinized companies with activities in Sudan or in Iran's petroleum energy sector, etc. GO 03/06/2014 Fav/CS BI 03/25/2014 Fav/CS AP 04/22/2014 Fav/CS RC	Fav/CS Yeas 14 Nays 0

A proposed committee substitute for the following bill (CS/SB 950) is available:

31	**CS/SB 950** Education / Stargel (Compare CS/CS/H 433)	Education; Authorizing a school district to assign to a school that has earned failing grades certain newly hired instructional personnel; revising the powers of a district school superintendent to include authorization to assign certain newly hired instructional personnel to a school that has earned failing grades based on the judgment of a school principal; deleting obsolete provisions relating to acceptable means of demonstrating mastery of professional development; revising certain requirements for the renewal or reinstatement of a professional certificate, etc. ED 03/11/2014 Fav/CS AED 04/02/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 13 Nays 2

With subcommittee recommendation - Education

32	**CS/CS/SB 956** Community Affairs / Environmental Preservation and Conservation / Bean (Similar CS/CS/H 791)	Coastal Management; Authorizing the Department of Environmental Protection to grant areawide permits for certain structures; requiring the department to promote the public use of aquatic preserves and their associated uplands; authorizing the department to receive gifts and donations for certain purposes; authorizing the department to grant privileges or concessions for the accommodation of visitors in and use of aquatic preserves and their associated uplands provided certain conditions are met, etc. EP 03/13/2014 Fav/CS CA 03/25/2014 Fav/CS AGG 04/02/2014 Favorable AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - General Government		
33	**CS/CS/SB 972** Judiciary / Children, Families, and Elder Affairs / Galvano (Similar CS/CS/H 561)	Attorneys for Dependent Children with Special Needs; Requiring appointment of an attorney to represent a dependent child who meets one or more specified criteria; requiring that, if one is available, an attorney who is willing to represent a child without additional compensation be appointed; requiring that the appointment be in writing; requiring that an attorney not acting in a pro bono capacity be adequately compensated for his or her services and have access to funding for certain costs; requiring the Department of Children and Families to develop procedures to identify dependent children who qualify for an attorney, etc. CF 03/18/2014 Fav/CS JU 04/01/2014 Fav/CS AP 04/22/2014 Not Considered	Not Considered
34	**CS/SB 1006** Criminal Justice / Hays (Similar CS/CS/H 413, Compare CS/CS/H 415, Link CS/S 1002)	Consumer Collection Practices; Removing provisions relating to the revocation or suspension of a professional license which allow the Office of Financial Regulation to reject an applicant for registration; authorizing the office to conduct examinations and investigations; requiring registrants to report, within a specified time period, a conviction of, or plea of nolo contendere to, a crime or an administrative enforcement action, etc. BI 03/05/2014 Favorable CJ 03/24/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 16 Nays 0
35	**CS/SB 1012** Banking and Insurance / Richter (Similar CS/CS/H 673, Compare CS/CS/CS/H 675, Link CS/CS/S 1278)	Financial Institutions; Revising provisions relating to prohibited acts and practices by a financial institution; authorizing the circuit court to issue an injunction in order to protect the interests of the depositors, members, creditors, or stockholders of a financial institution and the public's interest in the safety and soundness of the financial institution system; providing notice requirements and procedures that allow a financial institution to protect trade secrets included in documents submitted to the Office of Financial Regulation; prohibiting certain financial institutions from using a name that may mislead consumers, etc. BI 03/05/2014 Fav/CS ACJ 03/12/2014 Favorable AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0
	With subcommittee recommendation - Criminal and Civil Justice		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
36	**CS/SB 1018** Commerce and Tourism / Detert (Similar CS/CS/H 7051)	Department of Agriculture and Consumer Services; Removing the requirement that an applicant for private investigative, private security, and repossession services provide a written statement by a fingerprint technician or licensed physician under certain conditions; requiring a health studio to maintain a bond in favor of the department, rather than the state; repealing provisions relating to the Commercial Weight-Loss Practices Act; prohibiting a telephone solicitor or a person from initiating an outbound telephone call to a consumer, a donor, or a potential donor under certain circumstances, etc. CM 03/10/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 13 Nays 0
37	**CS/SB 1030** Health Policy / Bradley / Bean / Brandes (Compare CS/CS/H 843, H 859, S 962, Link S 1700)	Low-THC Marijuana and Cannabis; Authorizing specified physicians to order low-THC marijuana for use by specified patients; requiring the department to create a compassionate use registry; requiring the department to authorize a specified number of dispensing organizations; revising the definition of the term “cannabis” for purposes of the Florida Comprehensive Drug Abuse Prevention and Control Act and as applicable to certain criminal offenses proscribing the sale, manufacture, delivery, possession, or purchase of cannabis, to which penalties apply, etc. HP 03/11/2014 Fav/CS CJ 03/24/2014 Favorable AP 04/22/2014 Fav/CS	Fav/CS Yeas 14 Nays 1
38	**CS/SB 1032** Criminal Justice / Latvala (Similar CS/CS/CS/H 489, CS/S 1556)	Subsurface Rights; Requiring a seller to provide a prospective purchaser with a subsurface rights disclosure summary; providing the form for the disclosure summary; requiring the disclosure summary to be included in the contract for sale or attached to the contract for sale, etc. CJ 03/10/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
39	**CS/CS/SB 1044** Agriculture / Communications, Energy, and Public Utilities / Simpson (Similar CS/H 7147, Compare H 4007)	Energy Policies; Removing a provision relating to representation in the Southern States Energy Compact; requiring the Department of Agriculture and Consumer Services to include in its annual report recommendations for energy efficiency; authorizing the Commissioner of Agriculture to appoint a member to the Southern States Energy Board; amending the purpose of the Florida Energy and Climate Protection Act; authorizing the department to post on its website information relating to alternative fueling stations or electric vehicle charging stations, etc. CU 03/11/2014 Fav/CS AG 03/31/2014 Fav/CS AP 04/22/2014 Not Considered	Not Considered
40	**CS/SB 1068** Health Policy / Latvala (Similar CS/H 1065, Compare H 1063)	Massage Therapy; Requiring an applicant for licensure under ch. 480, F.S., to submit to certain fingerprinting requirements; requiring the Department of Health to issue an emergency order suspending the license of a massage therapist or massage establishment for the commission of certain offenses; requiring the Board of Massage Therapy to deny an application for a massage therapy license or renewal license for certain offenses; requiring a person with a specified interest in a massage establishment to submit to certain background screening requirements; exempting certain entities from massage establishment licensure requirements, etc. HP 03/11/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 16 Nays 0
41	**CS/SB 1114** Governmental Oversight and Accountability / Community Affairs (Similar H 7173, Compare H 5005, H 7181, S 184, S 2506, Link S 1112)	Retirement ; Revising the definition of “vested” or “vesting” to provide that a member initially enrolled in the Florida Retirement System after a certain date is vested in the pension plan after completing 10 years of creditable service; providing for compulsory membership in the Florida Retirement System Investment Plan for certain employees in the Elected Officers’ Class or the Senior Management Service Class initially enrolled after a specified date; authorizing renewed membership in the retirement system for retirees who are reemployed in a position eligible for the Elected Officers’ Class under certain circumstances, etc. GO 04/10/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 10 Nays 8

A proposed committee substitute for the following bill (CS/SB 1122) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
42	**CS/SB 1122** Health Policy / Bean (Similar CS/CS/H 1131)	Emergency Allergy Treatment; Expanding provisions to apply to all emergency allergy reactions, rather than to insect bites only; authorizing certain health care practitioners to prescribe epinephrine auto-injectors to an authorized entity; authorizing such entities to maintain a supply of epinephrine auto-injectors; authorizing certified individuals to use epinephrine auto-injectors; authorizing uncertified individuals to use epinephrine auto-injectors under certain circumstances; providing immunity from liability, etc. HP 03/11/2014 Fav/CS AHS 04/02/2014 Fav/CS AP 04/22/2014 Fav/CS With subcommittee recommendation - Health and Human Services	Fav/CS Yeas 16 Nays 0
43	**CS/SB 1126** Environmental Preservation and Conservation / Dean (Identical CS/CS/H 955)	Fish and Wildlife Conservation Commission; Providing that a boating safety course may be offered in a classroom or online; eliminating an exemption from boating safety education requirements for boating law violators; repealing provisions relating to a charge to be applied to areas covered by cooperative agreements with the United States Forest Service over and above the license fee for hunting; conforming provisions relating to the change in responsibility for providing developmental disabilities services from the Department of Children and Families to the Agency for Persons with Disabilities; clarifying the activities authorized under an annual military gold sportsman's license, etc. EP 03/20/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 16 Nays 0
44	**CS/SB 1206** Education / Montford (Similar CS/CS/CS/H 487)	Agricultural Industry Certifications; Requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education information and industry certifications for farm occupations to be considered for placement on industry certification funding lists; defining the term "industry certification"; requiring the state board to adopt rules for implementing an industry certification process for farm occupations, etc. ED 03/18/2014 Temporarily Postponed ED 03/25/2014 Fav/CS AG 04/07/2014 Favorable AP 04/22/2014 Not Considered	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
45	**CS/CS/SB 1208** Health Policy / Criminal Justice / Latvala (Similar CS/H 517)	Fraudulent Controlled Substance Prescriptions; Revising provisions prohibiting possession of incomplete prescription forms; providing enhanced criminal penalties for violations involving incomplete prescription forms, etc. CJ 03/10/2014 Fav/CS HP 03/19/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 16 Nays 0
46	**CS/SB 1212** Health Policy / Bean (Similar CS/CS/H 1085)	Behavior Analysts; Creating the Board of Applied Behavior Analysis; specifying the authority and duties of the board; establishing maximum fees for applications, initial licenses, and license renewals; providing penalties for practicing applied behavior analysis without a license or wrongfully identifying oneself as a licensed behavior analyst; requiring an applicant for licensure under ch. 470, F.S., to submit to certain fingerprinting requirements, etc. HP 04/01/2014 Fav/CS RI 04/10/2014 Favorable AP 04/22/2014 Fav/CS	Fav/CS Yeas 14 Nays 2
47	**CS/CS/SB 1254** Rules / Health Policy / Grimsley (Similar CS/H 7105, Compare CS/CS/CS/H 573, S 1670, S 2512)	Health Care Services; Limiting services at PPEC centers; amending provisions relating to home medical equipment providers; requiring that the emergency management plan include criteria relating to the maintenance of patient equipment and supply lists; exempting certain people from the requirement to enroll in Medicaid managed care; providing for contracting with eligible plans; revising provisions relating to negotiation with a provider service network; providing requirements for termination of a contract with a provider service network, etc. HP 03/25/2014 Fav/CS RC 04/02/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0

A proposed committee substitute for the following bill (CS/SB 1260) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
48	**CS/SB 1260** Banking and Insurance / Brandes (Similar CS/CS/H 565, Compare H 291, CS/CS/H 321, H 471, H 581, CS/CS/H 633, CS/CS/H 743, H 759, CS/H 785, CS/CS/H 879, CS/CS/H 1109, CS/CS/H 1271, S 462, S 496, CS/CS/CS/S 542, CS/CS/S 570, CS/CS/S 708, CS/CS/S 952, CS/S 1210, CS/CS/S 1308, CS/CS/S 1344, CS/CS/S 1672)	Insurance; Revising original appointment and renewal fees related to certain insurance representatives; providing licensure exemptions that allow specified individuals or entities to conduct insurance business at specified locations under certain circumstances; revising provisions for unfair methods of competition and unfair or deceptive acts relating to conducting certain insurance transactions through credit card facilities; providing that certain dividends may be retained by the joint underwriting plan for future use, etc. BI 03/19/2014 Fav/CS AGG 04/09/2014 Fav/CS AP 04/22/2014 Fav/CS With subcommittee recommendation - General Government	Fav/CS Yeas 14 Nays 0

A proposed committee substitute for the following bill (CS/SB 1272) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
49	**CS/SB 1272** Transportation / Brandes (Compare CS/CS/CS/H 185, CS/H 883, CS/CS/H 7005, H 7175, CS/CS/S 1184)	Transportation and Motor Vehicles; Requiring the Florida Transportation Commission to monitor the Mid-Bay Bridge Authority; requiring the Department of State to consult with the Department of Law Enforcement in establishing a retention schedule for records generated by the use of an automated license plate recognition system; revising provisions relating to the operation of vehicles equipped with autonomous technology on state roads for testing purposes; requiring the Department of Highway Safety and Motor Vehicles to begin to review and prepare for the development of a system for issuing an optional digital proof of driver license, etc. TR 03/06/2014 Fav/CS ATD 04/09/2014 Fav/CS AP 04/22/2014 Fav/CS With subcommittee recommendation - Transportation, Tourism, and Economic Development	Fav/CS Yeas 16 Nays 0
50	**CS/SB 1292** Education / Legg (Compare CS/H 7165, CS/CS/S 790)	Postsecondary Education; Establishing the Florida Center for Library Automation; repealing provisions relating to licensing electronic library resources and the Florida Virtual Campus; creating the Complete Florida Plus Program, rather than the Complete Florida Degree Program, within the Innovation Institute of the University of West Florida; establishing the Complete Florida Degree Initiative; providing that the University of West Florida is the successor in interest to the Florida Virtual Campus, etc. ED 03/25/2014 Fav/CS AED 04/09/2014 Favorable AP 04/22/2014 Favorable	Favorable Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - Education		
51	**CS/SB 1328** Governmental Oversight and Accountability / Latvala (Similar CS/CS/H 1385)	Inspectors General; Requiring that the Chief Inspector General be confirmed by the Senate; requiring the Chief Inspector General to provide independent legal counsel for specified state agencies; revising provisions relating to the duties, appointment, and removal of agency inspectors general, etc. GO 03/26/2014 Not Considered GO 04/03/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 14 Nays 0
52	**CS/SB 1354** Banking and Insurance / Grimsley (Compare CS/H 1001)	Health Care; Revising contract requirements for Medicaid managed care programs; establishing a process for providers to override certain treatment restrictions; requiring health insurers to use a standardized prior authorization form; prohibiting an insurer from retroactively denying a claim in certain circumstances, etc. HP 03/25/2014 Favorable BI 04/01/2014 Temporarily Postponed BI 04/08/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0
	A proposed committee substitute for the following bill (SB 1394) is available:		
53	**SB 1394** Legg (Compare CS/H 7033, CS/CS/S 850)	Education; Revising the requirements to earn a Merit designation on a standard high school diploma, etc. ED 03/25/2014 Favorable AED 04/09/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 15 Nays 0
	With subcommittee recommendation - Education		
54	**CS/CS/SB 1474** Community Affairs / Ethics and Elections / Abruzzo (Similar CS/CS/H 1315, Compare H 1317)	Public Officers and Employees; Authorizing the electors of a political subdivision to impose additional or more stringent standards of conduct and disclosure requirements upon the political subdivision's officers and employees; providing that a respondent is entitled to a public hearing upon a finding of probable cause of a violation of a local ethics ordinance; requiring a local ethics ordinance to establish certain procedures, etc. EE 03/17/2014 Fav/CS CA 04/01/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
55	**SB 1486** Garcia (Similar H 799, Compare CS/CS/CS/H 573)	Transitional Living Facilities; Providing requirements for transitional living facility policies and procedures governing client admission, transfer, and discharge; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or take other retaliatory action under certain circumstances; providing conditions for investigating and reporting incidents of abuse, neglect, mistreatment, or exploitation of clients; providing background screening requirements; requiring the agency, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop electronic information systems for certain purposes, etc. CF 03/18/2014 Not Considered CF 03/25/2014 Favorable HP 04/08/2014 Favorable AP 04/22/2014 Favorable	Favorable Yeas 16 Nays 0

A proposed committee substitute for the following bill (CS/SB 1512) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
56	**CS/SB 1512** Education / Stargel (Compare H 895, CS/H 5103, CS/H 7117, H 7167, S 1446, CS/S 1642)	Students with Disabilities; Establishing the Florida Personalized Accounts for Learning; specifying criteria for students who are eligible to participate in the program; prohibiting specific providers, schools, institutions, school districts, and other entities from sharing, refunding, or rebating program funds; requiring a school district to notify the parent regarding the option to participate in the program; specifying the school district's responsibilities for completing a matrix of services and notifying the Department of Education of the completion of the matrix, etc. ED 03/11/2014 Workshop-Discussed ED 03/18/2014 Fav/CS AED 04/02/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 14 Nays 3

With subcommittee recommendation - Education

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
57	**CS/CS/SB 1576** Agriculture / Environmental Preservation and Conservation / Dean (Similar H 1313)	Springs; Specifying distributions to the Ecosystem Management and Restoration Trust Fund; requiring the Department of Environmental Protection or the governing board of a water management district to establish the minimum flow and water level for an Outstanding Florida Spring; creating part VIII of chapter 373, F.S., entitled "Florida Springs and Aquifer Protection Act"; specifying prohibited activities within a spring protection and management zone of an Outstanding Florida Spring; repealing provisions relating to periodic evaluation and assessment of onsite sewage treatment and disposal systems, etc. EP 03/13/2014 Temporarily Postponed EP 03/20/2014 Fav/CS AG 03/31/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0

A proposed committee substitute for the following bill (SB 1582) is available:

58	**SB 1582** Dean (Similar CS/H 7093)	Rehabilitation of Petroleum Contamination Sites; Revising legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; limiting eligibility for funding under the Early Detection Incentive Program, etc. EP 03/20/2014 Favorable AGG 04/02/2014 Fav/CS AP 04/22/2014 Fav/CS With subcommittee recommendation - General Government	Fav/CS Yeas 17 Nays 0
59	**CS/CS/CS/SB 1630** Community Affairs / Transportation / Agriculture / Montford (Similar CS/H 7091, Compare H 121, H 207, CS/H 575, H 5003, CS/S 312)	Department of Agriculture and Consumer Services; Authorizing a property appraiser to grant an agricultural classification after the application deadline upon a showing of extenuating circumstances; adding a representative to the Joint Task Force on State Agency Law Enforcement Communications, to be appointed by the Commissioner of Agriculture; requiring a person to retake an educational seminar when renewing an Apalachicola Bay oyster harvesting license; revising requirements for pesticide fact sheets and safety data sheets; revising the exemption from permit requirements for minor food outlets, etc. AG 03/17/2014 Fav/CS TR 03/26/2014 Fav/CS CA 04/08/2014 Fav/CS AP 04/22/2014 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
60	**CS/CS/SB 1632** Community Affairs / Ethics and Elections / Stargel (Similar CS/CS/CS/H 1237)	Special Districts; Revising duties of the Legislative Auditing Committee; specifying applicability of procedures regarding suspension and removal of a member of the governing body of a special district; revising governing body membership for independent special districts created to provide funding for children's services; revising the oversight review process for special districts; repealing provisions relating to the Community Improvement Authority Act, etc. EE 03/17/2014 Fav/CS CA 04/01/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0
61	**CS/SB 1634** Military and Veterans Affairs, Space, and Domestic Security / Commerce and Tourism (Compare H 611, CS/H 7023, S 1116)	Department of Economic Opportunity; Requiring each county and municipality to adopt and enforce land development regulations in accordance with the submitted comprehensive plan; requiring an analysis of the New Markets Development Program in the Economic Development Programs Evaluation; revising legislative intent for purposes of the Florida Small Cities Community Development Block Grant Program; requiring the Department of Economic Opportunity to adopt rules establishing a competitive selection process for loan guarantees and grants awarded under the block grant program, etc. CA 03/19/2014 Favorable MS 03/25/2014 Fav/CS AP 04/22/2014 Fav/CS	Fav/CS Yeas 15 Nays 0

A proposed committee substitute for the following bill (SB 1666) is available:

62	**SB 1666** Children, Families, and Elder Affairs (Compare H 431, CS/H 7169, S 1302)	Child Abuse and Child Welfare Services; Requiring the secretary of the Department of Children and Families to appoint an Assistant Secretary for Child Welfare; providing requirements for such position; providing education requirements for child protective investigators and child protective investigation supervisors; establishing a tuition exemption program and a student loan forgiveness program for child protective investigators and supervisors; establishing the Florida Institute for Child Welfare; repealing provisions relating to the Florida Child Welfare Student Loan Forgiveness Program; repealing provisions relating to partnerships to develop child protective investigation workers, etc. AHS 04/02/2014 Fav/CS AP 04/10/2014 Temporarily Postponed AP 04/22/2014 Fav/CS	Fav/CS Yeas 16 Nays 0

With subcommittee recommendation - Health and Human Services

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
63	**SB 1674** Environmental Preservation and Conservation (Similar H 7089)	Ratification of Rules of the Department of Environmental Protection; Ratifying specified rules relating to qualifications and performance reviews of contractors performing certain site rehabilitation activities for petroleum contaminated sites and procedures for procurement of such contractors for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs, etc. AP 04/22/2014 Favorable	Favorable Yeas 16 Nays 0
64	**SB 1702** Education (Similar CS/CS/H 7069, Compare CS/CS/H 303, CS/H 7169, S 394)	Education; Providing a directive to the Division of Law Revision and Information; revising provisions relating to the Rilya Wilson Act; including large family child care homes in local zoning regulation requirements; providing requirements for nonpublic schools delivering certain voluntary prekindergarten education programs and child care and development programs; authorizing the Department of Children and Families to adopt rules for compliance by certain programs not licensed by the department; revising requirements for application and determination of eligibility to enroll in the Voluntary Prekindergarten Education Program, etc. AP 04/22/2014 Fav/CS	Fav/CS Yeas 15 Nays 0
65	**HB 5601** Finance and Tax Subcommittee / Workman (Compare CS/H 567, H 653, H 769, H 847, H 899, H 1015, H 1241, H 1391, H 1419, H 5001, S 134, S 362, S 474, S 712, S 740, S 792, CS/S 1076, CS/S 1438, S 2500)	Economic Development; Revises provisions related to prepaid calling arrangements; imposes additional rate on gross receipts for electrical power or energy; reduces sales tax rate for charges for electrical power or energy; extends expiration date applicable to granting of community contribution tax credits; revises & provides exemptions from sales & use tax; requires DOR to distribute funds to State Transportation Trust Fund for certain transportation projects; increases amount of income exempt from corporate income tax; increases amount of income exempt from franchise tax imposed on banks & savings associations; provides for creation of Qualified Television Loan Fund; revises limits on tax credits that may be approved under New Markets Development Program; provides for Energy Star & WaterSense product sales tax holiday, physical fitness admissions tax suspension, school sales tax holiday, & hurricane preparedness sales tax holiday; provides appropriations. AP 04/10/2014 AP 04/22/2014 Fav/1 Amendment	Fav/1 Amendment (Yeas 18 Nays 0

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 142
INTRODUCER:	Appropriations Committee and Senator Hays
SUBJECT:	Access to Health Care for the Underserved
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Favorable**
2.	Munroe	Cibula	JU	**Favorable**
3.	Brown	Pigott	AHS	**Favorable**
4.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 142 expands the circumstances under which a volunteer dentist or dental hygienist is not personally liable for negligence. Under existing law, the liability protections apply to free dental services provided to low-income patients pursuant to a government contract. Under the bill, the dentist or dental hygienist may accept voluntary contributions for the cost of laboratory work and retain the protections from personal liability.

The bill does not change the liability of the government entity that contracts with the dentist or dental hygienist to provide the free dental services. The government entity remains liable, subject to the state's sovereign immunity limitations, for any negligent dental services.

The bill also authorizes any volunteer health care provider—not just dentists or dental hygienists—to retain sovereign immunity and provide care for up to 30 days after a patient is determined not to meet the financial eligibility standard to allow the patient time to find a new provider.

Finally, the bill extends the future repeal date of the health access dental license by five years to January 1, 2020.

The bill has no fiscal impact.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the Act). The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[1] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

Health care providers under the Act include:[2]

- A birth center licensed under ch. 383, F.S.[3]
- An ambulatory surgical center licensed under ch. 395, F.S.[4]
- A hospital licensed under ch. 395, F.S.[5]
- A physician or physician assistant licensed under ch. 458, F.S.[6]
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.[7]
- A chiropractic physician licensed under ch. 460, F.S.[8]
- A podiatric physician licensed under ch. 461, F.S.[9]
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the Act.[10]
- A dentist or dental hygienist licensed under ch. 466, F.S.[11]
- A midwife licensed under ch. 467, F.S.[12]
- A health maintenance organization certificated under part I of ch. 641, F.S.[13]
- A health care professional association and its employees or a corporate medical group and its employees.[14]

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[1] Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed $22,980 is at 200 percent of the federal poverty level using Medicaid data. *See 2013 Poverty Guidelines, Annual Guidelines* at: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/2013-Federal-Poverty-level-charts.pdf (last visited December 13, 2013).
[2] Section 766.1115(3)(d), F.S.
[3] Section 766.1115(3)(d)1., F.S.
[4] Section 766.1115(3)(d)2., F.S.
[5] Section 766.1115(3)(d)3., F.S.
[6] Section 766.1115(3)(d)4., F.S.
[7] Section 766.1115(3)(d)5., F.S.
[8] Section 766.1115(3)(d)6., F.S.
[9] Section 766.1115(3)(d)7., F.S.
[10] Section 766.1115(3)(d)8., F.S.
[11] Section 766.1115(3)(d)9., F.S.
[12] Section 766.1115(3)(d)10., F.S.
[13] Section 766.1115(3)(d)11., F.S.
[14] Section 766.1115(3)(d)12., F.S.

- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.[15]
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.[16]
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.[17]
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the Act as the Department of Health (DOH), a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.[18]

A contract under the Act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.[19]

The Act further specifies additional contract requirements. The contract must provide that:
- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.
- Patient care, including any follow-up or hospital care, is subject to approval by the governmental contractor.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.[20]
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.[21]

[15] Section 766.1115(3)(d)13., F.S.
[16] Section 766.1115(3)(d)14., F.S.
[17] Section 766.1115(3)(d)15., F.S.
[18] Section 766.1115(3)(c), F.S.
[19] Section 766.1115(3)(a), F.S.
[20] Section 766.1115(4), F.S.
[21] Rule 64I-2.003(2), F.A.C.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.[22]

The individual accepting services through this contracted provider cannot have medical or dental care insurance coverage for the illness, injury, or condition for which medical or dental care is sought.[23] Services not covered under the Act include experimental procedures and clinically unproven procedures. The governmental contractor must determine whether a procedure is covered.

The health care provider may not subcontract for the provision of services under this chapter.[24]

According to the DOH, from July 1, 2011, through June 30, 2012, 12,867 licensed health care volunteers (plus an additional 9,949 clinic staff volunteers) provided 433,191 health care patient visits with a total value of $231,530,324 under the Act.[25] The Florida Department of Financial Services, Division of Risk Management, reported on March 26, 2012, that nine claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.[26]

Interpretation of s. 766.1115, F.S., varies across the state. In certain parts of the state, the statute is interpreted to mean that as long as there is transparency and clear proof that the volunteer provider is providing services, without receiving personal compensation, then the patient can pay a nominal amount per visit to assist in covering laboratory fees. In other parts of the state, the statute is interpreted to mean that if any monetary amount is accepted, then sovereign immunity is lost. Patients sometimes offer to pay a nominal contribution to cover some of the cost of laboratory fees that providers incur to pay third parties for items such as dentures for the patient. In many areas, the dentist is paying the cost of these fees from his or her own resources.[27]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable

[22] Section 766.1115(5), F.S.
[23] Rule 64I-2.002(2), F.A.C.
[24] Rule 64I-2.004(2), F.A.C.
[25] Department of Health, *Volunteer Health Services 2011-2012 Annual Report*, available at: http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/vhsreportfinal12.pdf, (last visited December 13, 2013).
[26] *Id.* at Appendix B.
[27] Conversation with representatives of the Florida Dental Association on December 11, 2013.

in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to $200,000 for one incident and the total for all recoveries related to one incident is limited to $300,000.[28] The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.[29]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[30] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.[31]

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.[32] The court explained:

> Whether the [Children's Medical Services] CMS physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[33] Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.

[28] Section 768.28(5), F.S.
[29] *Id.*
[30] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).
[31] *Id.*
[32] *Id.* at 703.
[33] Florida Department of Health and Rehabilitative Services.

> Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.[34]

Health Access Dental Licensure

In 2008, the Legislature established the health access dental license in order to attract out-of-state dentists to practice in underserved health access settings.[35] With this license, a dentist actively licensed in good standing in another state, the District of Columbia, or a U.S. territory is authorized to practice dentistry in Florida in a health access setting if the dentist:

- Files a Board-approved application and pays the applicable fees;
- Has not been convicted or pled nolo contendre to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Submits proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
- Submits documentation that the dentist has completed, or will obtain prior to licensure, a continuing education equivalent to Florida's requirement for dentists for the last full reporting biennium before applying for a health access license;
- Submits proof of her or his successful completion of parts I and II of the National Boards and a state or regional clinical dental license examination that the Board has determined effectively measures the applicant's ability to practice safely;
- Has never had a license revoked from another state, the District of Columbia, or a U.S. territory;
- Has never failed an exam under s. 466.006, F.S., unless the applicant was reexamined and received a license to practice in Florida;
- Has not been reported to the National Board of Dental Examiners (NPDB), unless the applicant successfully appealed to have his or her name removed from the data bank; and
- Submits proof that he or she has been engaged in the active, clinical practice of dentistry providing direct patient care for five years immediately preceding the date of application, or proof of continuous clinical practice providing direct patient care since graduation if the applicant graduated less than five years from his or her application.[36]

A health access dental license is subject to biennial renewal. The Board will renew a health access dental license if the applicant:

- Submits a renewal application and pays the required fees;

[34] *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).
[35] A "health access setting" is defined in s. 466.003(14), F.S., as a program or institution of the Department of Children and Family Services, the Department of Health, or the Department of Juvenile Justice, a nonprofit community health center, a Head Start center, a federally qualified health center (FQHC) or FQHC look-alike as defined by federal law, a school-based prevention program, or a clinic operated by an accredited college of dentistry or an accredited dental hygiene program in this state if such community service programs and institutions immediately report to the Board of Dentistry practice act or standard of care violations related to the actions or inactions of a dentist, dental hygienist, or dental assistant engaged in the delivery of dental care in such settings.
[36] Section 466.0067, F. S.

- Signs and submits a statement attesting that the applicant has completed all continuing education required of a licensed dentist;
- Submits documentation of continued employment in the health access setting;
- Has not been convicted or pled nolo contendre to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Has never failed an exam under s. 466.006, F.S., since initially receiving a health access dental license or since the last renewal; and,
- Has not been reported to the NPDB, unless the applicant successfully appealed to have his or her name removed from the data bank.[37]

The Board may revoke a health access dental license if the licensee is terminated from employment at the health access setting or practices outside of the health access setting, fails the Florida dental examination, or is found by the Board to have committed a violation of Chapter 466 (the Dental Practice Act), other than a violation that is a citation offense or a minor violation.[38]

Currently, there are a total of 54 health access dental licenses. Of those 31 are in-state active, five are in-state delinquent, 13 are out-of-state active, three are out-of-state inactive, and two are retired.[39] According to data collected by the Department of Health, 14 dentists with health access licenses are currently practicing in county health departments (CHDs). Several CHD administrators reported they did not believe they could have obtained a dentist without the availability of the health access license. CHDs also report that these dentists have been of high quality and have improved access to care on the part of the low income population.[40]

The program is scheduled for repeal effective January 1, 2015, unless reenacted by the Legislature.[41]

III. Effect of Proposed Changes:

The bill expands the circumstances in which a volunteer dentist or dental hygienist is not personally liable for negligence. Under existing law, the liability protections apply to free dental services provided to low-income patients pursuant to a government contract. Under the bill, the dentist or dental hygienist may accept voluntary contributions for the cost of laboratory work and

[37] Section 466.00671, F.S.
[38] Section 466.00672, F.S.
[39] Florida Dept. of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan FY 2012-2013*, 8, *available at* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-12-13.pdf (last visited Nov. 25, 2013). "In-State Active" means the licensed practitioner has a Florida mailing address and is authorized to practice. "In-State Delinquent" means the licensed practitioner has a Florida mailing address and is not authorized to practice in the state because of failure to renew the license by the expiration date. "Out-of-State Active" means the licensed practitioner has an out-of-state mailing address and is authorized to practice. "Out-of-State Inactive" means the licensed practitioner has an out-of-state mailing address and is not authorized to practice. "Retired" means the licensed practitioner is not authorized to practice. The practitioner is not obligated to update licensure data. *Id.* at 10. s. 456.036, F.S.
[40] E-mail from Philip Street, Senior Policy Coordinator, Health Statistics and Performance Management, Florida Dept. of Health, (Nov. 19, 2013) (on file with the Senate Health Policy Committee).
[41] Section 466.00673, F.S.

retain the protections from personal liability, provided such contributions do not exceed the actual cost of the laboratory work.

The bill does not change the liability of the government entity that contracts with the dentist or dental hygienist to provide the free dental services. The government entity remains liable, subject to the state's sovereign immunity limitations, for any negligent dental services.

The bill also authorizes any volunteer health care provider—not just dentists or dental hygienists—to retain sovereign immunity and provide care for up to 30 days after a patient is determined not to meet the financial eligibility standard to allow the patient time to find a new provider.

Finally, the bill extends the future repeal of the health access dental license to January 1, 2020.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 142, the DOH anticipates that a small number of dental laboratories will receive reimbursement for laboratory work for indigent patients.[42] A dentist or dental hygienist may need to prepare additional documentation showing that any voluntary contribution for laboratory is reimbursement for costs, not compensation.[43]

C. Government Sector Impact:

None.

[42] *See* Department of Health, *Bill Analysis for SB 1016*, March 13, 2013 (on file with the Senate Committee on Judiciary).
[43] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide a definition of the "costs of dental laboratory work" and does not indicate what may be included as part of those costs, e.g. whether a dentist's compensation to his or her staff to coordinate laboratory work may be considered part of the costs of dental laboratory work related to the services provided to the patient.[44] The Legislature may wish to consider whether reimbursable costs for laboratory work should be defined.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 466.00673 and 766.1115.

IX. Additional Information:

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

CS by Appropriations on April 22, 2014.
The CS:

- Makes technical changes to conform the bill to the House companion;
- Allows a voluntary health care provider to retain sovereign immunity and provide care for up to 30 days after a patient is determined not to meet the financial eligibility standard; and
- Extends the future repeal of the health access dental license to January 1, 2020.

B. Amendments:

None.

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

[44] *Id.*

421220

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 31 - 59

and insert:

The contract must be for volunteer, uncompensated services, except as provided in paragraph (4)(g). For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the

421220

recipient, or a ~~any~~ public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

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

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

And the title is amended as follows:

Delete lines 2 - 16

and insert:

An act relating to dentists and dental hygienists;

421220

amending s. 766.1115, F.S.; revising the definition of the term "contract"; requiring that a contract with a governmental contractor for health care services include a provision allowing a voluntary contribution toward certain dental laboratory work; providing that the contribution may not exceed the actual amount of the dental laboratory charges; providing an effective date.

110440

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment to Amendment (421220) (with title amendment)

Delete line 21
and insert:
later found to be ineligible. A health care provider shall continue to be an agent for purposes of s. 768.28(9) for 30 days after a determination of ineligibility to allow for treatment until the individual transitions to treatment by another health care provider. A health care provider under

110440

11
12 ========== T I T L E A M E N D M E N T ==========
13 And the title is amended as follows:
14 Delete lines 39 - 41
15 and insert:
16 An act relating to access to health care for the
17 underserved; amending s. 766.1115, F.S.; revising the
18 definition of the term "contract"; extending the
19 period a health care provider remains an agent of the
20 state after an individual is deemed ineligible;
21 requiring that a contract with a

962718

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete line 46
and insert:
later found to be ineligible. A health care provider shall continue to be an agent for purposes of s. 768.28(9) for 30 days after a determination of ineligibility to allow for treatment until the individual transitions to treatment by another health care provider. A health care provider under

962718

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 4
and insert:
revising a definition; requiring a health care provider to continue to be an agent for a specified number of days after a determination of ineligibility under certain circumstances; requiring a contract with a

979050

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 63 and 64
insert:

Section 2. Section 466.00673, Florida Statutes, is amended to read:

466.00673 Repeal of a health access dental license.—Effective January 1, 2020 ~~2015~~, ss. 466.0067-466.00673 are repealed unless reenacted by the Legislature. Any health access dental license issued before January 1, 2020 ~~2015~~, shall remain

979050

valid according to ss. 466.0067-466.00673, without effect from repeal.

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

And the title is amended as follows:

Delete lines 2 - 16

and insert:

An act relating to access to health care for the underserved; amending s. 766.1115, F.S.; revising a definition; requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S.; amending s. 466.00673, F.S.; extending the future repeal of provisions authorizing the health access dental license; providing an effective date.

By Senator Hays

11-00173A-14 2014142__

A bill to be entitled

An act relating to sovereign immunity for dentists and dental hygienists; amending s. 766.1115, F.S.; revising a definition; requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S.; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 766.1115, Florida Statutes, is amended, and paragraph (g) is added to subsection (4) of that section, to read:

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

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

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor which allows~~. This contract shall allow~~ the health care provider to deliver health care services to low-

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

11-00173A-14 2014142__

income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a ~~any~~ public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(g) Notwithstanding subsection (3), as an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract, a health care provider licensed under chapter 466 may allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient. This contribution may not exceed the actual cost of the dental laboratory charges and is

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

deemed in compliance with this section.

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

Section 2. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator Joe Negron, Chair
Committee on Appropriations
CC: Cindy Kynoch, Staff Director
Alicia Weiss, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: **Request to agenda SB 142 – Sovereign Immunity for Dentists and Dental Hygienists**

Date: February 6, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:
❒ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
❒ 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
❒ 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
❒ 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Sovereign Community

Bill Number SB 142 *(if applicable)*

Name Joe Anne Hart

Amendment Barcode *(if applicable)*

Job Title Director of Governmental Affairs

Address 118 E. Jefferson Street
Street
Tallahassee Fl 32301
City *State* *Zip*

Phone (850) 224-1089

E-mail jahart@floridadental.org

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

Representing Florida Dental Association

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 142 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 294
INTRODUCER:	Appropriations Committee and Senator Hays
SUBJECT:	Emergency Communication System
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Favorable**
2.	Cote	Diez-Arguelles	AFT	**Favorable**
3.	Cote	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 294 lowers the E911 fee from 50 cents to 40 cents for all three categories of voice communication services: prepaid wireless service, wireless service, and nonwireless service. The bill creates a process for collection and distribution of the E911 fee on prepaid wireless services by sellers at point of sale. A seller of prepaid wireless operating in the state before the fee is imposed can retain 100 percent of the prepaid E911 fees collected for the first two months to offset the costs of setup. After this two-month period, a seller may retain five percent of the prepaid wireless E911 fees that are collected as a retailer collection allowance. The remainder of fees collected must be remitted to the Department of Revenue in the month following collection of the fee.

The bill expands the list of authorized county expenditures for which E911 funds may be used and modifies the distribution of funds to counties and wireless providers.

The bill appropriates the nonrecurring sum of $250,000 from the General Revenue Fund to the Department of Revenue and $190,713 from the Operating Trust Fund to the Department of Revenue for the 2014-2015 fiscal year.

On February 17, 2014, the Revenue Estimating Conference determined that the provisions in this bill will decrease revenues distributed to the Emergency Communications Number E911 System Fund by $1.0 million in Fiscal Year 2014-15, with a $3.2 million positive, recurring impact to the fund.

II. Present Situation:

The Wireless Emergency Communications Act[1] established a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposed a monthly fee, capped at $0.50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services.

Section 365.172(8), F.S., requires voice communications services providers to collect the E911 fee from subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol. State and local governments are not subject to the fee.[2]

The E911 Board (Board) helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the Board is to make disbursements from the Emergency Communications Number E911 System Fund (E911 Fund) to county governments and wireless providers according to s. 365.173, F.S. The Board has the authority to adjust the level of the fee, within the $0.50 cap, once annually.

E911 Fees for Prepaid Wireless Service

In 2006, the Board was required[3] to evaluate the 911 system revenues and services costs to determine the date that the wireless E911 fee could be reduced to a level that still funds all counties' E911 costs, service provider costs, and Board administration costs. In its report, the Board concluded that there were insufficient fee revenues collected to cover all county and service provider E911 costs.[4]

In its report, the Board also recommended that the Legislature consider changing the provisions relating to prepaid calling services so that fees were imposed on users in a fair and consistent manner. At that time, E911 fees for prepaid wireless service were remitted based upon each prepaid wireless telephone associated with this state, for each wireless service customer that had a sufficient positive balance as of the last day of each month. Recognizing that direct billing may not be possible, the law provided that the surcharge amount, or an equivalent number of minutes, could be transferred from the prepaid wireless subscriber's account.

In 2007, the Legislature suspended collection of E911 fees on prepaid wireless service until July 1, 2009, and required the board to conduct a study of the collection of E911 fees on the sale of prepaid wireless service.[5] The resulting report[6] concluded that it was feasible to collect E911

[1] Chapter 99-367, L.O.F., codified in s. 365.172, F.S. Today the statute is cited as the "Emergency Communications Number E911 Act." Section 365.172(1), F.S.
[2] Section 365.172(8)(c), F.S.
[3] See proviso language accompanying specific appropriation 2946 of the Fiscal Year 2006-07 General Appropriations Act (HB 5001).
[4] Florida Department of Management Services, E911 Board, *2006 Wireline and Wireless 911 Fee Evaluation Legislative Report* (Sept. 29, 2006).
[5] Chapter 2007-78, Laws of Florida.
[6] Florida Department of Management Services, E911 Board, *E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis*, 106 (Dec. 31, 2008), available at

fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis.

In 2010, the Legislature extended the suspension of E911 fee collections for prepaid wireless service through July 1, 2013, at which point the Board was required to start collecting the fee from those sales.[7] However, currently there is no mechanism for collection of the E911 fee on wireless prepaid services.

Distribution of E911 Funds

Funds generated from the E911 fees levied on subscribers are accounted for in the Emergency Communications Number E911 System Fund and segregated into two separate categories: wireless and nonwireless.[8] One percent of the moneys in each category is retained by the Board to cover the costs of managing, administering, and overseeing the E911 Fund. Two percent of the moneys in each category are used to make monthly distributions to rural counties for facilities, network and service enhancements, and assistance for their E911 systems and to make grants to rural counties to upgrade and replace such systems.

In the wireless category, 67 percent of the moneys are distributed monthly to counties, based on the total number of service identifiers in each county. The county may use these funds to pay for expenditures related to establishing or providing E911 services and contracting for E911 services, as well as to pay for complying with the requirements for E911 service contained in specified Federal Communications Commission orders.[9] The remaining 30 percent of the moneys in the wireless category are available for distribution to wireless providers as reimbursement for actual costs incurred to provide E911 service.

In the nonwireless category, 97 percent of the moneys are distributed monthly to counties based on the total number of service identifiers in each county. The county may use these funds exclusively to pay for expenditures related to establishing or providing E911 services and contracting for E911 services.[10]

Section 365.172(10), F.S., specifies the types of expenses for which funds derived from the E911 fee may be expended. In general, all costs directly attributable to the establishment or provision of E911 service and contracting for E911 services are eligible. For this purpose, the law defines E911 service to include the functions of database management, call taking, dispatching, location verification, and call transfer.

A county may carry forward up to 30 percent of the total funds it receives from the Board during a calendar year for expenditures for capital outlay, capital improvements, or equipment replacement provided that the expenditures are otherwise authorized uses of the funds derived from E911 fees.

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http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board_prepaid_study (last visited March 5, 2013).

[7] Chapter 2010-50, Laws of Florida.

[8] Subsection 365.173(1), F.S.

[9] Section 365.173(2)(a), F.S. See also s. 365.172(9), F.S.

[10] Section 365.173(2)(b), F.S.

III. Effect of Proposed Changes:

The bill amends ss. 365.172 and 365.173, F.S., as follows:

- Provides a mechanism for collection of the E911 fee on prepaid wireless service by sellers at the point of sale, beginning January 1, 2015, and establishes a new category in the E911 Trust Fund for revenues derived from this fee.
- Lowers the E911 fee from $0.50 to $0.40 per month per service identifier for wireless and nonwireless voice communications services or $0.40 on each retail transaction for prepaid wireless services. The lower fee amount for wireless and nonwireless services is effective January 1, 2015.
- Retains the existing E911 fee cap of $0.50 and allows the Board, no sooner than June 1, 2015, to adjust the rate under this cap by a two-thirds vote of the total number of all Board members.
- Expands the list of authorized county expenditures for which E911 funds may be used.
- Modifies the percentage of funds to be distributed to counties, such that counties will receive 76 percent of the moneys in the wireless category (up from 67 percent), 96 percent of the moneys in the nonwireless category (down from 97 percent) and 61 percent of the moneys in the new prepaid wireless category.
- Reduces the percentage of funds available for distribution to wireless providers from 30 percent to 20 percent.
- Provides that 35 percent of the moneys in the new prepaid wireless category will be retained by the Board to provide E911 grants to counties.
- Amends and creates definitions to conform to the substantive provisions of the bill.
- Removes obsolete provisions.

E911 Fees for Prepaid Wireless Service

The bill creates subsection (9) of section 365.172, F.S., to provide a mechanism for the collection of the E911 fee on each retail purchase of prepaid wireless service from a seller. The prepaid wireless E911 fee is effective January 1, 2015. The fee is $0.40 per retail transaction. A seller of prepaid wireless service operating in this state before the fee is imposed can retain 100 percent of the prepaid E911 fees collected for the first two months to offset costs of setup. After this two-month period, a seller may retain five percent of the prepaid wireless E911 fees that are collected as a retailer collection allowance. The remainder of fees collected must be remitted to the Department of Revenue in the month following collection of the fee.

The E911 fee on prepaid wireless must be collected by the seller of the prepaid wireless service on each retail transaction occurring in Florida. The amount of the prepaid fee must be separately stated or disclosed to the consumer. If a prepaid wireless device is sold for a single, non-itemized price with a prepaid wireless service of 10 minutes or less or $5 or less, the seller may elect not to apply the wireless E911 fee to the transaction.

In order to determine the county where a retail transaction occurs, the bill provides the following three options:

- When the transaction is done by a consumer in person at a seller's business location in this state, the transaction is deemed to have occurred in the county of the business location.

- If the transaction does not take place at the seller's business location, the transaction is treated as taking place in the county of the consumer's shipping address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number.
- If the specific Florida county location cannot be determined, the transaction is to be treated as nonspecific.

Each seller is required to file a return and remit the prepaid wireless E911 fees collected in the previous month to DOR on or before the 20th day of the month.[11] The bill allows a seller to remit the fees through an electronic transfer and to file its return through an electronic data interchange. If DOR has authorized the seller to file its sales and use tax return on a quarterly, semiannual, or annual basis, the seller may remit the E911 fees and file its return on or before the 20th day of the month following that reporting period. A seller that collects less than $50 per month of the E911 fees is permitted to file quarterly returns on or before the 20th day of the month following each quarterly period. If the seller is required to file a return for two or more business locations, the bill allows the seller to file a consolidated return, provided that the seller reports the E911 fees it has collected by county. No return is required if there are no fees to remit.

The bill requires every seller of prepaid wireless service in Florida to register with DOR for each place of business, as required by existing laws regarding registration as a sales and use tax dealer. A separate application is required for each place of business. The Department of Revenue must administer, collect and enforce the E911 fee on prepaid wireless in the same manner as it administers, collects and enforces sales and use tax.

The bill requires DOR to deposit the funds remitted into the Audit and Warrant Clearing Trust Fund and may retain up to 3.2 percent of the funds remitted to reimburse its direct costs of administering the collection and remittance of prepaid wireless fees. DOR must transfer all remaining funds remitted to the Emergency Communications Number E911 System Fund on a monthly basis.

The bill also provides appropriations to DOR for the purposes of administering the collection and remittance of the E911 fees from prepaid wireless service.

Distribution of E911 Fees

The bill establishes a new category in the E911 Fund for revenues derived from application of the E911 fee to prepaid wireless service. Of the moneys transferred into the E911 Fund and placed into this new category, the bill specifies the following distribution:

- 61 percent will be distributed each month to counties based on the total amount of fees reported and paid in each county;
- 35 percent will be retained by the Board to provide E911 grants to counties;
- Three percent will be used to make monthly distributions to rural counties; and

[11] If the 20th day of the month is a Saturday, Sunday, or legal holiday, the deadline is extended until the next business day.

- One percent will be retained by the Board to cover the costs of managing, administering, and overseeing the E911 Fund.[12]

The bill increases distributions from the wireless category from 67 percent to 76 percent. The bill decreases the percentage of funds available from the wireless category for distribution to wireless providers from 30 percent to 20 percent.

The bill decreases distributions from the nonwireless category to counties from 97 percent to 96 percent.

The bill increases, from two percent to three percent, the percentage of funds available from both the wireless and nonwireless categories to be used to make monthly distributions to rural counties.

The bill clarifies that any county that receives funds from the E911 Fund may not reduce, withhold, or allocate such funds for purposes other than covering the costs specified in statute. Further, the bill provides that the county's annual financial audit must assure that all E911 fee revenues, interest, and E911 grant funding are used as specified in statute and as specified by the E911 Board's grant and special disbursement programs. The bill also requires counties to submit these financial audit reports to the Board.

The bill expands the list of authorized expenditures for which funds distributed from the E911 Fund may be used. The bill provides that Department of Health certification and recertification and training costs for 911 public safety communications, including dispatching, are functions of 911 services. In addition, it adds circuits; GIS systems and software equipment and information displays; salary and expenses for a county to employ technical system maintenance personnel; and emergency medical, fire, and law enforcement prearrival instruction software to the list of authorized expenditures.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[12] The Board currently retains one percent of all moneys in the E911 Fund for this purpose.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

On February 17, 2014, the Revenue Estimating Conference determined that CS/SB 294 will decrease revenues distributed to the Emergency Communications Number E911 System Fund by $1.0 million in Fiscal Year 2014-15, with a $3.2 million positive, recurring impact to the fund.

B. Private Sector Impact:

The bill requires retail sellers of prepaid wireless service to collect the E911 fee and remit the proceeds to DOR. This requirement creates initial costs for system setup and ongoing costs for collections and remittance. To address these costs, the bill allows sellers to retain 100 percent of their E911 fee collections for the first two months of collections and allows sellers to retain five percent of their E911 fee collections thereafter.

C. Government Sector Impact:

CS/SB 294 appropriates the nonrecurring sum of $250,000 from the General Revenue Fund and a recurring sum of $190,713 from the Operating Trust Fund to cover the cost of administering this act for Fiscal Year 2014-2015. The bill also authorizes DOR to retain 3.2 percent of the funds remitted under the bill to cover the annual costs of implementing the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 365.172, 365.173, and 401.465

IX. Additional Information:

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

CS by Appropriations on April 22, 2014:
The CS:

- Clarifies that the E911 fee on prepaid wireless service cannot be assessed before January 1, 2015.
- Lowers the E911 fee from 50 cents to 40 cents per month for wireless and nonwireless communication services and establishes the E911 fee of 40 cents per

retail transaction for prepaid wireless services. The 40 cent fee is effective January 1, 2015.

- Provides that no sooner than June 1, 2015, the E911 board may adjust the rate of the fee by a two-thirds vote of the board members, not to exceed 50 cents.
- Provides that the Department of Revenue must administer, collect and enforce the E911 fee on prepaid wireless in the same manner as it administers, collects and enforces sales and use tax.
- Provides a nonrecurring appropriation of $250,000 from the General Revenue Fund, and a recurring appropriation of $190,713 from the Operating Trust Fund to the Department of Revenue for Fiscal Year 2014-2015.
- Provides that the bill is effective July 1, 2014.

B. Amendments:

None.

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

630790

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment

Delete lines 528 - 529

and insert:

prepaid wireless service sold before January 1, 2015 ~~calling arrangement that is subject to s.~~

195846

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 589 - 780

and insert:

identifier. Effective January 1, 2015, the fee shall be 40 cents per month for each service identifier. The fee shall apply uniformly and be imposed throughout the state, except for those counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line. In those counties the fee established by ordinance

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may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county's board of county commissioners to the board.

~~(g) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(i).~~

(g) ~~(h) No later than November 1, 2007,~~ The board may adjust the allocation percentages for distribution of the fund as provided in s. 365.173. No sooner than June 1, 2015, the board may adjust the rate of the fee under paragraph (f) based on the criteria in this paragraph and paragraph (h). Any adjustment in the rate must be approved by a two-thirds vote of the total number of E911 board members. When setting the percentages or ~~and~~ contemplating any adjustments to the fee, the board shall consider the following:

1. The revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies;

2. The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173(2)(g); and

3. The need to fund statewide, regional, and county grants in accordance with sub-subparagraph (6)(a)3.b. and s. 365.173(2)(h).

(h) ~~(i)~~ The board may adjust the allocation percentages or adjust the amount of the fee as provided in paragraph (g) ~~, or both,~~ if necessary to ensure full cost recovery or prevent overrecovery of costs incurred in the provision of E911 service, including costs incurred or projected to be incurred to comply with the order. Any new allocation percentages or reduced or

increased fee may not be adjusted for 1 year. In no event shall the fee ~~may not~~ exceed 50 cents per month for ~~per~~ each service identifier. The ~~board-established~~ fee, and any board adjustment of the fee, shall be uniform throughout the state, except for the counties identified in paragraph (f). No less than 90 days before the effective date of any adjustment to the fee, the board shall provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the board is then receiving the fee.

(i) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(i).

(j) State and local taxes do not apply to the fee. The amount of the E911 fee collected by a provider may not be included in the base for imposition of any tax, fee, surcharge, or other charge imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(k) A local government may not levy the fee or any additional fee on providers or subscribers for the provision of E911 service.

(l) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as the definitions and provisions apply to the taxes levied under chapter 202 on mobile communications services.

(9) PREPAID WIRELESS E911 FEE.—

(a) Effective January 1, 2015, a prepaid wireless E911 fee is imposed per retail transaction at the rate established in paragraph (8)(f). In order to allow sellers of all sizes and technological capabilities adequate time to comply with this

subsection, a seller of prepaid wireless service operating in this state before the prepaid wireless E911 fee is imposed shall retain 100 percent of the fee collected under this paragraph for the first 2 months to offset the cost of setup.

(b) Effective March 1, 2015, the prepaid wireless E911 fee imposed under paragraph (a) shall be subject to remittance in accordance with paragraph (g). In no event shall the fee exceed 50 cents for each retail transaction. At least 90 days before the effective date of any adjustment to the fee under paragraph (8)(g), the Department of Revenue shall provide written notice of the adjusted fee amount and its effective date to each seller from which the department is then receiving the fee. At least 120 days before the effective date of any adjustment to the fee imposed under this subsection, the board shall provide notice to the Department of Revenue of the adjusted fee amount and effective date of the adjustment.

(c) The prepaid wireless E911 fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless E911 fee shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer.

(d) For purposes of paragraph (c), a retail transaction that takes place in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Such transaction is deemed to have occurred in the county of the business location. When a retail transaction does not take place at the seller's business location, the transaction shall be treated as taking

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place at the consumer's shipping address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number. Such transaction is deemed to have occurred in the county of the consumer's shipping address when items are shipped to the consumer or, when no items are shipped, the county of the consumer's address or the location associated with the consumer's mobile telephone number. A transaction for which the specific Florida county cannot be determined shall be treated as nonspecific.

(e) If a prepaid wireless device is sold for a single, nonitemized price with a prepaid wireless service of 10 minutes or less or $5 or less, the seller may elect not to apply the prepaid wireless E911 fee to the transaction.

(f) The amount of the prepaid wireless E911 fee that is collected by a seller from a consumer and that is separately stated on an invoice, receipt, or similar document provided to the consumer by the seller, may not be included in the base for imposition of any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(g) Beginning April 1, 2015, each seller shall file a return and remit the prepaid wireless E911 fees collected in the previous month to the Department of Revenue on or before the 20th day of the month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns are due on the next succeeding day that is not a Saturday, Sunday, or legal holiday observed by federal or state agencies as defined in chapter 683 and s. 7503 of the Internal Revenue Code of 1986, as amended. A seller may remit the prepaid wireless

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E911 fee by electronic funds transfer and file a fee return with the Department of Revenue that is initiated through an electronic data interchange.

1. When a seller is authorized by the Department of Revenue pursuant to s. 212.11(1)(c) or (d) to file a sales and use tax return on a quarterly, semiannual, or annual reporting basis, the seller may file a return and remit the prepaid wireless E911 fees on or before the 20th day of the month following the authorized reporting period for sales and use tax.

2. A seller collecting less than $50 per month of prepaid wireless E911 fees may file a quarterly return for the calendar quarters ending in March, June, September, and December. The seller must file a return and remit the prepaid wireless E911 fees collected during each calendar quarter on or before the 20th day of the month following that calendar quarter.

3. A seller must provide the following information on each prepaid wireless E911 fee return filed with the Department of Revenue:

a. The seller’s name, federal identification number, taxpayer identification number issued by the Department of Revenue, business location address and mailing address, and county of the business location in accordance with paragraph (d);

b. The reporting period;

c. The number of prepaid wireless services sold during the reporting period;

d. The amount of prepaid wireless E911 fees collected and the amount of any adjustments to the fees collected;

e. The amount of any retailer collection allowance deducted

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from the amount of prepaid wireless E911 fees collected; and

f. The amount to be remitted to the Department of Revenue.

4. A seller who operates two or more business locations for which returns are required to be filed with the Department of Revenue may file a consolidated return reporting and remitting the prepaid wireless E911 fee for all business locations. Such sellers must report the prepaid wireless E911 fees collected in each county, in accordance with paragraph (d), on a reporting schedule filed with the fee return.

5. A return is not required for a reporting period when no prepaid wireless E911 fee is to be remitted for that period.

6. The Department of Revenue shall administer, collect, and enforce the fee under this subsection pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of chapter 212, regarding authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees shall apply. The provision of estimated tax liability in s. 212.11(1)(a) shall not apply to the prepaid wireless E911 fee.

(h) A seller of prepaid wireless services in this state must register with the Department of Revenue for each place of business as required by s. 212.18(3) and the Department of Revenue's administrative rule regarding registration as a sales and use tax dealer. A separate application is required for each place of business. A valid certificate of registration issued by the Department of Revenue to a seller for sales and use tax purposes is sufficient for purposes of the registration

195846

requirement of this subsection. There is no fee for registration for remittance of the prepaid wireless E911 fee.

(i) The Department of Revenue shall deposit the funds remitted under this subsection into the Audit and Warrant Clearing Trust Fund established in s. 215.199 and retain up to 3.2 percent of the funds remitted under this subsection to reimburse its direct costs of administering the collection and remittance of prepaid wireless E911 fees. Thereafter, the Department of Revenue shall transfer all remaining funds remitted under this subsection to the Emergency Communications Number E911 System Fund monthly for use as provided in s. 365.173.

(j) Beginning March 1, 2015, a seller may retain 5 percent of the prepaid wireless E911 fees that are collected by the seller

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

And the title is amended as follows:

Delete line 18

and insert:

included in the base for imposition of any tax, fee,

269546

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment

Delete line 832
and insert:
the fee authorized by subsections (8) and (9) ~~this section~~.
These costs include the

490150

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with directory amendment)

Delete line 935

and insert:

prepaid wireless E911 fees identified as nonspecific in accordance

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

And the directory clause is amended as follows:

Delete lines 882 - 884

490150

and insert:

Section 2. Effective on March 1, 2015, section

645826

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1070 - 1081

and insert:

Section 4. For the 2014-2015 fiscal year, the nonrecurring sum of $250,000 is appropriated from the General Revenue Fund, and the recurring sum of $190,713 is appropriated from the Operating Trust Fund, to the Department of Revenue for the purpose of administering this act.

Section 5. Except as otherwise expressly provided in this

645826

act, this act shall take effect July, 1, 2014.

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

And the title is amended as follows:

Delete lines 46 - 48

and insert:

401.465, F.S.; conforming a cross-reference; providing appropriations; providing

By Senator Hays

11-00036A-14 2014294__

A bill to be entitled

An act relating to emergency communication system; amending s. 365.172, F.S., relating to the Emergency Communications Number E911 System; revising definitions; revising provisions relating to oversight of certain fees by the Technology Program within the Department of Management Services; revising E911 board appointment provisions; revising duties of the board; revising provisions for administration, distribution, and use of the E911 fee; revising provisions for state E911 Grant Program funding; revising E911 fee provisions; revising fee collection procedures; providing that the state and local governments are not consumers for certain purposes; specifying the amount of the fee; revising provisions for use of the fees collected; authorizing the board to adjust the rate of the fee; providing that fees collected may not be included in the base for measuring any tax, fee, surcharge, or other charge; providing for a prepaid wireless E911 fee; limiting the amount of the fee; providing procedures for adjustment and imposition of the fee; requiring the Department of Revenue to provide notice to sellers; providing requirements for collection of the fee by the seller; providing criteria for the location of the transaction; providing requirements and procedures for filing returns and remitting fees to the Department of Revenue; providing that the Department of Revenue is the agent for the E911 Board for purposes of

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

11-00036A-14 2014294__

collecting the prepaid wireless E911 fee; requiring sellers of prepaid wireless services to register with the department; providing for distribution of funds remitted; limiting liability of provider or seller of prepaid wireless service; prohibiting a local government from imposing a fee on sellers of prepaid wireless services; providing that the state and local governments are not consumers for certain purposes; providing definitions for specified purposes; revising provisions for authorized expenditures of the E911 fee; providing that certain costs of the Department of Health are functions of 911 services; amending s. 365.173, F.S.; revising provisions for accounting, distribution, use, and auditing of the Emergency Communications Number E911 System Fund; providing for a prepaid wireless category in such fund; amending s. 401.465, F.S.; conforming a cross-reference; providing a directive to the Division of Law Revision and Information; providing an appropriation; providing effective dates.

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

Section 1. Subsections (3) through (9) of section 365.172, Florida Statutes, are amended, present subsections (9) through (14) of that section are renumbered as subsections (10) through (15), respectively, and a new subsection (9) is added to that section, to read:

365.172 Emergency communications number "E911."—

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

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, and 365.174, the term:

~~(a) "Answering point" means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls.~~

(a) ~~(b)~~ "Authorized expenditures" means expenditures of the fee, as specified in subsection (10) ~~(9)~~.

(b) ~~(c)~~ "Automatic location identification" means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone, or the location of the address of the wireline telephone, used to place a 911 call.

(c) ~~(d)~~ "Automatic number identification" means the capability of the E911 service which enables the automatic display of the service number used to place a 911 call.

(d) ~~(e)~~ "Board" or "E911 Board" means the board of directors of the E911 Board established in subsection (5).

(e) ~~(f)~~ "Building permit review" means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations.

(f) ~~(g)~~ "Collocation" means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.

(g) ~~(h)~~ "Designed service" means the configuration and

manner of deployment of service the wireless provider has designed for an area as part of its network.

(h) ~~(i)~~ "Enhanced 911" or "E911" means ~~is the designation for~~ an enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features. E911 service provided by a wireless provider means E911 as defined in the order.

(i) ~~(j)~~ "Existing structure" means a structure that exists at the time an application for permission to place antennae on a structure is filed with a local government. The term includes any structure that can structurally support the attachment of antennae in compliance with applicable codes.

(j) ~~(k)~~ "Fee" means the E911 fee authorized and imposed under subsections ~~subsection~~ (8) and (9).

(k) ~~(l)~~ "Fund" means the Emergency Communications Number E911 System Fund established in s. 365.173 and maintained under this section for the purpose of recovering the costs associated with providing 911 service or E911 service, including the costs of implementing the order. The fund shall be segregated into wireless, prepaid wireless, and nonwireless categories.

(l) ~~(m)~~ "Historic building, structure, site, object, or district" means any building, structure, site, object, or district that has been officially designated as a historic

building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.

(m) ~~(n)~~ "Land development regulations" means any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government's comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does not include any building construction standard adopted under and in compliance with chapter 553.

(n) ~~(o)~~ "Local exchange carrier" means a "competitive local exchange telecommunications company" or a "local exchange telecommunications company" as defined in s. 364.02.

(o) ~~(p)~~ "Local government" means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

(p) ~~(q)~~ "Medium county" means any county that has a population of 75,000 or more but less than 750,000.

(q) ~~(r)~~ "Mobile telephone number" or "MTN" means the telephone number assigned to a wireless telephone at the time of initial activation.

(r) ~~(s)~~ "Nonwireless category" means the revenues to the fund received from voice communications services providers other than wireless providers.

(s) ~~(t)~~ "Office" means the Technology Program within the Department of Management Services, as designated by the secretary of the department.

(t) ~~(u)~~ "Order" means:

1. The following orders and rules of the Federal Communications Commission issued in FCC Docket No. 94-102:

a. Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 of the Code of Federal Regulations adopted by the Federal Communications Commission pursuant to such order.

b. Memorandum and Order No. FCC 97-402 adopted on December 23, 1997.

c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

d. Order No. FCC 98-345 adopted December 31, 1998.

2. Orders and rules subsequently adopted by the Federal Communications Commission relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

(u) "Prepaid wireless category" means all revenues in the fund received through the Department of Revenue from the fee authorized and imposed under subsection (9).

(v) "Prepaid wireless service" means a right to access wireless service that allows a caller to contact and interact with 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars, which units or dollars expire on a predetermined schedule or are decremented on a predetermined basis in exchange for the right to access wireless service.

~~(v) "Prepaid calling arrangements" has the same meaning as defined in s. 212.05(1)(e).~~

(w) "Public agency" means the state and any municipality, county, municipal corporation, or other governmental entity,

public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(x) "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(y) "Public safety answering point," "PSAP," or "answering point" means the public safety agency that receives incoming 911 requests for assistance and dispatches appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.

(z) ~~(y)~~ "Rural county" means any county that has a population of fewer than 75,000.

(aa) ~~(z)~~ "Service identifier" means the service number, access line, or other unique ~~subscriber~~ identifier assigned to a subscriber and established by the Federal Communications Commission for purposes of routing calls whereby the subscriber has access to the E911 system.

(bb) ~~(aa)~~ "Tower" means any structure designed primarily to support a wireless provider's antennae.

(cc) ~~(bb)~~ "Voice communications services" means two-way voice service, through the use of any technology, which actually provides access to E911 services, and includes communications services, as defined in s. 202.11, which actually provide access to E911 services and which are required to be included in the provision of E911 services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service. For the purposes of this

section, the term "voice-over-Internet-protocol service" or "VoIP service" means interconnected VoIP services having the following characteristics:

1. The service enables real-time, two-way voice communications;

2. The service requires a broadband connection from the user's locations;

3. The service requires IP-compatible customer premises equipment; and

4. The service offering allows users generally to receive calls that originate on the public switched telephone network and to terminate calls on the public switched telephone network.

(dd) ~~(cc)~~ "Voice communications services provider" or "provider" means any person or entity providing voice communications services, except that the term does not include any person or entity that resells voice communications services and was assessed the fee authorized and imposed under subsection (8) by its resale supplier.

(ee) ~~(dd)~~ "Wireless 911 system" or "wireless 911 service" means an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by accessing the digits "911."

(ff) ~~(ee)~~ "Wireless category" means the revenues to the fund received from a wireless provider from the fee authorized and imposed under subsection (8).

(gg) ~~(ff)~~ "Wireless communications facility" means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a

wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

(hh)~~(gg)~~ "Wireless provider" means a person who provides wireless service and:

1. Is subject to the requirements of the order; or

2. Elects to provide wireless 911 service or E911 service in this state.

(ii)~~(hh)~~ "Wireless service" means "commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

(4) POWERS AND DUTIES OF THE OFFICE.—The office shall oversee the administration of the fee authorized and imposed ~~on subscribers of voice communications services~~ under subsections ~~subsection~~ (8) and (9).

(5) THE E911 BOARD.—

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

(a) The E911 Board is established to administer, with oversight by the office, the fee imposed under subsections ~~subsection~~ (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for submission by the office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state. In order to advise and assist the office in implementing the purposes of this section, the board, which has the power of a body corporate, has the powers enumerated in subsection (6).

(b) The board shall consist of 11 members, one of whom must be the system director designated under s. 365.171(5), or his or her designee, who shall serve as the chair of the board. The remaining 10 members of the board shall be appointed by the Governor and must be composed of 5 county 911 coordinators, consisting of a representative from a rural county, a representative from a medium county, a representative from a large county, and 2 at-large representatives recommended by the Florida Association of Counties in consultation with the county 911 coordinators; 3 local exchange carrier member representatives, one of whom must be a representative of the local exchange carrier having the greatest number of access lines in the state and one of whom must be a representative of a certificated competitive local exchange telecommunications company; and 2 member representatives from the wireless telecommunications industry, with consideration given to

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

wireless providers that are not affiliated with local exchange carriers. Not more than one member may be appointed to represent any single provider on the board.

(c) The system director, designated under s. 365.171(5), or his or her designee, must be a permanent member of the board. Each of the remaining 10 ~~eight~~ members of the board shall be appointed to a 4-year term and may not be appointed to more than two successive terms. However, for the purpose of staggering terms, two of the original board members shall be appointed to terms of 4 years, two shall be appointed to terms of 3 years, and four shall be appointed to terms of 2 years, as designated by the Governor. A vacancy on the board shall be filled in the same manner as the original appointment.

~~(d) The first vacancy in a wireless provider representative position occurring after July 1, 2007, must be filled by appointment of a local exchange company representative. Until the appointment is made, there shall be only one local exchange company representative serving on the board, notwithstanding any other provision to the contrary.~~

(6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

(a) The board shall:

1. Administer the E911 fee.

2. Implement, maintain, and oversee the fund.

3. Review and oversee the disbursement of the revenues deposited into the fund as provided in s. 365.173.

a. The board may establish a schedule for implementing wireless E911 service by service area, and prioritize disbursements of revenues from the fund to providers and rural counties as provided in s. 365.173(2)(e) ~~s. 365.173(2)(d)~~ and

(g) pursuant to the schedule, in order to implement E911 services in the most efficient and cost-effective manner.

b. Revenues in the fund which have not been disbursed because sworn invoices as required by s. 365.173(2)(e) ~~s. 365.173(2)(d)~~ have not been submitted to the board may be used by the board as needed to provide grants to counties for the purpose of upgrading E911 systems. The counties must use the funds only for capital expenditures or remotely provided hosted 911 answering point call-taking equipment and network services directly attributable to establishing and provisioning E911 services, which may include next-generation deployment. Prior to the distribution of grants, the board shall provide 90 days' written notice to all counties and publish electronically an approved application process. County grant applications shall be prioritized based on the availability of funds, current system life expectancy, system replacement needs, and Phase II compliance per the Federal Communications Commission. No grants will be available to any county for next-generation deployment until all counties are Phase II complete. The board shall take all actions within its authority to ensure that county recipients of such grants use these funds only for the purpose under which they have been provided and may take any actions within its authority to secure county repayment of grant revenues upon determination that the funds were not used for the purpose under which they were provided.

c. When determining the funding provided in a state 911 grant application request, the board shall take into account information on the amount of carryforward funds retained by the counties. The information will be based on the amount of county

carryforward funds reported in the financial audit required in s. 365.173(2)(d). E911 State Grant Program funding requests will be limited by any county carryforward funds in excess of the allowable 30 percent amount of fee revenue calculated on a 2-year basis.

d.~~c.~~ The board shall reimburse all costs of a wireless provider in accordance with s. 365.173(2)(e) ~~s. 365.173(2)(d)~~ before taking any action to transfer additional funds.

~~d. By September 1, 2007, the board shall authorize the transfer of up to $15 million to the counties from existing money within the fund established under s. 365.173(1). The money shall be disbursed equitably to all of the counties using a timeframe and distribution methodology established by the board before September 1, 2007, in order to prevent a loss to the counties in the ordinary and expected time value of money caused by any timing delay in remittance to the counties of wireline fees caused by the one-time transfer of collecting wireline fees by the counties to the board. All disbursements for this purpose must be returned to the fund from future remittances by the nonwireless category.~~

e. After taking the action required in sub-subparagraphs a.-d., the board may review and, with all members participating in the vote, adjust the percentage allocations or adjust the amount of the fee as provided~~, or both,~~ under paragraph (8)(g) ~~(8)(h)~~, and, if the board determines that the revenues in the wireless category exceed the amount needed to reimburse wireless providers for the cost to implement E911 services, the board may transfer revenue to the counties from the existing funds within the wireless category. The board shall disburse the funds

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equitably to all counties using a timeframe and distribution methodology established by the board.

4. Review documentation submitted by wireless providers which reflects current and projected funds derived from the fee, and the expenses incurred and expected to be incurred in order to comply with the E911 service requirements contained in the order for the purposes of:

a. Ensuring that wireless providers receive fair and equitable distributions of funds from the fund.

b. Ensuring that wireless providers are not provided disbursements from the fund which exceed the costs of providing E911 service, including the costs of complying with the order.

c. Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the fee.

d. Implementing changes to the allocation percentages or adjusting the fee under paragraph (8)(h) ~~(8)(i)~~.

5. Meet monthly in the most efficient and cost-effective manner, including telephonically when practical, for the business to be conducted, to review and approve or reject, in whole or in part, applications submitted by wireless providers for recovery of moneys deposited into the wireless category, and to authorize the transfer of, and distribute, the fee allocation to the counties.

6. Hire and retain employees, which may include an independent executive director who shall possess experience in the area of telecommunications and emergency 911 issues, for the purposes of performing the technical and administrative functions for the board.

7. Make and enter into contracts, pursuant to chapter 287,

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and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.

8. Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.

9. Adopt, use, and alter a common corporate seal.

10. Elect or appoint the officers and agents that are required by the affairs of the board.

11. The board may adopt rules under ss. 120.536(1) and 120.54 to implement this section and ss. 365.173 and 365.174.

12. Provide coordination, support, and technical assistance to counties to promote the deployment of advanced 911 and E911 systems in the state.

13. Provide coordination and support for educational opportunities related to E911 issues for the E911 community in this state.

14. Act as an advocate for issues related to E911 system functions, features, and operations to improve the delivery of E911 services to the residents of and visitors to this state.

15. Coordinate input from this state at national forums and associations, to ensure that policies related to E911 systems and services are consistent with the policies of the E911 community in this state.

16. Work cooperatively with the system director established in s. 365.171(5) to enhance the state of E911 services in this state and to provide unified leadership for all E911 issues through planning and coordination.

17. Do all acts and things necessary or convenient to carry out the powers granted in this section in a manner that is

competitively and technologically neutral as to all voice communications services providers, including, but not limited to, consideration of emerging technology and related cost savings, while taking into account embedded costs in current systems.

18. Have the authority to secure the services of an independent, private attorney via invitation to bid, request for proposals, invitation to negotiate, or professional contracts for legal services already established at the Division of Purchasing of the Department of Management Services.

(b) Board members shall serve without compensation; however, members are entitled to per diem and travel expenses as provided in s. 112.061.

(c) By February 28 of each year, the board shall prepare a report for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses for the immediately preceding state fiscal year and county fiscal ~~calendar~~ year:

1. The annual receipts, including the total amount of fee revenues collected by each provider, the total disbursements of money in the fund, including the amount of fund-reimbursed expenses incurred by each wireless provider to comply with the order, and the amount of moneys on deposit in the fund.

2. Whether the amount of the fee and the allocation percentages set forth in s. 365.173 have been or should be adjusted to comply with the requirements of the order or other provisions of this chapter, and the reasons for making or not making a recommended adjustment to the fee.

3. Any other issues related to providing E911 services.

4. The status of E911 services in this state.

(7) REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNTING FIRM.—

(a) The board shall issue a request for proposals as provided in chapter 287 for the purpose of retaining an independent accounting firm. The independent accounting firm shall perform all material administrative and accounting tasks and functions required for administering the fee. The request for proposals must include, but need not be limited to:

1. A description of the scope and general requirements of the services requested.

2. A description of the specific accounting and reporting services required for administering the fund, including processing checks and distributing funds as directed by the board under s. 365.173.

3. A description of information to be provided by the proposer, including the proposer's background and qualifications and the proposed cost of the services to be provided.

(b) The board shall establish a committee to review requests for proposals which must include the statewide E911 system director designated under s. 365.171(5), or his or her designee, and two members of the board, one of whom is a county 911 coordinator and one of whom represents a voice communications services provider. The review committee shall review the proposals received by the board and recommend an independent accounting firm to the board for final selection. By agreeing to serve on the review committee, each member of the review committee shall verify that he or she does not have any interest or employment, directly or indirectly, with potential proposers which conflicts in any manner or degree with his or

her performance on the committee.

(c) ~~After July 1, 2004,~~ The board may secure the services of an independent accounting firm via invitation to bid, request for proposals, invitation to negotiate, or professional contracts already established at the Division of Purchasing, Department of Management Services, for certified public accounting firms, or the board may hire and retain professional accounting staff to accomplish these functions.

(8) E911 FEE.—

(a) Each voice communications services provider shall collect the fee described in this subsection, except that the fee for prepaid wireless service shall be collected in the manner set forth in subsection (9). Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee shall not be assessed on any pay telephone in the state.

1. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber based on the number of access lines having access to the E911 system, on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.

2. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber on a basis of five service-identified access lines for each digital transmission link, including primary rate interface service or equivalent Digital-Signal-1-level service, which can be channelized and split into 23 or 24 voice-grade or data-grade channels for communications, up to a maximum of 25 access lines per account bill rendered.

3. Except in the case of prepaid wireless service, each

wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. ~~Before July 1, 2013,~~ The fee shall not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a prepaid wireless service before the fee under subsection (9) takes effect ~~calling arrangement that is subject to s. 212.05(1)(c)~~.

~~a. An E911 fee shall not be collected from the sale of prepaid wireless service before July 1, 2013.~~

~~b. For purposes of this section, the term:~~

~~(I) "Prepaid wireless service" means the right to access telecommunications services, which must be paid for in advance and sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount.~~

~~(II) "Prepaid wireless service providers" includes those persons who sell prepaid wireless service regardless of its form, as a retailer or reseller.~~

4. Except in the case of prepaid wireless service, each ~~The~~ voice communications services provider ~~providers~~ not addressed under subparagraphs 1., 2., and 3. shall bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for E911 services. A provider shall remit the fee to the board only if

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the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider for providing voice communications service.

(b) A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed. A county subscribing to 911 service remains liable to the provider delivering the 911 service or equipment for any 911 service, equipment, operation, or maintenance charge owed by the county to the provider.

(c) For purposes of this subsection ~~section~~, the state and local governments are not subscribers.

(d) Each provider may retain 1 percent of the amount of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee. The remainder shall be delivered to the board and deposited by the board into the fund. The board shall distribute the remainder pursuant to s. 365.173.

(e) ~~Effective September 1, 2007,~~ Voice communications services providers billing the fee to subscribers shall deliver revenues from the fee to the board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of service identifiers in each county. Each wireless provider and other applicable provider identified in subparagraph (a)4. shall report the number of service identifiers for subscribers whose place of primary use is in each county. All provider subscriber information provided to the board is subject to s. 365.174. If a provider chooses to remit any fee amounts to the board before they are paid by the

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subscribers, a provider may apply to the board for a refund of, or may take a credit for, any such fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt.

(f) The rate of the fee ~~shall be set by the board after considering the factors set forth in paragraphs (h) and (i), but~~ may not exceed 50 cents per month for ~~per~~ each service identifier. Effective on the first day of the month following 180 days after this act takes effect, the fee shall be 46 cents per month for each service identifier. The fee shall apply uniformly and be imposed throughout the state, except for those counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line. In those counties the fee established by ordinance may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county's board of county commissioners to the board.

~~(g) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(i).~~

(g)~~(h) No later than November 1, 2007,~~ The board may adjust the allocation percentages for distribution of the fund as provided in s. 365.173. No sooner than 1 year after the fee is imposed under paragraph (9)(a), the board may adjust the rate of the fee under paragraph (f) based on the criteria in this paragraph and paragraph (h). Any adjustment in the rate must be approved by a two-thirds vote of the total number of E911 board members. When setting the percentages or ~~and~~ contemplating any adjustments to the fee, the board shall consider the following:

1. The revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies;

2. The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173(2)(g); and

3. The need to fund statewide, regional, and county grants in accordance with sub-subparagraph (6)(a)3.b. and s. 365.173(2)(h).

(h)~~(i)~~ The board may adjust the allocation percentages or adjust the amount of the fee as provided in paragraph (g)~~, or both,~~ if necessary to ensure full cost recovery or prevent overrecovery of costs incurred in the provision of E911 service, including costs incurred or projected to be incurred to comply with the order. Any new allocation percentages or reduced or increased fee may not be adjusted for 1 year. In no event shall the fee ~~may not~~ exceed 50 cents per month for ~~per~~ each service identifier. The ~~board-established~~ fee, and any board adjustment of the fee, shall be uniform throughout the state, except for the counties identified in paragraph (f). No less than 90 days before the effective date of any adjustment to the fee, the board shall provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the board is then receiving the fee.

(i) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(i).

(j) State and local taxes do not apply to the fee. The amount of the E911 fee collected by a provider may not be included in the base for measuring any tax, fee, surcharge, or

other charge imposed by this state, any political subdivision of this state, or any governmental agency.

(k) A local government may not levy the fee or any additional fee on providers or subscribers for the provision of E911 service.

(l) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as the definitions and provisions apply to the taxes levied under chapter 202 on mobile communications services.

(9) PREPAID WIRELESS E911 FEE.—

(a) Effective on the first day of the month following 120 days after this act takes effect, a prepaid wireless E911 fee is imposed per retail transaction at the rate of 46 cents. In order to allow sellers of all sizes and technological capabilities adequate time to comply with this subsection, a seller of prepaid wireless service operating in this state before the prepaid wireless E911 fee is imposed shall retain 100 percent of the fee collected under this paragraph for the first 2 months to offset the cost of setup.

(b) Effective on the first day of the month following 180 days after this act takes effect, the prepaid wireless E911 fee is imposed per retail transaction at the rate established in paragraphs (8)(f)-(h) and shall be remitted in accordance with paragraph (g). In no event shall the fee exceed 50 cents for each retail transaction. At least 90 days before the effective date of any adjustment to the fee under paragraph (8)(g), the Department of Revenue shall provide written notice of the adjusted fee amount and its effective date to each seller from

which the department is then receiving the fee. At least 120 days before the effective date of any adjustment to the fee imposed under this subsection, the board shall provide notice to the Department of Revenue of the adjusted fee amount and effective date of the adjustment.

(c) The prepaid wireless E911 fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless E911 fee shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer.

(d) For purposes of paragraph (c), a retail transaction that takes place in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Such transaction is deemed to have occurred in the county of the business location. When a retail transaction does not take place at the seller's business location, the transaction shall be treated as taking place at the consumer's shipping address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number. Such transaction is deemed to have occurred in the county of the consumer's shipping address when items are shipped to the consumer or, when no items are shipped, the county of the consumer's address or the location associated with the consumer's mobile telephone number. A transaction for which the specific Florida county cannot be determined shall be treated as nonspecific.

(e) If a prepaid wireless device is sold for a single, nonitemized price with a prepaid wireless service of 10 minutes

or less or $5 or less, the seller may elect not to apply the wireless E911 fee to the transaction.

(f) The amount of the prepaid wireless E911 fee that is collected by a seller from a consumer and that is separately stated on an invoice, receipt, or similar document provided to the consumer by the seller, may not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(g) Beginning the month after the fee is imposed under paragraph (b), each seller shall file a return and remit the prepaid wireless E911 fees collected in the previous month to the Department of Revenue on or before the 20th day of the month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns are due on the next succeeding day that is not a Saturday, Sunday, or legal holiday observed by federal or state agencies as defined in chapter 683 and s. 7503 of the Internal Revenue Code of 1986, as amended. A seller may remit the prepaid wireless E911 fee by electronic funds transfer and file a fee return with the Department of Revenue that is initiated through an electronic data interchange.

1. When a seller is authorized by the Department of Revenue pursuant to s. 212.11(1)(c) or (d) to file a sales and use tax return on a quarterly, semiannual, or annual reporting basis, the seller may file a return and remit the prepaid wireless E911 fees on or before the 20th day of the month following the authorized reporting period for sales and use tax.

2. A seller collecting less than $50 per month of prepaid

wireless E911 fees may file a quarterly return for the calendar quarters ending in March, June, September, and December. The seller must file a return and remit the prepaid wireless E911 fees collected during each calendar quarter on or before the 20th day of the month following that calendar quarter.

3. A seller must provide the following information on each prepaid wireless E911 fee return filed with the Department of Revenue:

a. The seller's name, federal identification number, taxpayer identification number issued by the Department of Revenue, business location address and mailing address, and county of the business location in accordance with paragraph (d);

b. The reporting period;

c. The number of prepaid wireless services sold during the reporting period;

d. The amount of prepaid wireless E911 fees collected and the amount of any adjustments to the fees collected;

e. The amount of any retailer collection allowance deducted from the amount of prepaid wireless E911 fees collected; and

f. The amount to be remitted to the Department of Revenue.

4. A seller who operates two or more business locations for which returns are required to be filed with the Department of Revenue may file a consolidated return reporting and remitting the prepaid wireless E911 fee for all business locations. Such sellers must report the prepaid wireless E911 fees collected in each county, in accordance with paragraph (d), on a reporting schedule filed with the fee return.

5. A return is not required for a reporting period when no

prepaid wireless E911 fee is to be remitted for that period.

6. The Department of Revenue serves as an agent of the E911 Board for collection of the prepaid wireless E911 fee, and the board retains the authority to administer the fee as provided in this section and s. 365.173.

(h) A seller of prepaid wireless services in this state must register with the Department of Revenue for each place of business as required by s. 212.18(3) and the Department of Revenue's administrative rule regarding registration as a sales and use tax dealer. A separate application is required for each place of business. A valid certificate of registration issued by the Department of Revenue to a seller for sales and use tax purposes is sufficient for purposes of the registration requirement of this subsection. There is no fee for registration for remittance of the prepaid wireless service E911 fee.

(i) The Department of Revenue shall deposit the funds remitted under this subsection into the Audit and Warrant Clearing Trust Fund established in s. 215.199 and retain up to 3.2 percent of the funds remitted under this subsection to reimburse its direct costs of administering the collection and remittance of prepaid wireless fees. Thereafter, the Department of Revenue shall transfer all remaining funds remitted under this subsection to the Emergency Communications Number E911 System Fund monthly for use as provided in s. 365.173.

(j) A seller may retain 5 percent of the prepaid wireless E911 fees that are collected under paragraph (b) by the seller from consumers as a retailer collection allowance.

(k) A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in

connection with providing or failing to provide 911 or E911 service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 911 or E911 service.

(l) A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing any lawful assistance to any investigative or law enforcement officer of the United States, any state, or any political subdivision of any state in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

(m) The limitations of liability under this subsection for providers and sellers are in addition to any other limitation of liability provided for under this section.

(n) A local government may not levy the fee or any additional fee on providers or sellers of prepaid wireless service for the provision of E911 service.

(o) For purposes of this section, the state and local governments are not consumers.

(p) For purposes of this subsection, the term:

1. "Consumer" means a person who purchases prepaid wireless service in a retail sale.

2. "Prepaid wireless E911 fee" means the fee that is required to be collected by a seller from a consumer as provided in this subsection.

3. "Provider" means a person that provides prepaid wireless service pursuant to a license issued by the Federal Communications Commission.

4. "Retail transaction" means the purchase by a consumer from a seller of prepaid wireless service that may be applied to a single service identifier for use by the consumer. If a consumer makes a purchase of multiple prepaid wireless services in a single transaction, each individual prepaid wireless service shall be considered a separate retail transaction for purposes of calculating the prepaid wireless E911 fee.

5. "Seller" means a person who makes retail sales of prepaid wireless services to a consumer.

(10) ~~(9)~~ AUTHORIZED EXPENDITURES OF E911 FEE.—

(a) For purposes of this section, E911 service includes the functions of database management, call taking, ~~dispatching,~~ location verification, and call transfer. Department of Health certification and recertification and training costs for 911 public safety telecommunications, including dispatching, are functions of 911 services.

(b) All costs directly attributable to the establishment or provision of E911 service and contracting for E911 services are eligible for expenditure of moneys derived from imposition of the fee authorized by this section. These costs include the acquisition, implementation, and maintenance of Public Safety Answering Point (PSAP) equipment and E911 service features, as defined in the providers' published schedules ~~Public Service Commission's lawfully approved 911 and E911 and related tariffs~~ or the acquisition, installation, and maintenance of other E911 equipment, including: circuits; call answering equipment; ~~,~~ call transfer equipment; ~~,~~ ANI or ALI controllers; ~~, ALI controllers,~~ ANI or ALI displays; ~~, ALI displays,~~ station instruments; ~~,~~ E911 telecommunications systems; ~~,~~ visual call information and storage

devices; ~~,~~ recording equipment; ~~,~~ telephone devices and other equipment for the hearing impaired used in the E911 system; ~~,~~ PSAP backup power systems; ~~,~~ consoles; ~~,~~ automatic call distributors, and interfaces, including hardware and software, for computer-aided dispatch (CAD) systems; ~~,~~ integrated CAD systems for that portion of the systems used for E911 call taking; GIS system and software equipment and information displays; ~~,~~ network clocks; ~~,~~ salary and associated expenses for E911 call takers for that portion of their time spent taking and transferring E911 calls, salary, and associated expenses for a county to employ a full-time equivalent E911 coordinator position and a full-time equivalent mapping or geographical data position, and technical system maintenance, database, and administration personnel ~~and a staff assistant position per county~~ for the portion of their time spent administrating the E911 system; emergency medical, fire, and law enforcement prearrival instruction software; charts and training costs; ~~,~~ training costs for PSAP call takers, supervisors, and managers in the proper methods and techniques used in taking and transferring E911 calls; ~~,~~ costs to train and educate PSAP employees regarding E911 service or E911 equipment, including fees collected by the Department of Health for the certification and recertification of 911 public safety telecommunicators as required under s. 401.465; ~~,~~ and expenses required to develop and maintain all information, including ALI and ANI databases and other information source repositories, necessary to properly inform call takers as to location address, type of emergency, and other information directly relevant to the E911 call-taking and transferring function. Moneys derived from the fee may also

be used for next-generation E911 network services, next-generation E911 database services, next-generation E911 equipment, and wireless E911 routing systems.

(c) The moneys may not be used to pay for any item not listed in this subsection, including, but not limited to, any capital or operational costs for emergency responses which occur after the call transfer to the responding public safety entity and the costs for constructing, leasing, maintaining, or renovating buildings, except for those building modifications necessary to maintain the security and environmental integrity of the PSAP and E911 equipment rooms.

Section 2. Effective on the date that the prepaid wireless E911 fee is imposed and remitted to the state under section 365.172(9)(b), Florida Statutes, as amended by this act, section 365.173, Florida Statutes, is amended to read:

365.173 Emergency Communications Number E911 System Fund.—

(1) REVENUES.—

(a) ~~All~~ Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund, a fund created in the Technology Program, or other office as designated by the Secretary of Management Services.~~,~~

(b) Revenues derived from the fee levied on prepaid wireless service under s. 365.172(9), less the costs of administering collection of the fee, must be transferred by the Department of Revenue to the Emergency Communications Number E911 System Fund on or before the 25th day of each month

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following the month of receipt. ~~and,~~

(c) For accounting purposes, the Emergency Communications Number E911 System Fund must be segregated into three ~~two~~ separate categories:

1.~~(a)~~ The wireless category; ~~and~~

2.~~(b)~~ The nonwireless category; and

3. The prepaid wireless category.

(d) All moneys must be invested by the Chief Financial Officer pursuant to s. 17.61. All moneys in such fund are to be expended by the office for the purposes provided in this section and s. 365.172. These funds are not subject to s. 215.20.

(2) DISTRIBUTION AND USE OF FUNDS.—As determined by the board pursuant to s. 365.172(8)(g) ~~s. 365.172(8)(h)~~, and subject to any modifications approved by the board pursuant to s. 365.172(6)(a)3. or (8)(h) ~~(8)(i)~~, the moneys in the fund shall be distributed and used only as follows:

(a) Seventy-six ~~Sixty-seven~~ percent of the moneys in the wireless category shall be distributed each month to counties, based on the total number of service identifiers in each county, and shall be used exclusively for payment of:

1. Authorized expenditures, as specified in s. 365.172(10) ~~s. 365.172(9)~~.

2. Costs to comply with the requirements for E911 service contained in the order and any future rules related to the order.

(b) Ninety-six ~~Ninety-seven~~ percent of the moneys in the nonwireless category shall be distributed each month to counties based on the total number of service identifiers in each county and shall be used exclusively for payment of authorized

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expenditures, as specified in s. 365.172(10) ~~s. 365.172(9)~~.

(c) Sixty-one percent of the moneys in the prepaid wireless category shall be distributed each month to counties based on the total amount of fees reported and paid in each county and shall be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10). The moneys from prepaid wireless fees identified as nonspecific in accordance with s. 365.172(9) shall be distributed as determined by the E911 Board.

(d) ~~(c)~~ Any county that receives funds under paragraphs (a), ~~and~~ (b), and (c) shall establish a fund to be used exclusively for the receipt and expenditure of the revenues collected under paragraphs (a), ~~and~~ (b), and (c). All fees placed in the fund and any interest accrued shall be used solely for costs described in subparagraphs (a)1. and 2. and may not be reduced, withheld, or allocated for other purposes. The money collected and interest earned in this fund shall be appropriated for these purposes by the county commissioners and incorporated into the annual county budget. The fund shall be included within the financial audit performed in accordance with s. 218.39. The financial audit shall assure that all E911 fee revenues, interest, and E911 grant funding are used for payment of authorized expenditures, as specified in s. 365.172(10) and as specified in the E911 Board grant and special disbursement programs. The county is responsible for all expenditures of revenues distributed from the county E911 fund and shall submit the financial audit reports to the board for review. A county may carry forward up to 30 percent of the total funds disbursed to the county by the board during a county fiscal ~~calendar~~ year

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for expenditures for capital outlay, capital improvements, ~~or~~ equipment replacement, or implementation of a hosted system if such expenditures are made for the purposes specified in subparagraphs (a)1. and 2.; however, the 30-percent limitation does not apply to funds disbursed to a county under s. 365.172(6)(a)3., and a county may carry forward any percentage of the funds, except that any grant provided shall continue to be subject to any condition imposed by the board. In order to prevent an excess recovery of costs incurred in providing E911 service, a county that receives funds greater than the permissible E911 costs described in s. 365.172(10) ~~s. 365.172(9)~~, including the 30-percent carryforward allowance, must return the excess funds to the E911 board to be allocated under s. 365.172(6)(a).

(e) ~~(d)~~ Twenty ~~Thirty~~ percent of the moneys in the wireless category shall be distributed to wireless providers in response to sworn invoices submitted to the board by wireless providers to reimburse such wireless providers for the actual costs incurred to provide 911 or E911 service, including the costs of complying with the order. Such costs include costs and expenses incurred by wireless providers to design, purchase, lease, program, install, test, upgrade, operate, and maintain all necessary data, hardware, and software required to provide E911 service. Each wireless provider shall submit to the board, by August 1 of each year, a detailed estimate of the capital and operating expenses for which it anticipates that it will seek reimbursement under this paragraph during the ensuing state fiscal year. In order to be eligible for recovery during any ensuing state fiscal year, a wireless provider must submit all

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

sworn invoices for allowable purchases made within the previous calendar year no later than March 31 of the fiscal year. By September 15 of each year, the board shall submit to the Legislature its legislative budget request for funds to be allocated to wireless providers under this paragraph during the ensuing state fiscal year. The budget request shall be based on the information submitted by the wireless providers and estimated surcharge revenues. Distributions of moneys in the fund by the board to wireless providers must be fair and nondiscriminatory. If the total amount of moneys requested by wireless providers pursuant to invoices submitted to the board and approved for payment exceeds the amount in the fund in any month, wireless providers that have invoices approved for payment shall receive a pro rata share of moneys in the fund and the balance of the payments shall be carried over to the following month or months until all of the approved payments are made. The board may adopt rules necessary to address the manner in which pro rata distributions are made when the total amount of funds requested by wireless providers pursuant to invoices submitted to the board exceeds the total amount of moneys on deposit in the fund.

~~(c) Notwithstanding paragraphs (a) and (d), the amount of money that remained in the wireless 911 system fund on December 31, 2006, must be disbursed to wireless providers for the recovery of allowable costs incurred in previous years ending December 31, 2006, and in accordance with paragraph (d). In order to be eligible for recovered costs incurred under paragraph (d), a wireless provider must submit sworn invoices to the board by December 31, 2007. The board must disburse the~~

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

~~designated funds in the wireless 911 system fund on or after January 1, 2008.~~

(f) One percent of the moneys in each category of the fund shall be retained by the board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and other activities as defined in s. 365.172(6). Any funds retained for such purposes in a calendar year which are not applied to such costs and expenses by March 31 of the following year shall be redistributed as determined by the board.

(g) Three ~~Two~~ percent of the moneys in each category of the fund shall be used to make monthly distributions to rural counties for the purpose of providing facilities and network and service enhancements and assistance for the 911 or E911 systems operated by rural counties and for the provision of grants by the office to rural counties for upgrading and replacing E911 systems.

(h) Thirty-five percent of the moneys in the prepaid wireless category shall be retained by the board to provide state E911 grants to be awarded in accordance with the following order of priority:

1. For all large, medium, and rural counties to upgrade or replace E911 systems.

2. For all large, medium, and rural counties to develop and maintain statewide 911 routing, geographic, and management information systems.

3. For all large, medium, and rural counties to develop and maintain next-generation 911 services and equipment. ~~By September 1, 2007, up to $15 million of the existing 911 system~~

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

~~fund shall be available for distribution by the board to the counties in order to prevent a loss in the ordinary and expected time value of money caused by any timing delay in remittance to the counties of wireline fees caused by the one-time transfer of collecting wireline fees by the counties to the board. All disbursements for this purpose must be returned to the fund from the future remittance by the nonwireless category.~~

(i) If the wireless category has funds remaining in it on December 31 after disbursements have been made during the calendar year immediately prior to December 31, the board may disburse the excess funds in the wireless category in accordance with s. 365.172(6)(a)3.b.

(3) The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the E911 service. It is the intent of the Legislature that all revenue from the fee be used as specified in ~~this~~ subsection (2).

Section 3. Paragraph (a) of subsection (2) of section 401.465, Florida Statutes, is amended to read:

401.465 911 public safety telecommunicator certification.—

(2) PERSONNEL; STANDARDS AND CERTIFICATION.—

(a) Effective October 1, 2012, any person employed as a 911 public safety telecommunicator at a public safety answering point, as defined in s. 365.172(3) ~~s. 365.172(3)(a)~~, must be certified by the department.

Section 4. The Division of Law Revision and Information is directed to replace the phrase "on the first day of the month following 120 days after this act takes effect" or the phrase "on the first day of the month following 180 days after this act

takes effect" wherever it occurs in this act with the respective date.

Section 5. For the 2014-2015 fiscal year, the nonrecurring sum of $500,000 is appropriated from the General Revenue Fund to the Department of Revenue for the purposes of administering this act.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator Joe Negron, Chair
Appropriations Committee
CC: Cindy Kynoch, Staff Director
Alicia Weiss, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: **Request to agenda SB 294 – Emergency Communication System**

Date: February 19, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:
- ❒ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- ❒ 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- ❒ 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- ❒ 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 22, 2014
Meeting Date

Topic E-911 Bill Number SB 294 *(if applicable)*

Name JIM BRAINERD Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2814 Rabbit Hill Rd. Phone (850) 508-6716
Street

Tallahassee FL 32308 E-mail BRAINERDLAW@COMCAST.NET
City *State* *Zip*

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

Representing Polk County

Appearing at request of Chair: [ ] Yes [ ] No Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Emergency Communication System

Bill Number SB 294 *(if applicable)*

Name Brewster Bevis

Amendment Barcode *(if applicable)*

Job Title Senior Vice President

Address 516 N. Adams St
Street

Phone 850-224-7173

Tallahassee *City* FL *State* 32301 *Zip*

E-mail bbevis@aif.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22
Meeting Date

Topic 911 Bill Number SB 294 *(if applicable)*

Name JIM SMITH Amendment Barcode *(if applicable)*

Job Title DIRECTOR

Address 315 S CALHOUN ST STE 800 Phone
Street

TALLAHASSEE E-mail
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing CENTURYLINK

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic E911 fee

Bill Number 294 *(if applicable)*

Name Amber Hughes

Amendment Barcode _____ *(if applicable)*

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 850-701-3621

Tall. FL 32301
City *State* *Zip*

E-mail ahughes@flcities.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

Topic E911 Bill Number 0294 *(if applicable)*

Name Capt. Brian Schnering Amendment Barcode *(if applicable)*

Job Title Florida Sheriffs Association

Address 2617 Mahan Dr Phone 877 2165
Street

Tallahassee FL 32308 E-mail
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Sheriffs Association

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic E-911 Emergency Comms Systems Bill Number SB 294 *(if applicable)*

Name Troy McNichols Amendment Barcode *(if applicable)*

Job Title Regional Dir External Affairs

Address 12150 Research Pkwy Phone 407 492 8934

Street

Orl FL 32826 E-mail tm913x@att.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing AT&T

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number 294 *(if applicable)*

Name Diana Ferguson Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 119 S Monroe St Ste 202 Phone 850-681-6788
Street

Tallahassee FL 32308 E-mail dferguson@reedsmith.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing T-Mobile

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22
Meeting Date

Topic 911

Bill Number SB 294 *(if applicable)*

Name Woody Simmons

Amendment Barcode *(if applicable)*

Job Title VP Govt Affairs

Address 106 East College Ave. Suite 710
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 222-6300

E-mail Woodrow.Simmons@verizon.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Verizon

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic E-911 FBSS

Bill Number 294 *(if applicable)*

Name Dawn Suggs

Amendment Barcode _____ *(if applicable)*

Job Title Sr. Leg. Advocate

Address 100 South Monroe Street

Phone 850.320.2635

Tallahassee FL 32301
City *State* *Zip*

E-mail dsuggs@fl-counties.com

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

Representing FL. Association of Counties

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 312 (832084)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senator Simpson and others
SUBJECT:	Agriculture
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Favorable**
2.	White	Yeatman	CA	**Fav/CS**
3.	Babin	Diez-Arguelles	AFT	**Fav/CS**
4.	Babine	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 312 allows property appraisers to approve late-filed applications for agricultural classification when extenuating circumstances exist.

The bill expands the definition of "livestock" to include aquacultural species certified pursuant to chapter 597. It also allows agricultural land to retain an agricultural classification when the land owner participates in a water retention program sponsored by a water management district or the Florida Department of Environmental Protection, and requires that these lands be assessed as nonproductive agricultural lands.

The bill also expands the sales tax exemption for certain farm equipment to include:

- Power farm equipment used in the storage of raw products on the farm;
- Irrigation equipment, including replacement parts and accessories;
- Repairs of power farm equipment and irrigation equipment; and
- The portion of the sales price below $20,000 of trailers that weigh 12,000 pounds or less, used in agricultural production and transportation of farm products.

The Revenue Estimating Conference has determined the provisions of this bill will reduce General Revenue Fund receipts by $13.6 million in Fiscal Year 2014-2015, with a recurring

impact of $15 million, and the bill will reduce local property taxes by $100,000 in Fiscal Year 2015-2016 and future years.

II. Present Situation:

Property Valuation in Florida

The Florida Constitution requires that all property be assessed at just value (fair market value) for ad valorem tax purposes. However, sections 3, 4, and 6, Article VII of the Florida Constitution, provide for specified assessment limitations, property classifications, and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, the assessed value is determined. The assessed value is then reduced by any applicable exemptions to produce the taxable value.

Agricultural Property Classification

Section 193.461, F.S., provides that each county's property appraiser shall, for assessment purposes on an annual basis, classify all lands within a county as agricultural or nonagricultural. For property to be classified as agricultural land, it must be used "primarily for bona fide agricultural purposes." Agricultural purposes include, but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture, including algaculture; sod farming; and all forms of farm products and farm production.

Property appraisers are required to reclassify lands as nonagricultural when they are diverted from an agricultural to a nonagricultural use or no longer utilized for agricultural purposes.

In response to the spread of citrus canker, the 2000 Legislature authorized lands to retain agricultural classification and be assessed at a de minimis value of no more than $50 per acre if the owner took the land out of production due to a state or federal eradication or quarantine program. These lands retain the agricultural classification and de minimis assessment as long as they are not used to produce income or used for a nonagricultural use.

Property owners must submit applications for agricultural classification by March 1 of each year.[1] If a property owner submits an application after March 1, the property owner must petition the value adjustment board and show extenuating circumstances that warrant granting the classification; the property appraiser is not authorized to review late applications.[2]

Water Retention Programs

The Legislature has encouraged and supported development of creative public-private partnerships and programs that facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed. Since 2005, the South Florida Water Management District has been working with agencies, environmental organizations, land owners, and researchers to enhance opportunities for

[1] Section 193.461(3)(a), F.S.
[2] *Id.*

storing excess surface water on private and public lands. Over the years, these efforts have made thousands of acre-feet of water retention and storage available.

Water retention systems serve to control storm water volume before it is discharged to surface waters or floods urban areas. The systems also act to minimize point source and non-point source pollution prior to its entry into streams, natural wetlands, and other receiving waters. These systems vary widely in their pollutant removal capabilities, but can effectively remove a number of contaminants with removal rates as high as 95 and 99 percent for some non-dissolved nutrients and pesticides, respectively.

Eight Florida ranchers participated in a $6 million pilot program run by the South Florida Water Management District called the "Florida Ranchlands Environmental Services Project." The program, which ran from 2006 to 2011, paid ranchers to construct water retention areas on their properties that acted as natural phosphorous filters. In addition to construction costs, the program paid ranchers for annual maintenance and a participation fee for three years. The district also created a $3 million water farming pilot project that paid citrus growers to build systems to store excess water on fallow citrus land before it can flow into estuaries.

When an agricultural landowner enters into an agreement with a water management district or the Department of Environmental Protection for water storage or water quality improvements on private land, the extent of existing wetlands and other surface waters must be established in the agreement.[3]This "baseline determination" is later needed so that any increase in wetlands or surface water as a result of the project does not subject the landowner to increased regulatory requirements.

As part of Florida's pollution control requirements, Florida establishes the amount of a pollutant that a water body may receive without exceeding water quality standards.[4] The Department of Agriculture and Consumer Services is authorized to establish best management practices to reduce agricultural pollutants.[5]

Sales and Use Tax

Florida provides the following sales tax exemptions relating to livestock:

- The gross proceeds from the sale of livestock directly from the farm;[6]
- The use of livestock or livestock products by the farmer;[7]
- Disinfectants, insecticides and pesticides used in dairy barns or on poultry farms for the purpose of protecting livestock;[8] and
- The sale of feed for livestock.[9]

[3] Section 373.4591, F.S.
[4] *See* Section 403.067(6)(a)2., F.S. (describing the total maximum daily load calculation)
[5] Section 403.067(7)(c), F.S.
[6] Section 212.07(5), F.S.
[7] *Id.*
[8] Section 212.08(5)(a), F.S.
[9] Section 212.08(7)(d), F.S.

"Livestock" is defined as "all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals raised for commercial purposes[,] . . . [and] fish raised for commercial purposes."[10]

Florida provides a sales tax exemption for certain farm equipment. In order to qualify, the equipment must be "power farm equipment" used exclusively on a farm or in a forest for the agricultural production of crops or for fire prevention and suppression work with respect to such crops. The exemption applies to the "sale, rental, lease, use, consumption or storage for use in this state of power farm equipment"; the provision does not exempt the repair of power farm equipment.

"Power farm equipment" is limited to moving or stationary equipment that contains within itself the means for its own propulsion or depends upon an external power source to perform its functions. Sales of component parts of power farm equipment are not exempt unless the component part is, by itself, power farm equipment. For example, the sale of a complete irrigation supply system would be exempt as the sale of power farm equipment; however, the sale of a pipe that will be used to update an existing system is not exempt.

Agricultural production is limited to practices necessary to accomplish the production of plants and animals through the harvest phase. Power farm equipment used in activities that occur after harvesting, such as processing, is not exempt.

III. Effect of Proposed Changes:

Section 1 allows property appraisers to review late applications for agricultural classification and approve the application if the property owner demonstrates that he or she was unable to apply timely or otherwise demonstrates extenuating circumstances for not having filed in a timely manner.

The bill also allows agricultural lands to be used in water retention programs sponsored by the Department of Environmental Protection or a water management district without losing their agricultural classification. These lands will be assessed as nonproductive agricultural lands. If these lands are diverted to a nonagricultural use, they will be subject to normal assessment procedures.

Section 2 amends the definition of "livestock" to include all aquaculture species that are certified under chapter 597 and raised for commercial purposes.

The bill also amends the definition of "agricultural production" to include the storage of raw products on the farm, thereby expanding the exemption for power farm equipment to include certain equipment used in the storage of agricultural products.

Section 3 amends the exemption for farm equipment to include:
- Irrigation equipment;
- The repair of power farm equipment and irrigation equipment;

[10] Section 212.02(29), F.S.

- Replacement parts and accessories for power farm equipment or irrigation equipment; and
- The portion of a sales price below $20,000 for trailers weighing 12,000 pounds or less that are purchased by a farmer and used by the farmer to transport farm products from his or her farm to the first point of sale.

The bill also exempts stakes used by a farmer to support plants during agricultural production.

Section 4 allows a landowner that enters into an agreement to implement best management practices with the Department of Agriculture and Consumer Services to establish a baseline of wetlands and other surface waters, at the landowner's expense, and document the baseline in the best management practices implementation agreement. The determination will serve as the baseline for future agricultural pollutant analysis.

Section 5 provides that the bill will take effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that, except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law, if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

PCS/CS/SB 312 provides property tax and sales tax exemptions that will reduce municipalities' and counties' property tax and sales tax collections, thereby reducing their revenue-raising authority. However, an exemption from the mandates provision may apply because the reduction in local governments' revenue-raising authority may result in an insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the provisions of PCS/CS/SB 312 will reduce General Revenue receipts by $13.6 million in Fiscal Year 2014-2015, with a recurring impact of $15 million, and the bill will reduce local property taxes by $100,000 in Fiscal Year 2015-2016 and future years.

B. Private Sector Impact:

Under the conditions described in the bill, participants in water retention programs may have reduced ad valorem tax liability for flooded lands. The legislation allows agricultural producers to benefit from reduced tax liability for purchases of specified agricultural items, such as parts and repairs for irrigation equipment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 193.461, 212.02, 212.08, and 373.4591.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on April 2, 2014:
The CS/CS:

- Allows property appraisers to approve late-filed applications for agricultural classification under certain circumstances;
- Provides that agricultural land used in a dispersed water storage program will be assessed as nonproductive agricultural land, and will be subject to statutory assessment procedures if it is diverted to a nonagricultural use;
- Expands the definition of "livestock" to include all aquaculture certified under chapter 597;
- Limits new the sales tax exemption for power farm equipment used for storage to equipment used to store raw products on the farm;
- Limits the new sales tax exemption for trailers use for agricultural purposes to the portion of sales prices below $20,000 for trailers weighing 12,000 pounds or less;
- Creates a sales tax exemption for stakes used by a farmer to support plants during agricultural production; and
- Expands the ability of a landowner that participates in water storage programs to use a baseline determination of wetlands and other surface waters for future regulatory

requirements to also allow a baseline to be used for best management practices implementation agreements regarding agricultural pollutants.

CS by Community Affairs on January 8, 2014:

The CS classifies flooded lands as agricultural lands for property tax valuation purposes, instead of classifying the use of such lands as non-income-producing. Flooded lands in recognized water storage programs, or successor programs, would be assessed at a de minimis value, on a single year methodology, and this provision would not expire.

The CS removes provisions that would have defined "qualified agricultural producer," and authorized the Department of Revenue to issue certificates for agricultural sales and use tax exemptions.

B. Amendments:

None.

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

156972

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 107 - 215
and insert:
Section 2. Subsection (3) of section 212.08, Florida Statutes, is amended to read:
212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following

156972

are hereby specifically exempt from the tax imposed by this chapter.

(3) EXEMPTIONS; CERTAIN FARM EQUIPMENT.—A ~~There shall be no~~ tax may not be imposed on the sale, rental, lease, use, consumption, or storage for use in this state of power farm equipment or irrigation equipment used exclusively on a farm or in a forest in the agricultural production of crops or products as produced by those agricultural industries included in s. 570.02(1), or for fire prevention and suppression work with respect to such crops or products. This exemption also applies to replacement parts and accessories for irrigation equipment and repairs to irrigation equipment. Harvesting may not be construed to include processing activities. This exemption is not forfeited by moving farm equipment between farms or forests. However, this exemption shall not be allowed unless the purchaser, renter, or lessee signs a certificate stating that the farm equipment is to be used exclusively on a farm or in a forest for agricultural production or for fire prevention and suppression, as required by this subsection. Possession by a seller, lessor, or other dealer of a written certification by the purchaser, renter, or lessee certifying the purchaser's, renter's, or lessee's entitlement to an exemption permitted by this subsection relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption.

Section 3. Section 373.4591, Florida Statutes, is amended to read:

156972

373.4591 Improvements on private agricultural lands.—The Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural lands. When an agreement is entered into between a water management district or the department and a private landowner to establish such a partnership, a baseline condition determining the extent of wetlands and other surface waters on the property shall be established and documented in the agreement before improvements are constructed. When an agreement is entered into between the Department of Agriculture and Consumer Services and a private landowner to implement best management practices pursuant to s. 403.067(7)(c), a baseline condition determining the extent of wetlands and other surface waters on the property may be established at the option and expense of the private landowner and documented in the agreement before improvements are constructed. The Department of Agriculture and Consumer Services shall submit the landowner's proposed baseline condition documentation to the lead agency for review and approval, and the agency shall make every effort to complete the review within 45 days. The Department of Agriculture and Consumer Services, the department, and the water management districts shall coordinate on a process for reviewing such requests. The determination

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

And the title is amended as follows:

Delete lines 9 - 22

and insert:

amending s. 212.08, F.S.; expanding the exemption for

156972

certain farm equipment from the sales and use tax imposed under ch. 212, F.S., to include irrigation equipment, replacement parts and accessories for irrigation equipment, and repairs of irrigation equipment; amending s. 373.4591, F.S.; authorizing agricultural landowners to establish baseline wetland and surface water conditions before implementing certain best management practice implementation agreements; requiring establishment of a process for review of proposed baseline condition determinations; providing an

778398

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 221 and 222
insert:

Section 5. The amendment to s. 212.02(29), Florida Statutes, made by section 2 of this act is intended to be remedial in nature and apply retroactively, but it does not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

778398

11
12 ================ T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete line 22
15 and insert:
16 practice implementation agreements; providing that the
17 amendment to s. 212.02(29), F.S., is remedial in
18 nature and applies retroactively but does not provide
19 a basis for an assessment of any tax not paid or
20 create a right to a refund or credit of any tax paid
21 before a specified time; providing an

832084

576-03652-14

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to agriculture; amending s. 193.461, F.S.; authorizing a property appraiser to grant an agricultural classification after the application deadline upon a showing of extenuating circumstances; providing that participation in certain dispersed water storage programs does not change a land's agricultural classification for assessment purposes; amending s. 212.02, F.S.; redefining the terms "livestock" and "agricultural production"; amending s. 212.08, F.S.; expanding the exemption for certain farm equipment from the sales and use tax imposed under ch. 212, F.S., to include irrigation equipment, repairs of farm equipment and irrigation equipment, and certain trailers; expanding the exemption for items in agricultural use from the sale and use tax imposed under ch. 212, F.S., to include stakes used to support plants during agricultural production; amending s. 373.4591, F.S.; authorizing agricultural landowners to establish baseline wetland and surface water conditions before implementing certain best management practice implementation agreements; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) and subsection

832084

576-03652-14

(7) of section 193.461, Florida Statutes, are amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(3)(a) ~~No~~ Lands may not ~~shall~~ be classified as agricultural lands unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying such lands, may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose. Failure to make timely application by March 1 shall constitute a waiver for 1 year of the privilege herein granted for agricultural assessment. However, an applicant who is qualified to receive an agricultural classification who fails to file an application by March 1 must ~~may~~ file an application for the classification with the property appraiser within 25 days after the property appraiser mails the notices required under s. 194.011(1). Upon receipt of sufficient evidence, as determined by the property appraiser, demonstrating that the applicant was unable to apply for the classification in a timely manner or otherwise demonstrating extenuating circumstances judged by the property appraiser to warrant granting the classification, the property appraiser may grant the classification. If the applicant fails to produce sufficient evidence demonstrating that the applicant was unable to apply for the classification in a timely manner or otherwise demonstrating extenuating circumstances as judged by the property appraiser, the applicant ~~and~~ may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the classification be granted. The petition may

be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding ~~the provisions of~~ s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the classification and demonstrates particular extenuating circumstances judged by the ~~property appraiser or the~~ value adjustment board to warrant granting the classification, ~~the property appraiser or~~ the value adjustment board may grant the classification for the current year. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department. The lessee of property may make original application or reapply using the short form if the lease, or an affidavit executed by the owner, provides that the lessee is empowered to make application for the agricultural classification on behalf of the owner and a copy of the lease or affidavit accompanies the application. A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for classification of property within the county after an initial application is made and the classification granted by the property appraiser. Such waiver may be revoked by a majority vote of the governing body of the county.

(7)(a) Lands classified for assessment purposes as agricultural lands which are taken out of production by a ~~any~~ state or federal eradication or quarantine program shall

continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs which are converted to fallow~~,~~ or otherwise nonincome-producing uses shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to ~~no more than~~ $50 per acre, on a single year assessment methodology; however, lands converted to other income-producing agricultural uses permissible under such programs shall be assessed pursuant to this section. Land under a mandated eradication or quarantine program which is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(b) Lands classified for assessment purposes as agricultural lands which participate in a dispersed water storage program pursuant to a contract with the Department of Environmental Protection or a water management district which requires flooding of land shall continue to be classified as agricultural lands for the duration of the inclusion of the lands in such program or successor programs and shall be assessed as nonproductive agricultural lands. Land under a dispersed water storage program which is diverted to a nonagricultural use shall be assessed under s. 193.011.

Section 2. Subsections (29) and (32) of section 212.02, Florida Statutes, are amended to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(29) "Livestock" includes all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses,

hogs, cattle, ostriches, and other grazing animals raised for commercial purposes. The term ~~"livestock" shall~~ also includes all aquaculture species that are certified under chapter 597 and ~~include fish~~ raised for commercial purposes.

(32) "Agricultural production" means the production of plants and animals useful to humans, including the preparation, planting, cultivating, or harvesting of these products or any other practices necessary to accomplish production through the harvest phase, including storage of raw products on the farm. The term ~~and~~ includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.

Section 3. Subsection (3) and paragraph (a) of subsection (5) of section 212.08, Florida Statutes, are amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(3) EXEMPTIONS; CERTAIN FARM EQUIPMENT.—

(a) A ~~There shall be no~~ tax may not be imposed on the sale, rental, lease, use, consumption, repair, or storage for use in this state of power farm equipment or irrigation equipment, including replacement parts and accessories for power farm equipment or irrigation equipment, which are used exclusively on a farm or in a forest in the agricultural production of crops or products ~~as~~ produced by those agricultural industries included in s. 570.02(1), or for fire prevention and suppression work

with respect to such crops or products. Harvesting may not be construed to include processing activities. This exemption is not forfeited by moving farm equipment between farms or forests.

(b) A tax may not be imposed on that portion of the sales price below $20,000 for a trailer weighing 12,000 pounds or less and purchased by a farmer for exclusive use in agricultural production or to transport farm products from his or her farm to the place where the farmer transfers ownership of the farm products to another. This exemption is not forfeited by using a trailer to transport the farmer's farm equipment. The exemption provided under this paragraph does not apply to the lease or rental of a trailer.

(c) The exemptions provided in paragraphs (a) and (b) are ~~However, this exemption shall~~ not ~~be~~ allowed unless the purchaser, renter, or lessee signs a certificate stating that the farm equipment is to be used exclusively ~~on a farm or in a forest for agricultural production or for fire prevention and suppression,~~ as required under ~~by~~ this subsection. Possession by a seller, lessor, or other dealer of a written certification by the purchaser, renter, or lessee certifying the purchaser's, renter's, or lessee's entitlement to an exemption permitted by this subsection relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(a) *Items in agricultural use and certain nets.*—A ~~There are exempt from the~~ tax may not be imposed on ~~by this chapter~~ nets

576-03652-14

designed and used exclusively by commercial fisheries; disinfectants, fertilizers, insecticides, pesticides, herbicides, fungicides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or on poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock; portable containers or movable receptacles in which portable containers are placed, used for processing farm products; field and garden seeds, including flower seeds; nursery stock, seedlings, cuttings, or other propagative material purchased for growing stock; seeds, seedlings, cuttings, and plants used to produce food for human consumption; cloth, plastic, and other similar materials used for shade, mulch, or protection from frost or insects on a farm; stakes used by a farmer to support plants during agricultural production; generators used on poultry farms; and liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised; however, such exemption is ~~shall~~ not ~~be~~ allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein. Also exempt are cellophane wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire and twine used for baling hay, when used by a farmer to contain, produce, or process an agricultural commodity.

Section 4. Section 373.4591, Florida Statutes, is amended to read:

373.4591 Improvements on private agricultural lands.—The Legislature encourages public-private partnerships to accomplish

576-03652-14

water storage and water quality improvements on private agricultural lands. When an agreement is entered into between a water management district or the department and a private landowner to establish such a partnership, a baseline condition determining the extent of wetlands and other surface waters on the property shall be established and documented in the agreement before improvements are constructed. When the Department of Agriculture and Consumer Services and a landowner agree to a plan to implement best management practices pursuant to s. 403.067(7)(c), a baseline condition determining the extent of wetlands and other surface waters on the property may be established at the option and expense of the landowner and documented in the best management practice implementation agreement before improvements are constructed. The determination for the baseline condition shall be conducted using the methods set forth in the rules adopted pursuant to s. 373.421. The baseline condition documented in the agreement shall be considered the extent of wetlands and other surface waters on the property for the purpose of regulation under this chapter for the duration of the agreement and after its expiration.

Section 5. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 312
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senator Simpson and others
SUBJECT:	Agriculture
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Favorable**
2.	White	Yeatman	CA	**Fav/CS**
3.	Babin	Diez-Arguelles	AFT	**Fav/CS**
4.	Babin	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 312 allows property appraisers to approve late-filed applications for agricultural classification when extenuating circumstances exist.

The bill allows agricultural land to retain an agricultural classification when the land owner participates in a water retention program sponsored by a water management district or the Florida Department of Environmental Protection, and requires that these lands be assessed as nonproductive agricultural lands.

The bill also expands the sales tax exemption for certain farm equipment to include:

- Irrigation equipment, including replacement parts and accessories; and
- Repairs of irrigation equipment.

The Revenue Estimating Conference has determined the provisions of this bill will reduce General Revenue Fund receipts by $2.2 million in Fiscal Year 2014-2015, with a recurring impact of $2.4 million, and the bill will reduce local property taxes by $100,000 in Fiscal Year 2015-2016 and future years.

II. Present Situation:

Property Valuation in Florida

The Florida Constitution requires that all property be assessed at just value (fair market value) for ad valorem tax purposes. However, sections 3, 4, and 6, Article VII of the Florida Constitution, provide for specified assessment limitations, property classifications, and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, the assessed value is determined. The assessed value is then reduced by any applicable exemptions to produce the taxable value.

Agricultural Property Classification

Section 193.461, F.S., provides that each county's property appraiser shall, for assessment purposes on an annual basis, classify all lands within a county as agricultural or nonagricultural. For property to be classified as agricultural land, it must be used "primarily for bona fide agricultural purposes." Agricultural purposes include, but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture, including algaculture; sod farming; and all forms of farm products and farm production.

Property appraisers are required to reclassify lands as nonagricultural when they are diverted from an agricultural to a nonagricultural use or no longer utilized for agricultural purposes.

In response to the spread of citrus canker, the 2000 Legislature authorized lands to retain agricultural classification and be assessed at a de minimis value of no more than $50 per acre if the owner took the land out of production due to a state or federal eradication or quarantine program. These lands retain the agricultural classification and de minimis assessment as long as they are not used to produce income or used for a nonagricultural use.

Property owners must submit applications for agricultural classification by March 1 of each year.[1] If a property owner submits an application after March 1, the property owner must petition the value adjustment board and show extenuating circumstances that warrant granting the classification; the property appraiser is not authorized to review late applications.[2]

Water Retention Programs

The Legislature has encouraged and supported development of creative public-private partnerships and programs that facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed. Since 2005, the South Florida Water Management District has been working with agencies, environmental organizations, land owners, and researchers to enhance opportunities for storing excess surface water on private and public lands. Over the years, these efforts have made thousands of acre-feet of water retention and storage available.

[1] Section 193.461(3)(a), F.S.
[2] *Id.*

Water retention systems serve to control storm water volume before it is discharged to surface waters or floods urban areas. The systems also act to minimize point source and non-point source pollution prior to its entry into streams, natural wetlands, and other receiving waters. These systems vary widely in their pollutant removal capabilities, but can effectively remove a number of contaminants with removal rates as high as 95 and 99 percent for some non-dissolved nutrients and pesticides, respectively.

Eight Florida ranchers participated in a $6 million pilot program run by the South Florida Water Management District called the "Florida Ranchlands Environmental Services Project." The program, which ran from 2006 to 2011, paid ranchers to construct water retention areas on their properties that acted as natural phosphorous filters. In addition to construction costs, the program paid ranchers for annual maintenance and a participation fee for three years. The district also created a $3 million water farming pilot project that paid citrus growers to build systems to store excess water on fallow citrus land before it can flow into estuaries.

When an agricultural landowner enters into an agreement with a water management district or the Department of Environmental Protection for water storage or water quality improvements on private land, the extent of existing wetlands and other surface waters must be established in the agreement.[3] This "baseline determination" is later needed so that any increase in wetlands or surface water as a result of the project does not subject the landowner to increased regulatory requirements.

As part of Florida's pollution control requirements, Florida establishes the amount of a pollutant that a water body may receive without exceeding water quality standards.[4] The Department of Agriculture and Consumer Services is authorized to establish best management practices to reduce agricultural pollutants.[5]

Sales and Use Tax

Florida provides a sales tax exemption for certain farm equipment. In order to qualify, the equipment must be "power farm equipment" used exclusively on a farm or in a forest for the agricultural production of crops or for fire prevention and suppression work with respect to such crops. The exemption applies to the "sale, rental, lease, use, consumption or storage for use in this state of power farm equipment"; the provision does not exempt the repair of power farm equipment.

"Power farm equipment" is limited to moving or stationary equipment that contains within itself the means for its own propulsion or depends upon an external power source to perform its functions. Sales of component parts of power farm equipment are not exempt unless the component part is, by itself, power farm equipment. For example, the sale of a complete irrigation supply system would be exempt as the sale of power farm equipment; however, the sale of a pipe that will be used to update an existing system is not exempt.

[3] Section 373.4591, F.S.
[4] *See* Section 403.067(6)(a)2., F.S. (describing the total maximum daily load calculation)
[5] Section 403.067(7)(c), F.S.

III. Effect of Proposed Changes:

Section 1 allows property appraisers to review late applications for agricultural classification and approve the application if the property owner demonstrates that he or she was unable to apply timely or otherwise demonstrates extenuating circumstances for not having filed in a timely manner.

The bill also allows agricultural lands to be used in water retention programs sponsored by the Department of Environmental Protection or a water management district without losing their agricultural classification. These lands will be assessed as nonproductive agricultural lands. If these lands are diverted to a nonagricultural use, they will be subject to normal assessment procedures.

Section 2 amends the sales tax exemption for farm equipment to include:

- Irrigation equipment;
- The repair of irrigation equipment; and
- Replacement parts and accessories for irrigation equipment.

Section 3 allows a landowner that enters into an agreement to implement best management practices with the Department of Agriculture and Consumer Services to establish a baseline of wetlands and other surface waters, at the landowner's expense, and document the baseline in the best management practices implementation agreement. The determination will serve as the baseline for future agricultural pollutant analysis. The Department of Agriculture and Consumer Services must submit the determination to the lead agency for approval and the lead agency must make every effort to complete the review within 45 days. The Department of Agriculture and Consumer Services, the Department of Environmental Protection and the water management districts shall coordinate on a process for approving these requests.

Section 4 provides that the bill will take effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that, except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law, if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The bill provides property tax and sales tax exemptions that will reduce municipalities' and counties' property tax and sales tax collections, thereby reducing their revenue-raising authority. However, an exemption from the mandates provision may apply because the reduction in local governments' revenue-raising authority may result in an insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the provisions of CS/CS/SB 312 will reduce General Revenue receipts by $2.2 million in Fiscal Year 2014-2015, with a recurring impact of $2.4 million, and the bill will reduce local property taxes by $100,000 in Fiscal Year 2015-2016 and future years.

B. Private Sector Impact:

Under the conditions described in the bill, participants in water retention programs may have reduced ad valorem tax liability for flooded lands. The legislation allows agricultural producers to benefit from reduced tax liability for purchases of specified agricultural items, such as parts and repairs for irrigation equipment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 193.461, 212.08, and 373.4591.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The CS/CS:

- Allows property appraisers to approve late-filed applications for agricultural classification under certain circumstances;

- Provides that agricultural land used in a dispersed water storage program will be assessed as nonproductive agricultural land, and will be subject to statutory assessment procedures if it is diverted to a nonagricultural use;
- Removes the provisions of the bill that expand the sales tax exemption for power farm equipment to include repairs, repair parts and accessories for power farm equipment;
- Removes the provisions of the bill that expand the definition of "agricultural production" to include storage;
- Removes the provision of the bill that create a sales tax exemption for trailers used in agricultural production and transportation of farm products; and
- Expands the ability of a landowner that participates in water storage programs to use a baseline determination of wetlands and other surface waters for future regulatory requirements to also allow a baseline to be used for best management practices implementation agreements regarding agricultural pollutants.

CS by Community Affairs on January 8, 2014:

The CS classifies flooded lands as agricultural lands for property tax valuation purposes, instead of classifying the use of such lands as non-income-producing. Flooded lands in recognized water storage programs, or successor programs, would be assessed at a de minimis value, on a single year methodology, and this provision would not expire.

The CS removes provisions that would have defined "qualified agricultural producer," and authorized the Department of Revenue to issue certificates for agricultural sales and use tax exemptions.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Simpson

578-00969-14 2014312c1

A bill to be entitled

An act relating to agriculture; amending s. 193.461, F.S.; providing that participation in certain dispersed water storage programs does not change a land's agricultural classification for assessment purposes; amending s. 212.02, F.S.; redefining the term "agricultural production" to include storage; amending s. 212.08, F.S.; expanding the exemption for certain farm equipment from the sales and use tax imposed under ch. 212, F.S., to include repairs of such equipment and trailers that are used for certain purposes; providing an effective date.

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

Section 1. Subsection (7) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(7)(a) Lands classified for assessment purposes as agricultural lands which are taken out of production by a ~~any~~ state or federal eradication or quarantine program shall continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs which are converted to fallow~~,~~ or otherwise nonincome-producing uses shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to ~~no more than~~ $50 per acre, on a single year assessment methodology; however, lands converted to other income-producing agricultural

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

578-00969-14 2014312c1

uses permissible under such programs shall be assessed pursuant to this section. Land under a mandated eradication or quarantine program which is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(b) Lands classified for assessment purposes as agricultural lands which participate in a dispersed water storage program pursuant to a contract with the Department of Environmental Protection or a water management district which requires flooding of land shall continue to be classified as agricultural lands for the duration of the inclusion of the lands in such program or successor programs and shall be assessed at a de minimis value, on a single year assessment methodology.

Section 2. Subsection (32) of section 212.02, Florida Statutes, is amended to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(32) "Agricultural production" means the production of plants and animals useful to humans, including the preparation, planting, cultivating, ~~or~~ harvesting, or storage of these products or any other practices necessary to accomplish production through the harvest and storage phase, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.

Section 3. Subsection (3) of section 212.08, Florida Statutes, is amended to read:

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

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(3) EXEMPTIONS; CERTAIN FARM EQUIPMENT.—There shall be no tax on the sale, rental, lease, use, consumption, repair, or storage for use in this state of power farm equipment and irrigation equipment, including replacement parts and accessories for such equipment, which are used exclusively on a farm or in a forest in the agricultural production of crops or products ~~as~~ produced by those agricultural industries included in s. 570.02(1), or for fire prevention and suppression work with respect to such crops or products. Trailers used in agricultural production and the transportation of farm products from the farm to the first point of sale are also exempt from such tax. Harvesting may not be construed to include processing activities. This exemption is not forfeited by moving farm equipment between farms or forests. However, this exemption may ~~shall~~ not be allowed unless the purchaser, renter, or lessee signs a certificate stating that the farm equipment is to be used exclusively on a farm or in a forest for agricultural production or for fire prevention and suppression, as required by this subsection. Possession by a seller, lessor, or other dealer of a written certification by the purchaser, renter, or lessee certifying the purchaser's, renter's, or lessee's entitlement to an exemption permitted by this subsection relieves the seller from the responsibility of collecting the

tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption.

Section 4. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Ag. Bill Number CS/SB 312 *(if applicable)*

Name Doug Mann Amendment Barcode — *(if applicable)*

Job Title —

Address 310 W. College Ave. Phone 222-7535
Street

Tallahassee, FL 32301 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AIF

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number 312 *(if applicable)*

Name Adam Basford Amendment Barcode _____ *(if applicable)*

Job Title Leg. Affairs Director

Address 315 S Calhoun St Phone 222-2557
Street

Tallahassee FL 32301 E-mail _____
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Farm Bureau

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Agriculture

Bill Number 312 *(if applicable)*

Name Leticia Adams

Amendment Barcode *(if applicable)*

Job Title Senior Policy Director

Address *Street*

Phone

City *State* *Zip*

E-mail

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

Representing Florida Chamber of Commerce

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 388
INTRODUCER:	Senator Bean
SUBJECT:	Public Retirement Plans
DATE:	April 23, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	**Favorable**
2.	White	Yeatman	CA	**Favorable**
3.	Fournier	Diez-Arguelles	AFT	**Favorable**
4.	Fournier	Kynoch	AP	**Favorable**

I. Summary:

SB 388 provides that a consolidated government that has entered into an interlocal agreement to provide police protection services to an incorporated municipality is eligible to receive the premium taxes reported for the municipality under certain circumstances. The bill authorizes the municipality receiving the police protection services to enact an ordinance levying the premium tax as provided by law and authorizes distribution of the premium tax revenues to the consolidated government as long as the interlocal agreement is in effect.

The Revenue Estimating Conference has estimated that this legislation will have an insignificant, negative fiscal impact on the state General Revenue Fund and a corresponding insignificant, positive fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

II. Present Situation:

Municipal Police Pensions

Chapter 185, F.S., provides funding for municipal police officers' pension plans. It provides for a "uniform retirement system" with defined benefit retirement plans for municipal police officers and sets standards for the operation and funding of these pension systems.[1] Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of .85 percent of the gross amount of receipts of premiums from policyholders on casualty insurance policies covering property within its corporate limits.[2] Revenues from this excise tax are one of the funding sources for police officers' pension plans. Currently, a municipality is eligible to receive state premium taxes (or excise taxes) only on those premiums for casualty

[1] Section 185.01, F.S.
[2] Section 185.08, F.S.

insurance policies covering property within its municipal limits. A municipality that provides police protection services outside of its municipal limits through an interlocal agreement is not eligible to receive premium tax revenue for casualty policies covering the property where the service is being provided.[3]

In order to qualify for the premium taxes, a police officers' pension plan must meet certain requirements in ch. 185, F.S.[4] The Department of Management Services (DMS) oversees and monitors these pension plans; however, day-to-day operational control rests with local boards of trustees.[5] Any premium taxes collected and distributed to a municipality for funding police officers' pension plans have a negative impact on the General Revenue Fund because those premium taxes paid by an insurance company under ch. 185, F.S., to a municipality are allowed as a credit against premium taxes the insurance company must pay to the state under s. 624.509, F.S.

Chapter 185, F.S., applies only to municipalities organized and established pursuant to the laws of the state, and does not apply to the unincorporated areas of any county or counties or to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

Firefighter Pensions

Under current law, a municipality may receive another municipality's premium tax revenues (associated with the tax on property insurance premiums) when there is an interlocal agreement in place to provide fire protection services.[6] The municipality receiving fire services must levy the tax authorized by ch. 175, F.S., and copies of the interlocal agreement and the municipal ordinance levying the tax must be provided to the Division of Retirement within DMS.

Consolidation

Consolidation combines city and county governments so that the boundaries of the county and an affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent governmental units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial. Nationally, few successful city-county consolidations exist. According to the National Association of Counties, only 31 of the 3,066 county governments in the United States are combined city/county governments.

Section 3, Article VIII, of the Florida Constitution, provides:

> Consolidation. —The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by

[3] *Id.*
[4] *See* ss. 185.10, 185.085, F.S.
[5] Section 185.05, F.S.
[6] Section 175.041, F.S.

> special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

Prior to 1933, the Florida Constitution of 1885 was silent on the subject of consolidation. The 1933 Legislature proposed a constitutional amendment specifically declaring its own power to establish a municipal corporation consolidating the governments of Duval County and any of the municipalities within its boundaries, subject to referendum approval of the affected voters. The electorate of Florida adopted this amendment in 1934.

The voters of the City of Jacksonville and Duval County did not adopt a municipal charter pursuant to this constitutional provision until 1967, and to date, only Duval County and the City of Jacksonville have taken advantage of the specific constitutional authority to consolidate. Section 9, Art. VIII of the Constitution of 1885 establishes the Jacksonville/Duval County consolidated charter. Section 6(e), Art. VIII of the State Constitution provides that s. 9, Art. VIII of the Constitution of 1885 remains in full force and effect after the adoption of the 1968 revision. The municipalities of Atlantic Beach, Baldwin, Jacksonville Beach, and Neptune Beach are not consolidated with Duval County.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 185.03 and 185.08, F.S., respectively, to allow a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, (Jacksonville/Duval County) to receive the distribution of premium tax revenues related to casualty insurance premiums covering property within a non-consolidated municipality with the county's boundaries. The consolidated government must notify the Division of Retirement of the DMS when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08, F.S. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, DMS may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to: require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has estimated that SB 388 has a negative, insignificant fiscal impact on the state General Revenue Fund and a corresponding positive, insignificant fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

B. Private Sector Impact:

The bill does not have a private sector impact. Although the bill authorizes a municipality to enact a tax on insurance premiums, the municipal taxes are fully credited against the state taxes on insurance premiums.

C. Government Sector Impact:

The Department of Revenue (DOR) will be notified by the Division of Retirement (within the Department of Management Services) of any additional taxing jurisdiction that levies a tax on insurance premiums as a result of the language of this bill. DOR will need to add that jurisdiction to the insurance premium tax form in the annual form process. The form will be adopted in a rule in the annual form adoption process. Additionally, this bill will require changes to the Insurance Premium Database to determine situs of premiums for allocation purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2005, the Legislature made similar changes to ch. 175, F.S., relating to the Firefighters' Pension Trust Fund. Sections 175.041 and 175.101, F.S., allow a municipality to receive excise tax monies for firefighter pension plans from another municipality if there is an interlocal agreement in place to provide fire protection services.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 185.03 and 185.08.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Bean

4-00352A-14 2014388__

A bill to be entitled

An act relating to public retirement plans; amending ss. 185.03 and 185.08, F.S.; specifying the applicability of ch. 185, F.S., to certain consolidated governments; providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law; including certain consolidated governments under provisions authorizing imposition of a state excise tax on casualty insurance premiums covering certain property; providing an effective date.

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

Section 1. Subsection (2) of section 185.03, Florida Statutes, is amended to read:

185.03 Municipal police officers' retirement trust funds; creation; applicability of provisions; participation by public safety officers.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(2)(a) ~~The provisions of~~ This chapter applies ~~shall apply~~ only to municipalities organized and established pursuant to the laws of the state~~,~~ and does ~~said provisions shall~~ not apply to

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

4-00352A-14 2014388__

the unincorporated areas of a ~~any~~ county or ~~counties nor shall the provisions hereof apply~~ to a ~~any~~ governmental entity whose police officers are eligible to participate in the Florida Retirement System.

(b) With respect to the distribution of premium taxes, a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, is also eligible to participate under this chapter. The consolidated government shall notify the division when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

Section 2. Subsection (1) of section 185.08, Florida Statutes, is amended to read:

185.08 State excise tax on casualty insurance premiums authorized; procedure.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1)(a) Each incorporated municipality in this state described and classified in s. 185.03, as well as each other city or town of this state which on July 31, 1953, had a lawfully established municipal police officers' retirement trust fund or city fund, by whatever name known, providing pension or relief benefits to police officers as provided under this chapter, may assess and impose on every insurance company,

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

corporation, or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on, the business of casualty insurance as shown by records of the Office of Insurance Regulation of the Financial Services Commission, an excise tax in addition to any lawful license or excise tax now levied by each of the ~~said~~ municipalities, respectively, amounting to .85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of such municipalities, respectively.

(b) This section applies to a municipality consisting of a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, and to casualty insurance policies covering property within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, and provided the properties are being provided with police protection services by the consolidated government.

Section 3. This act shall take effect July 1, 2014.

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

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 19, 2014

I respectfully request that **Senate Bill # 388**, relating to Public Retirement Pensions, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AARON BEAN
4th District

April 11, 2014

Senator Joe Negron
Chairman, Committee on Appropriations
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

This letter is to request that the following bills be placed on the agenda of the next committee meeting:

- *CS/CS/SB 956 relating to an act of Coastal Management (Companion bill on 2nd. Reading)*
- *CS/SB 1212 relating to an act of behavioral analysts (Companion in last committee)*
- *SB 388 – Public Retirement (Companion bill on 2nd. Reading)*
- *SB 598 – Juvenile Justice Education Program (In Senate Messages}*
- *SB 992 – Infectious Disease Control (Companion in last committee)*
- *SB 1122 – Emergency Allergy Treatment (Companion bill on 2nd Reading)*
- *SB 1416 Sexual Predator & Sexual Offender Absconders (Companion in last committee)*

Thank you for your consideration of this request.

Respectfully,

Aaron Bean
State Senator, 4th District

Cc: Cindy Kynoch, Staff Director
Ann Roberts, Committee Administrative Assistant

REPLY TO:
❒ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
❒ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22
Meeting Date

Topic Police Fire Pension

Bill Number 388 *(if applicable)*

Name Paige Carter-Smith

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail Paige@gaunc.net

Speaking: ☑ For ☐ Against ☐ Information

Representing Jacksonville Police Fire Pension

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 444 (314816)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Galvano
SUBJECT:	Workers' Compensation
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Betta	DeLoach	AGG	**Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 444 amends provisions related to stop work orders (SWO) and associated penalties relating to Florida's Workers' Compensation Law as follows:

- Extends the number of days for an employer to provide requested records to the Department of Financial Services (DFS) from five to 10 days or be subject to a SWO.
- Authorizes the DFS to issue an order of conditional release from a SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment and agrees to pay the remainder of the penalty in periodic installments or to pay the remaining penalty in full.
- Authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enter into a payment agreement within 28 days after service of the SWO upon the employer.
- Repeals a required employer reporting requirement for a probationary period.
- Credits the initial payment of the premium made by the employer to secure coverage against the assessed penalty for not having coverage for an employer that has not previously been issued a SWO. The bill provides a minimum $1,000 penalty if the calculated penalty, after the credit is applied, is less than $1,000.
- Revises the penalty for failing to have required coverage. The bill reduces the look-back period for failure to comply with coverage requirements from three to two years and increases the penalty multiplier from 1.5 to two times the amount of unpaid premiums.

The bill codifies a recent court decision regarding the calculation of workers' compensation indemnity benefits to allow the payment of such benefits at either 66.67 percent or the current 66 2/3 percent of the employee's average weekly wage; this change has no fiscal impact because it reflects current procedures used by carriers. The remaining provisions of the bill are expected to have a negligible fiscal impact.

The bill also changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund. The assessment rate cap is changed from 4.52 percent to 2.50 percent.

II. Present Situation:

Coverage Requirements

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S., including the enforcement of coverage requirements. Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer.[1]

An employer in a non-construction industry employing four or more part- or full-time employees must secure insurance.[2] An employer engaged in the construction industry must secure workers' compensation insurance if it employs one or more part- or full-time employees.[3] No more than three officers of a corporation or members of a limited liability company who are engaged in the construction industry may elect to be exempt from this requirement, if certain conditions are met.[4] Corporate officers and members of a non-construction LLC can elect to be exempt from workers' compensation coverage requirements.[5]

An employer may secure the workers' compensation coverage for his or her employees by entering into an employee leasing arrangement. In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer under which all or most of the client's workforce is employed by the leasing company and leased to the client company.[6] The employer must notify the employee leasing company of the names of covered employees.

[1] Section 440.38, F.S.
[2] Section 440.02(17)(b)2, F.S.
[3] *Id.*
[4] Section 440.05, F.S.
[5] *Id.*
[6] The Board of Employee Leasing Companies within the Department of Business and Professional Regulation license and regulate employee leasing companies pursuant to Part XI of chapter 468, F.S. Temporary help arrangements are excluded from the definition of employee leasing. (s. 468.520, F.S.)

Enforcement of Coverage Requirements

If an employer fails to comply with workers' compensation coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of determining noncompliance.[7] The SWO requires the employer to cease all business operations. The SWO remains in effect until the employer secures appropriate coverage and the DFS issues an order releasing the SWO (for employers that have paid the assessed penalty); or an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS). Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding three-year period or $1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide three years of business records. Some employers are often unable to quickly provide all records required to calculate the penalty. The SWO remains in effect and the employer cannot conduct business until the DFS has calculated the penalty.

A SWO is issued for the following violations: failure to obtain workers' compensation insurance, materially understating or concealing payroll, materially misrepresenting or concealing employee duties to avoid paying the proper premium, materially concealing information pertinent to the calculation of an experience modification factor, and failure to produce business records within five days of receipt of a written request from the DFS.[8] As a condition of release from a SWO, the DFS may require an employer to file periodic reports, for up to two years, to document the employer's continued compliance with coverage requirements.

Workers' Compensation Indemnity Benefits

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least eight days of work due to a covered (compensable) injury. Indemnity benefits are payable retroactively from the first day of disability (to include compensation for the first seven days missed) to employees who miss more than 21 days of work due to a compensable injury.[9] Such benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW), up to the maximum weekly benefit established by law.[10]

In a 2013 case, an employer had calculated the compensation rate for a claimant by multiplying the AWW by .66667 (or $529.48). The Judge of Compensation Claims (JCC) calculated the compensation rate by multiplying the AWW by .6667 (or $529.50). On appeal, the First District Court of Appeal held that "[b]ecause the [e]mployer did not pay less than the compensation required by statute, the JCC erred in ordering the employer to pay more []"than 66 2/3 percent of the AWW, namely $529.47.[11]

[7] Section 440.107, F.S.
[8] *Id.*
[9] Section 440.12(1), F.S.
[10] Section 440.15, F.S.
[11] *Escambia County School District v. Vickery-Orso*, 109 So. 3d 1242, 1244 (Fla 1st DCA 2013).

Workers' Compensation Special Disability Trust Fund

The Florida Special Disability Trust Fund (SDTF) was established to encourage the employment of workers with pre-existing permanent physical impairments. The SDTF reimburses employers (or their carriers) for the excess in workers' compensation benefits provided to an employee with a pre-existing impairment who is subsequently injured in a workers' compensation accident. As part of the reimbursement process, the SDTF determines whether claims are eligible to receive reimbursements, as well as audits and processes reimbursement requests. Reimbursement under the SDTF is not available for injuries occurring on or after January 1, 1998. The SDTF is maintained by annual assessments on insurers providing compensation insurance coverage. Claims with an accident date before 1998 are still eligible to seek reimbursements. After a claim has been accepted, a request for reimbursement of additional expenses may be submitted annually.

The assessment rate is calculated by the DFS using the previous three calendar years of SDTF expenditures. Currently, the assessment rate must produce an amount equal to the average of the sum of disbursements during the immediate past three calendar years and two times the disbursements of the most recent calendar year. The assessment rate is capped at 4.52 percent of net premiums.

III. Effect of Proposed Changes:

Enforcement of Coverage Requirements

The bill allows employers an additional five business days (ten days total) to produce records requested by the DFS before the issuance of a stop-work order.

The bill revises penalty for failure to comply with coverage requirements by increasing the penalty multiplier from 1.5 to two times the unpaid premiums and reducing the penalty period from the preceding three years to the prior two years.

The DFS is authorized to issue a conditional release of a SWO if the employer has obtained coverage, paid a $1,000 down payment and agreed to either pay the remaining penalty or enter into a periodic payment agreement. The bill authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enters into a payment agreement within 28 days after service of the SWO upon the employer. The bill repeals a required employer reporting requirement for a probationary period.

The bill provides for a credit of the initial payment of workers' compensation insurance premium against the full amount of the penalty for employers who have not been previously issued a SWO. The employer is required to provide the DFS with documentation that the employer has secured the payment of compensation and proof of payment to the carrier. If an employer secures coverage through an employee leasing company, the bill requires the employer to provide the DFS with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The bill provides for assessment of a minimum

$1,000 penalty against an employer if the calculated penalty, after the credit is applied, is less than $1,000.

Calculation of Compensation

The bill addresses the holdings in *Escambia County School District v. Vickery-Orso, supra,* by authorizing employers/carriers to pay compensation to injured employees of "66 2/3 or 66.67 percent" of the AWW. The latter percentage produces a slightly higher compensation rate for injured employees and removes the need for employers/carriers that have been paying benefits at 66.67 percent of the AWW to incur costs associated with modifying their payment procedures.

Workers' Compensation Special Disability Trust Fund

The bill changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund. The assessment rate cap is changed from 4.52 percent to 2.50 percent.

The bill is effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/SB 444 allows employers five additional days to produce records requested by the DFS before the issuance of a SWO.

The bill revises the employer penalty for not having coverage by reducing the look-back period from the preceding three years to two years for purposes of calculating the

penalty; however, it increases the penalty multiplier from 1.5 to two times the amount an employer would have paid in premium.

If an employer has not been previously issued a SWO, the bill provides for a credit of the initial payment of premium made to secure coverage against the assessed penalty, thereby decreasing the amount of the penalty to be paid by the employer.

The codification of the 66.67 percent compensation rate reflects current carrier claims payment procedures; so, there is no impact.[12]

The DFS states the changing of the assessment calculation will benefit the private sector by allowing the department to draw down the SDTF fund balance to pay approved older reimbursement requests that are awaiting payment without increasing the SDTF assessment rate. Reducing the cap from 4.52 percent to 2.5 percent lowers the maximum assessment for employers.

C. Government Sector Impact:

According to the DFS, revising the coverage non-compliance penalty will have a negligible impact on the Workers' Compensation Administration Trust Fund.[13]

Since the program is closed and the assessment rate is lower than 2.5 percent, reducing the assessment cap from 4.52 percent to 2.5 percent has no impact to the trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.107, 440.15, and 440.16.

[12] Department of Financial Services, *Senate Bill 444 Fiscal Analysis* (December 6, 2013) (on file with the Senate Banking and Insurance Committee).
[13] *Id.*

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on February 6, 2014:

- Changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund to be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund.
- Changes the assessment rate cap is from 4.52 percent to 2.50 percent.

B. Amendments:

None.

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

892866

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete line 43
and insert:
worksite. Information related to an employer's stop-work order shall be made available on the division's website and updated daily. The information shall remain on the website for at least 5 years. The order shall remain in effect until the department

892866

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 6
and insert:
requirements; providing for stop-work order information to be available on the Division of Workers' Compensation website; revising requirements for the release of

818218

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment

Delete lines 87 - 94
and insert:
credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation by a representative from the employee leasing company of the dollar or percentage amount attributable to the initial estimated

818218

workers' compensation expense for leased employees and proof of payment to

319214

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2014	.	
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	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment

Delete lines 228 - 279
and insert:
provided in s. 440.51. Payments of assessments shall be made by each carrier, self-insurer, and self-insured employer to the department for the Special Disability Trust Fund pursuant to department rule establishing such method of payment.

2. The department shall estimate annually in advance the amount necessary for the administration of this subsection and

the maintenance of this fund pursuant to this paragraph ~~and shall make such assessment in the manner hereinafter provided~~. By July 1 of each year, the department shall calculate the assessment rate, which shall be based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, the sum of the anticipated disbursements and expenses of the Special Disability Trust Fund for the next calendar year, and the expected fund balance for the next calendar year. Such assessment rate shall take effect January 1 of the next calendar year. Such amount shall be prorated among insurance companies writing workers' compensation insurance in the state, the self-insurers, and self-insured employers.

~~2. The annual assessment shall be calculated to produce during the next calendar year an amount which, when combined with that part of the balance anticipated to be in the fund on December 31 of the current calendar year which is in excess of $100,000, is equal to the average of:~~

~~a. The sum of disbursements from the fund during the immediate past 3 calendar years, and~~

~~b. Two times the disbursements of the most recent calendar year.~~

~~c. Such assessment rate shall first apply on a calendar year basis for the period beginning January 1, 2012, and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1, 2012. The assessment rate effective January 1, 2011, shall also apply to the interim period from July 1, 2011, through December 31, 2011, and shall be included in workers' compensation rate~~

~~filings, whether regular or amended, approved by the office which become effective on or after July 1, 2011. Thereafter, the annual assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly.~~

~~Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.~~

3. A reimbursement request that has been approved but remains unpaid as of June 30, 2014, shall be paid by October 31, 2014 ~~The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums~~. ~~Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund in accordance with such regulations as the department prescribes.~~

4. The Chief Financial Officer is authorized to receive and

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576-01686-14

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

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising penalties; amending ss. 440.15 and 440.16, F.S.; revising rate formulas related to the determination of compensation for disability and death; amending s. 440.49, F.S.; revising provisions relating to the assessment rate of the Special Disability Trust Fund; reducing the assessment rate limitation; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 10 ~~5~~ business days after receipt of the

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written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and ~~has~~ agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the remaining penalty amount in full. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 28 days after

service of the stop-work order upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. ~~The department may require an employer who is found to have failed to comply with the coverage requirements of s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.~~

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year ~~3-year~~ period or $1,000, whichever is greater. For employers who have not been previously issued a stop-work order, the department shall allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before the department applies the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of

payment to the carrier. In order for the department to apply a credit for an employer that has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of the estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit has been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 2 ~~1.5~~.

Section 2. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (a) of subsection (4) of section 440.15, Florida Statutes, are amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits

provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance of such total disability. ~~No~~ Compensation is not ~~shall be~~ payable under this section if the employee is engaged in, or is physically capable of engaging in, at least sedentary employment.

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsection (7), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 104 weeks except as provided in this subsection, s. 440.12(1), and s. 440.14(3). Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsection (7), in case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee's average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary,

wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer's work week. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits are ~~shall be~~ payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured employee's ability to return to work.

Section 3. Paragraph (b) of subsection (1) and subsection (3) of section 440.16, Florida Statutes, are amended to read:

440.16 Compensation for death.—

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed $150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66 2/3 or 66.67 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse's death.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 16 2/3 or 16.67 percent on account of the child or children. However, when the deceased is survived by a spouse and also a child or children, whether such child or children are the product of the union existing at the time of death or of a former marriage or marriages, the judge of compensation claims may provide for the payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children; and, in the case of death of such spouse, 33 1/3 or 33.33 percent for each child. However, upon the surviving spouse's remarriage, the spouse shall be entitled to a lump-sum payment equal to 26 weeks of compensation at the rate of 50 percent of the average weekly wage as provided in s. 440.12(2), unless the $150,000 limit provided in this paragraph is exceeded, in which case the surviving spouse shall receive a lump-sum payment equal to the remaining available benefits in lieu of any further indemnity benefits. ~~In no case shall~~ A surviving spouse's acceptance of a lump-sum payment does not affect payment of death benefits to other dependents.

3. To the child or children, if there is no spouse, 33 1/3 or 33.33 percent for each child.

4. To the parents, 25 percent to each, such compensation to be paid during the continuance of dependency.

5. To the brothers, sisters, and grandchildren, 15 percent for each brother, sister, or grandchild.

(3) If ~~Where~~, because of the limitation in paragraph (1)(b), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person or class that proportion of such percentage as, when added to the total percentage payable to all persons having priority of preference, will not exceed a total of said 66 2/3 or 66.67 percent, which proportion shall be paid:

(a) To such person; or

(b) To such class, share and share alike, unless the judge of compensation claims determines otherwise in accordance with the provisions of subsection (4).

Section 4. Paragraphs (b) and (c) of subsection (9) of section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(9) SPECIAL DISABILITY TRUST FUND.—

(b)1. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state, the commercial self-insurers under ss. 624.462 and 624.4621, the assessable mutuals as defined in s. 628.6011, and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund pursuant to department rule.

2. The department shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund pursuant to this paragraph ~~and shall make such assessment in the manner hereinafter provided~~. By July 1 of each year, the department shall calculate the assessment rate, which shall be based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the Special Disability Trust Fund for the next calendar year. Such assessment rate shall take effect January 1 of the next calendar year. Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.

~~2. The annual assessment shall be calculated to produce during the next calendar year an amount which, when combined with that part of the balance anticipated to be in the fund on December 31 of the current calendar year which is in excess of $100,000, is equal to the average of:~~

~~a. The sum of disbursements from the fund during the immediate past 3 calendar years, and~~

~~b. Two times the disbursements of the most recent calendar year.~~

~~c. Such assessment rate shall first apply on a calendar year basis for the period beginning January 1, 2012, and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1, 2012. The assessment rate effective January 1, 2011, shall also apply to the interim period from July 1, 2011, through December 31, 2011, and shall be included in workers' compensation rate~~

~~filings, whether regular or amended, approved by the office which become effective on or after July 1, 2011. Thereafter, the annual assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly.~~

~~Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.~~

3. ~~The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund in accordance with such regulations as the department prescribes.~~

~~4.~~ The Chief Financial Officer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(c) Notwithstanding the Special Disability Trust Fund assessment rate calculated pursuant to this section, the rate assessed may ~~shall~~ not exceed 2.5 ~~4.52~~ percent.

Section 5. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 444
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Galvano
SUBJECT:	Workers' Compensation
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Betta	DeLoach	AGG	**Fav/CS**
3.	Betta/Johnson	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 444 amends provisions related to stop work orders (SWO) and associated penalties relating to Florida's Workers' Compensation Law as follows:

- Extends the number of days for an employer to provide requested records to the Department of Financial Services (DFS) from five to 10 days or be subject to a SWO.
- Authorizes the DFS to issue an order of conditional release from a SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment and agrees to pay the remainder of the penalty in periodic installments or to pay the remaining penalty in full.
- Authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enter into a payment agreement within 28 days after service of the SWO upon the employer.
- Requires the DFS to maintain information related to an employer's SWO on the Division of Workers' Compensation website. Such information will remain on the website for at least five years.
- Repeals a required employer-reporting requirement for a probationary period.
- Credits the initial payment of the premium made by the employer to secure coverage against the assessed penalty for not having coverage for an employer that has not previously been issued a SWO. The bill provides a minimum $1,000 penalty if the calculated penalty, after the credit is applied, is less than $1,000.

- Revises the penalty for failing to have required coverage. The bill reduces the look-back period for failure to comply with coverage requirements from three to two years and increases the penalty multiplier from 1.5 to two times the amount of unpaid premiums.

The bill codifies a recent court decision regarding the calculation of workers' compensation indemnity benefits to allow the payment of such benefits at either 66.67 percent or the current 66 2/3 percent of the employee's average weekly wage; this change has no fiscal impact because it reflects current procedures used by carriers. The remaining provisions of the bill are expected to have a negligible fiscal impact.

The bill also revises the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance, disbursements, and expenses of the trust fund. The bill reduces the assessment rate cap from 4.52 percent to 2.50 percent.

II. Present Situation:

Coverage Requirements

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S., including the enforcement of coverage requirements. Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer.[1]

An employer in a non-construction industry employing four or more part- or full-time employees must secure insurance.[2] An employer engaged in the construction industry must secure workers' compensation insurance if it employs one or more part- or full-time employees.[3] No more than three officers of a corporation or members of a limited liability company who are engaged in the construction industry may elect to be exempt from this requirement, if certain conditions are met.[4] Corporate officers and members of a non-construction LLC can elect to be exempt from workers' compensation coverage requirements.[5]

An employer may secure the workers' compensation coverage for his or her employees by entering into an employee leasing arrangement. In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer under which all or most of the client's workforce is employed by the leasing company and leased to the client company.[6] The employer must notify the employee leasing company of the names of covered employees.

[1] Section 440.38, F.S.
[2] Section 440.02(17)(b)2, F.S.
[3] *Id.*
[4] Section 440.05, F.S.
[5] *Id.*
[6] The Board of Employee Leasing Companies within the Department of Business and Professional Regulation license and regulate employee leasing companies pursuant to Part XI of chapter 468, F.S. Temporary help arrangements are excluded from the definition of employee leasing. (s. 468.520, F.S.)

Enforcement of Coverage Requirements

If an employer fails to comply with workers' compensation coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of determining noncompliance.[7] The SWO requires the employer to cease all business operations. The SWO remains in effect until the employer secures appropriate coverage and the DFS issues an order releasing the SWO (for employers that have paid the assessed penalty); or an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS). Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding three-year period or $1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide three years of business records. Some employers are often unable to provide all records required to calculate the penalty in an expedited manner. The SWO remains in effect and the employer cannot conduct business until the DFS has calculated the penalty.

A SWO is issued for the following violations: failure to obtain workers' compensation insurance, materially understating or concealing payroll, materially misrepresenting or concealing employee duties to avoid paying the proper premium, materially concealing information pertinent to the calculation of an experience modification factor, and failure to produce business records within five days of receipt of a written request from the DFS.[8] As a condition of release from a SWO, the DFS may require an employer to file periodic reports, for up to two years, to document the employer's continued compliance with coverage requirements.

Workers' Compensation Indemnity Benefits

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least eight days of work due to a covered (compensable) injury. Indemnity benefits are payable retroactively from the first day of disability (to include compensation for the first seven days missed) to employees who miss more than 21 days of work due to a compensable injury.[9] Such benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW), up to the maximum weekly benefit established by law.[10]

In a 2013 case, an employer had calculated the compensation rate for a claimant by multiplying the AWW by .66667 (or $529.48). The Judge of Compensation Claims (JCC) calculated the compensation rate by multiplying the AWW by .6667 (or $529.50). On appeal, the First District Court of Appeal held that "[b]ecause the [e]mployer did not pay less than the compensation required by statute, the JCC erred in ordering the employer to pay more []"than 66 2/3 percent of the AWW, namely $529.47.[11]

[7] Section 440.107, F.S.
[8] *Id.*
[9] Section 440.12(1), F.S.
[10] Section 440.15, F.S.
[11] *Escambia County School District v. Vickery-Orso*, 109 So. 3d 1242, 1244 (Fla 1st DCA 2013).

Workers' Compensation Special Disability Trust Fund

The Florida Special Disability Trust Fund (SDTF) was established to encourage the employment of workers with pre-existing permanent physical impairments. The SDTF reimburses employers (or their carriers) for the excess in workers' compensation benefits provided to an employee with a pre-existing impairment who is subsequently injured in a workers' compensation accident. As part of the reimbursement process, the SDTF determines whether claims are eligible to receive reimbursements, as well as audits and processes reimbursement requests. Reimbursement under the SDTF is not available for injuries occurring on or after January 1, 1998. The SDTF is maintained by annual assessments on insurers providing compensation insurance coverage. Claims with an accident date before 1998 are still eligible to seek reimbursements. After a claim has been accepted, a request for reimbursement of additional expenses may be submitted annually.

The assessment rate is calculated by the DFS using the previous three calendar years of SDTF expenditures. Currently, the assessment rate must produce an amount equal to the average of the sum of disbursements during the immediate past three calendar years and two times the disbursements of the most recent calendar year. The assessment rate is capped at 4.52 percent of net premiums.

III. Effect of Proposed Changes:

Enforcement of Coverage Requirements

The bill allows employers an additional five business days (ten days total) to produce records requested by the DFS before the issuance of a stop-work order.

The bill revises penalty for failure to comply with coverage requirements by increasing the penalty multiplier from 1.5 to two times the unpaid premiums and reducing the penalty period from the preceding three years to the prior two years.

The DFS is authorized to issue a conditional release of a SWO if the employer has obtained coverage, paid a $1,000 down payment and agreed to either pay the remaining penalty or enter into a periodic payment agreement. The bill authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enters into a payment agreement within 28 days after service of the SWO upon the employer. The bill repeals a required employer reporting requirement for a probationary period.

The bill provides for a credit of the initial payment of workers' compensation insurance premium against the full amount of the penalty for employers who have not been previously issued a SWO. The employer is required to provide the DFS with documentation that the employer has secured the payment of compensation and proof of payment to the carrier. If an employer secures coverage through an employee leasing company, the bill requires the employer to provide the DFS with a written confirmation by a representative from the employee leasing company of the dollar amount or percentage amount attributable to the initial estimated workers' compensation expense for leased employees and proof of payment to the employee leasing company. The bill

provides for assessment of a minimum $1,000 penalty against an employer if the calculated penalty, after the credit is applied, is less than $1,000.

The bill requires the DFS to maintain information related to an employer's SWO on the Division of Workers' Compensation website. Such information must remain on the website for at least five years.

Calculation of Compensation

The bill addresses the holdings in *Escambia County School District v. Vickery-Orso, supra,* by authorizing employers/carriers to pay compensation to injured employees of "66 2/3 or 66.67 percent" of the AWW. The latter percentage produces a slightly higher compensation rate for injured employees and removes the need for employers/carriers that have been paying benefits at 66.67 percent of the AWW to incur costs associated with modifying their payment procedures.

Workers' Compensation Special Disability Trust Fund

The bill changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, the sum of the anticipated disbursements and expenses for the next calendar year, and the expected fund balance of the trust fund for the next calendar year. The assessment rate cap is reduced from 4.52 percent to 2.50 percent. The bill requires a reimbursement request that has been approved but remains unpaid by the DFS as of June 30, 2014, to be paid by October 31, 2014.

The bill is effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 444 allows employers five additional days to produce records requested by the DFS before the issuance of a SWO.

The bill revises the employer penalty for not having coverage by reducing the look-back period from the preceding three years to two years for purposes of calculating the penalty; however, it increases the penalty multiplier from 1.5 to two times the amount an employer would have paid in premium.

If an employer has not been previously issued a SWO, the bill provides for a credit of the initial payment of premium made to secure coverage against the assessed penalty, thereby decreasing the amount of the penalty to be paid by the employer.

The codification of the 66.67 percent compensation rate reflects current carrier claims payment procedures; so, there is no impact.[12]

The DFS states the changing of the assessment calculation will benefit the private sector by allowing the department to draw down the SDTF fund balance to pay approved older reimbursement requests that are awaiting payment without increasing the SDTF assessment rate. Reducing the cap from 4.52 percent to 2.5 percent lowers the maximum assessment for employers.

C. Government Sector Impact:

According to the DFS, revising the coverage non-compliance penalty will have a negligible impact on the Workers' Compensation Administration Trust Fund.[13]

Since the program is closed and the assessment rate is lower than 2.5 percent, reducing the assessment cap from 4.52 percent to 2.5 percent has no impact to the trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.107, 440.15, 440.16, and 440.49.

[12] Department of Financial Services, *Senate Bill 444 Fiscal Analysis* (December 6, 2013) (on file with the Senate Banking and Insurance Committee).
[13] *Id.*

IX. Additional Information:

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

CS by Appropriations on April 24, 2014:

- Changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund to be calculated by the DFS based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance, disbursements, and expenses of the trust fund.
- Lowers the trust fund assessment rate cap from 4.52 percent to 2.50 percent.
- Requires the DFS to maintain information related to an employer's SWO on the Division of Workers' Compensation website. Such information must remain on the website for at least five years.
- Provides technical, clarifying changes.

B. Amendments:

None.

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

By Senator Galvano

26-00355A-14 2014444__

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising penalties; amending ss. 440.15 and 440.16, F.S.; revising rate formulas related to the determination of compensation for disability and death; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 10 ~~5~~ business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The

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

26-00355A-14 2014444__

order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and ~~has~~ agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the remaining penalty amount in full. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 28 days after service of the stop-work order upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. ~~The department may require an employer who is found to have failed to comply with the coverage requirements of~~

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~~s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.~~

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year ~~3-year~~ period or $1,000, whichever is greater. For employers who have not been previously issued a stop-work order, the department shall allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before the department applies the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written attestation by a representative from the employee leasing company that the employer has entered

into an employee leasing contract, the dollar amount attributable to the initial payment of the estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit has been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 2 ~~1.5~~.

Section 2. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (a) of subsection (4) of section 440.15, Florida Statutes, are amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance of such total disability. ~~No~~ Compensation is not ~~shall be~~ payable under this

section if the employee is engaged in, or is physically capable of engaging in, at least sedentary employment.

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsection (7), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 104 weeks except as provided in this subsection, s. 440.12(1), and s. 440.14(3). Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsection (7), in case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee's average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer's work week. The amount

determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits are ~~shall be~~ payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured employee's ability to return to work.

Section 3. Paragraph (b) of subsection (1) and subsection (3) of section 440.16, Florida Statutes, are amended to read:

440.16 Compensation for death.—

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed $150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66 2/3 or 66.67 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse's death.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 16 2/3 or 16.67 percent on account of the child or children.

However, when the deceased is survived by a spouse and also a child or children, whether such child or children are the product of the union existing at the time of death or of a former marriage or marriages, the judge of compensation claims may provide for the payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children; and, in the case of death of such spouse, 33 1/3 or 33.33 percent for each child. However, upon the surviving spouse's remarriage, the spouse shall be entitled to a lump-sum payment equal to 26 weeks of compensation at the rate of 50 percent of the average weekly wage as provided in s. 440.12(2), unless the $150,000 limit provided in this paragraph is exceeded, in which case the surviving spouse shall receive a lump-sum payment equal to the remaining available benefits in lieu of any further indemnity benefits. ~~In no case shall~~ A surviving spouse's acceptance of a lump-sum payment does not affect payment of death benefits to other dependents.

3. To the child or children, if there is no spouse, 33 1/3 or 33.33 percent for each child.

4. To the parents, 25 percent to each, such compensation to be paid during the continuance of dependency.

5. To the brothers, sisters, and grandchildren, 15 percent for each brother, sister, or grandchild.

(3) If ~~Where~~, because of the limitation in paragraph (1)(b), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person

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or class that proportion of such percentage as, when added to the total percentage payable to all persons having priority of preference, will not exceed a total of said 66 2/3 or 66.67 percent, which proportion shall be paid:

(a) To such person; or

(b) To such class, share and share alike, unless the judge of compensation claims determines otherwise in accordance with the provisions of subsection (4).

Section 4. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

February 6, 2014

Senator Joe Negron
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/SB 444, Workers Compensation, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Cindy Kynoch
Alicia Weiss

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Workers' Comp

Bill Number 444 *(if applicable)*

Name Logan McFaddin

Amendment Barcode *(if applicable)*

Job Title Director of Legislative Affairs

Address LL-22 The Capitol
Street
Tallahassee FL 3299
City *State* *Zip*

Phone 413-2890

E-mail logan.mcfaddin@myfloridacfo.com

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

Representing CFO's Office

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 470
INTRODUCER:	Community Affairs Committee and Senator Detert
SUBJECT:	Malt Beverage Tastings
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Stearns	Yeatman	CA	**Fav/CS**
3.	Davis	Kynoch	AP	**Favorable**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 470 repeals the prohibition against beer tastings and creates conditions under which certain parties are authorized to conduct a tasting. The bill regulates the locations at which a tasting can be held and requires certain methods to be used at a tasting. The bill allows vendors to conduct a tasting on their own premises using malt beverages from their own inventory.

The bill prohibits certain parties from paying a fee or any compensation to a vendor for conducting a tasting. Licensed premises are authorized to hold more than one tasting in a day, but only one tasting may take place at a time. The bill provides for liability of certain parties that contract with third-parties to conduct tastings on their behalf. The bill prohibits certain parties from engaging in cooperative advertising with a vendor.

The bill has no fiscal impact on state funds.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,[1] which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and

[1] The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.

vendors.[2] The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.[3]

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the "three-tier system." The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[4]

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.[5] Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[6] Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.[7]

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,[8] allowing individuals to bring small quantities of alcohol back from trips out-of-state,[9] and allowing in-state wineries to manufacture and sell directly to consumers.[10]

Tied House Evil Prohibitions

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in pertinent part:

> No manufacturer, distributor, importer, primary American source of supply, or brand owner… or sales person thereof, shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the

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[2] *See* s. 561.14, F.S.
[3] Section 561.02, F.S.
[4] Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited March 4, 2014).
[5] Section 561.14(2), F.S.
[6] Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.
[7] Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.
[8] *See* s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).
[9] *See* s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.
[10] *See* s. 561.221, F.S.

> Beverage Law; **nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor…;** provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. (Emphasis supplied.)

Section 561.42(8), F.S., authorizes the division to establish rules and require reports to enforce limitation on credits and other forms of assistance.

Section 561.42, F.S., defines the types of items or services that may be provided to vendors. For example, s. 561.42(10), F.S., prohibits manufacturers, distributors, importers, primary American sources of supply,[11] or brand owners or registrants, or their brokers, sales agents or sales persons, from directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise.

Alcoholic Beverage Tastings

Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributers, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

[11] Section 564.045(1), F.S., defines the term "primary American source of supply" as the:
> manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

III. Effect of Proposed Changes:

Section 1 deletes brokers from the provisions of s. 561.42(14)(e), F.S., regulating malt beverages.

The bill allows a manufacturer, distributor, importer, or contracted third-party agent thereof, to conduct malt beverage tastings to be held on:

- The licensed premises of any vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or
- The licensed premises of any vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:
  - The licensed premises has at least 10,000 square feet of interior floor space exclusive of storage space; or
  - The licensed premises is a package store licensed under s. 565.02(1)(a) F.S.

For tastings conducted on the licensed premises of a vendor authorized to sell alcoholic beverages for consumption on premises, the samples shall be:

- Served to members of the general public of the age of legal consumption.
- Served in a tasting cup, glass, or other open container.

For tastings conducted on the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for off premises consumption, the samples shall be:

- Served to members of the general public of the age of legal consumption.
- Served in the interior of the building and each serving must be provided in a tasting cup having a capacity of 3.5 ounces or less.

A manufacturer, distributor, importer, or any contracted third-party agent thereof, may not pay a vendor, and a vendor may not accept, a fee or compensation of any kind, including the provision of any malt beverage at no or reduced cost, in return for the vendor's authorization of the tasting at his premises.

A manufacturer, distributor, importer, or any contracted third-party agent thereof must provide all of the beverages to be tasted. The total volume of beverages may not exceed 576 ounces per tasting. Any samples provided to a vendor count against the 576-ounce cap. The party conducting the tasting must have paid all excise taxes on the beverages and must return to the manufacturer or distributor's inventory any remaining beverages after the tasting. The party may purchase at retail price the malt beverages to be used for the tasting from the vendor that owns the premises to be used for the tasting, but any remaining beverages must be removed after the tasting.

More than one tasting may be held on the licensed premises per day, but only one manufacturer, distributor, importer, or any contracted third-party agent thereof may conduct a tasting on the premises at any one time.

A manufacturer, distributor, or importer that contracts with a third-party agent to conduct a malt beverage tasting on its behalf is responsible for any violation of this section by that agent.

A vendor may conduct a malt beverage tasting on its licensed premises using malt beverages from its own inventory.

The division may adopt rules pursuant to ss. 561.08 and 561.11, F.S., to implement, administer, and enforce this bill.

A manufacturer, distributor, importer, brand owner, brand registrant, sales agent or sales person, or any contracted third-party agent thereof may not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 470 permits distributors to hold tastings at vendors' premises, which could increase costs for distributors and have an indeterminate impact on manufacturers', distributors', and vendors' revenue.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation (department), the bill requires minimal information technology system changes to the Versa: Regulation software. Versa: Regulation is the licensing software the department uses to process applications, track licenses, complaints and legal proceedings. These programming expenditures can be absorbed within existing resources.[12]

[12] Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis: CS/CS/SB 387 (4/2/14).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.42 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on March 25, 2014:

- Deletes "brokers" from the provisions regulating malt beverages;
- Allows malt beverage tasting for:
  - Vendors licensed for on-premises consumption; or
  - Vendors licensed for off-premises consumption if the premises meets certain conditions;
- Provides restrictions and requirements for the conduct of tastings;
- Prohibits certain parties from paying a fee to a vendor in return for hosting a tasting;
- Provides for liability of certain parties that contract with third-parties to conduct tastings on their behalf;
- Allows vendors to conduct a tasting on their own premises using malt beverages from their own inventory; and
- Prohibits certain parties from engaging in cooperative advertising with a vendor.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Detert

578-03197-14 2014470c1

A bill to be entitled

An act relating to malt beverage tastings; amending s. 561.42, F.S.; removing the prohibition on beer samplings at the premises of vendors licensed for off-premises sales only; authorizing malt beverage tastings on the licensed premises of certain vendors, subject to certain requirements, limitations, liabilities, and penalties; providing construction with respect to special acts and ordinances; authorizing rulemaking; revising the prohibition on cooperative advertising with a vendor and prohibiting certain persons from naming vendors in advertising for malt beverage tastings; revising language to conform terminology and editorial style; providing an effective date.

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

Section 1. Subsection (14) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(14) The division shall adopt reasonable rules governing promotional displays and advertising, which rules may ~~shall~~ not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising

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578-03197-14 2014470c1

furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any broker, sales agent, or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter.

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, and ~~but~~ may be sold without limitation in total value of such items sold to a vendor.

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(d) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

(e)1. A manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof, may ~~Manufacturers, distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, shall not~~ conduct any sampling activities that include the tasting of malt beverage products on:

a. The licensed premises of any vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or

b. The licensed premises of any vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:

(I) The licensed premises is at an establishment having at least 10,000 square feet of interior floor space exclusive of storage space not open to the general public; or

(II) The licensed premises is a package store licensed under s. 565.02(1)(a) ~~their product at a vendor's premises licensed for off-premises sales only~~.

2. A malt beverage tasting conducted under this paragraph must be limited to and directed toward the general public of the age of legal consumption.

3. For a malt beverage tasting conducted under this paragraph on the licensed premises of a vendor authorized to sell alcoholic beverages for consumption on premises, each serving of a malt beverage to be tasted must be provided to the

consumer by the drink in a tasting cup, glass, or other open container and may not be provided by the package in an unopened can or bottle or in any other sealed container.

4. For a malt beverage tasting conducted under this paragraph on the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises, the tasting must be conducted in the interior of the building constituting the vendor's licensed premises and each serving of a malt beverage to be tasted must be provided to the consumer in a tasting cup having a capacity of 3.5 ounces or less.

5. A manufacturer, distributor, or importer, or any contracted third-party agent thereof, may not pay a vendor, and a vendor may not accept, a fee or compensation of any kind, including the provision of any malt beverage at no or reduced cost, to authorize the conduct of a malt beverage tasting under this paragraph.

6.a. A manufacturer, distributor, or importer, or any contracted third-party agent thereof, conducting a malt beverage tasting under this paragraph must provide all of the beverages to be tasted, the total volume of which per tasting may not exceed 576 ounces; must have paid all excise taxes on those beverages which are required of the manufacturer or distributor; and must return to the manufacturer's or distributor's inventory all of the malt beverages provided for the tasting that remain unconsumed after the tasting. More than one tasting may be held on the licensed premises each day, but only one manufacturer, distributor, importer, or contracted third-party agent thereof, may conduct a tasting on the premises at any one time.

b. Any samples of malt beverages provided to a vendor by a manufacturer, distributor, or importer, or any contracted third-party agent thereof, in conjunction with or at the time of a tasting conducted under this paragraph on the licensed premises of that vendor are subject to the volume limit for that premises set forth under sub-subparagraph a.

c. This subparagraph does not preclude a manufacturer, distributor, or importer, or any contracted third-party agent thereof, from buying the malt beverages it provides for the tasting from a vendor at no more than the retail price, but all of the malt beverages so purchased and provided for the tasting which remain unconsumed after the tasting must be removed from the premises of the tasting and properly disposed of.

7. A manufacturer, distributor, or importer of malt beverages that contracts with a third-party agent to conduct a malt beverage tasting under this paragraph on its behalf is responsible for any violation of this section by that agent.

8. This paragraph does not preclude a vendor from conducting a malt beverage tasting on its licensed premises using malt beverages from its own inventory.

9. This paragraph is supplemental to and does not supersede any special act or ordinance.

10. The division may, pursuant to ss. 561.08 and 561.11, adopt rules to implement, administer, and enforce this paragraph.

(f) A manufacturer ~~Manufacturers~~, distributor ~~distributors~~, importer ~~importers~~, brand owner ~~owners~~, or brand registrant ~~registrants~~ of malt beverages ~~beer~~, and any ~~broker,~~ sales agent~~,~~ or sales person thereof or contracted third-party agent under

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paragraph (e), may ~~shall~~ not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting authorized under paragraph (e) ~~vendors~~.

(g) A distributor ~~Distributors~~ of malt beverages ~~beer~~ may sell to a vendor ~~vendors~~ draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and the ~~a~~ distributor may exchange any parts that ~~which~~ are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of malt beverages ~~beer~~ may furnish to a vendor at no charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

Section 2. This act shall take effect July 1, 2014.

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

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 25, 2014

I respectfully request that **470**, relating to Malt Beverages, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number SB 470 *(if applicable)*

Name JOSÉ L. GONZALEZ Amendment Barcode _____ *(if applicable)*

Job Title DIRECTOR, STATE AFFAIRS

Address 907 CASSWADE DR. Phone 850-294-4057
Street

TALLAHASSEE, FL 32312 E-mail jose.gonzalez@anheuser-busch.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing ANHEUSER-BUSCH

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Malt Beverage Tastings

Bill Number SB470 *(if applicable)*

Name Brewster Bevis

Amendment Barcode *(if applicable)*

Job Title Senior Vice President

Address 516 N Adams St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 224-7173

E-mail bbevis@aif.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/22
Meeting Date

Topic Beer Tastings

Bill Number 470 *(if applicable)*

Name Eric Criss

Amendment Barcode *(if applicable)*

Job Title President

Address 110 S. Monroe *Street*

Phone 491 3903

Tallahassee FL 32312 *City* *State* *Zip*

E-mail eric@floridaBeer.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Beer Industry of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4-22-14
Meeting Date

Topic Malt Beverage Tastings

Bill Number 470 *(if applicable)*

Name Jon Costello

Amendment Barcode *(if applicable)*

Job Title Consultant

Address 119 S. Monroe
Street

Phone 850-766-8654

E-mail jon@rcuphlaw.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Miller Coors

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/22/14
Meeting Date

Topic Malt Beverage Tastings

Bill Number 470 *(if applicable)*

Name Melissa Joiner Ramba

Amendment Barcode *(if applicable)*

Job Title Director of Government Affairs

Address 227 S Adams St
Street

Tallahassee FL
City *State* *Zip*

Phone

E-mail Melissa@FRF.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 484 (350166)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senators Braynon and Brandes
SUBJECT:	Rental Car Sales and Use Tax Surcharges
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	Hrdlicka	CM	**Fav/CS**
2.	Cote	Diez-Arguelles	AFT	**Fav/CS**
3.	Cote	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Section 212.0606(1), F.S., imposes a surcharge of $2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers.

PCS/CS/SB 484 provides that a member of a car-sharing service who uses a motor vehicle for less than 24 hours must pay a surcharge of $1.00 per usage. A member of a car-sharing service who uses the same motor vehicle for at least 24 consecutive hours must pay a surcharge of $2.00 per day or any part of a day.

The bill provides that the new hourly surcharge on a car-sharing service does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, leased by or for the benefit of an airport or airport authority.

The Revenue Estimating Conference has not determined the impact of the bill. Staff estimates that the bill will have an insignificant, negative impact to the General Revenue Fund and a negative, recurring impact of $0.4 million to trust funds.

II. Present Situation:

Rental Car Surcharge

Section 212.0606(1), F.S., imposes a surcharge of $2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether such vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections by county, attributing the surcharge to the county where the rental agreement was made.

The surcharge applies to only the first 30 days of the term of any lease or rental, whether or not the vehicle is licensed in Florida. If the rental or lease of a vehicle is for longer than 30 days, only the first 30 days are subject to the surcharge. If the lease is renewed, the first 30 days of the renewed lease is subject to the surcharge. If payment for the lease or rental of a motor vehicle is made in Florida, the surcharge applies.

The surcharge is not imposed on leases or rentals to tax-exempt entities.[1] Section 212.0606(4), F.S., exempts from payment of the surcharge a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

After deduction for administrative fees, the rental car surcharge is distributed as follows:
- 80 percent of the surcharge to the State Transportation Trust Fund (STTF);
- 15.75 percent of the surcharge to the Tourism Promotional Trust Fund; and
- 4.25 percent of the surcharge to the Florida International Trade and Promotion Trust Fund.

The proceeds of the rental car surcharge deposited into the STTF are allocated to each Florida Department of Transportation (FDOT) district, except the Turnpike District, for transportation projects based on the amount of proceeds collected in the counties within each respective district.

For-Hire Vehicles

With limited exception, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a "for-hire vehicle" under s. 320.01(15)(a), F.S.:

> "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal

[1] Section 212.08, F.S.; Rule 12A-1.1038, F.A.C.

> corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."

Rental Car Industry

In recent years there has been a growing sub-industry of rental cars known as "car-sharing" services. Companies, or programs, like "Zipcar"[2], "car2go"[3], and "Hertz 24/7"[4] allow members to reserve the use of a car without visiting a rental car location. This model is seen as an alternative to the traditional rental car business model as well as an alternative to owning a car in a major metropolitan area. As a new and developing industry, car-sharing services are facing the challenge of varying regulations and taxes across different local and state governments. The CarSharing Association (CSA) represents several car-sharing companies and "works with shared-use mobility operators to advance industry standards, best practices and public policy advocacy."[5] Car-sharing services are promoted by some organizations as a form of "collaborative consumption," which is described as a "shift in consumer values from ownership to access."[6]

Three major varieties of car-sharing models exist currently:[7]

- Peer to Peer: "A fleet of cars is owned by a community. The marketplace matches owners of cars that are available to other drivers to rent."
- Business to Consumer: "A company owns a fleet of cars and facilitates the sharing among members."
- Not-For-Profit or Co-Op: "A local organization or community that facilitates car sharing with the goal of changing driving habits over making a profit."

A 2006 study conducted by Travelocity[8] (an online travel agency) found that taxes imposed by state and local governments accounted for an average of 28 percent of the total cost of renting a motor vehicle at airport locations and an average of almost 15 percent at neighborhood locations. Many rental companies also charge additional fees for drivers under 25 years of age, additional drivers, airport concession fees, refueling charges, loss and damage waivers, drop-off charges, partial days, mileage limits, frequent flyer fees, child safety seats, and GPS rental.

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[2] Zipcar website, http://www.zipcar.com/ (last visited February 3, 2014).
[3] car2go website, https://www.car2go.com/en/austin/ (last visited February 3, 2014).
[4] Hertz website, https://www.hertz.com/rentacar/productservice/index.jsp?targetPage=hertzondemand.jsp (last visited February 4, 2014).
[5] CSA website, http://carsharing.org/ (last visited February 3, 2014).
[6] Collaborative Consumption website, http://www.collaborativeconsumption.com/ (last visited February 3, 2014).
[7] Collaborative Fund and Hyperakt, *The Bright Future of CarSharing*, http://futureofcarsharing.com/ (last visited February 3, 2014).
[8] Travelocity, *2006/2007 Study Rates U.S. Airports in Terms of Sticker Shock and Compares Taxes When Renting at On-Airport vs. Neighborhood Locations*, December 12, 2006, http://news.travelocity.com/phoenix.zhtml?c=75787&p=irol-newsArticle&ID=941259 (last visited February 3, 2014).

Rental Car Surcharge and Car-Sharing Services

On September 17, 2012, the Department of Revenue (DOR) issued Technical Assistance Advisement 12A-022 which answered the question of whether a member based car-sharing service is subject to the Florida rental car surcharge. The facts presented to DOR were as follows:

> Taxpayer [the car-sharing service] offers a member based car-sharing service with a fleet of vehicles available for use by registered members at any time of the day, seven days a week. A member can reserve a vehicle before use, or simply locate one and access it. Each use is labeled as a "trip" and can last up to four consecutive days. A unique feature of Taxpayer's car-sharing service is members may, and often do, use a car for a much shorter period of time than typical car rentals. According to Taxpayer, the typical trip lasts twenty-five to forty minutes, costing between $7 and $10 before taxes. Members are invoiced daily for all trips that occur and Taxpayer adds the rental car surcharge and sales tax to this invoice.[9]

Despite the taxpayer's assertion that it is not engaged in the "traditional" rental of cars, DOR concluded that the taxpayer is renting cars and, therefore, the rental car surcharge does apply. The DOR further concluded that because the taxpayer's members may make multiple trips in one day without executing any additional agreement and without any action required of the taxpayer, and because members are charged for every trip within the same 24-hour period on a single daily invoice, the rental car "surcharge is due from Taxpayer's members once a day, regardless of the number of trips taken by a member in a twenty-four hour period."[10]

III. Effect of Proposed Changes:

The bill provides that a member of a car-sharing service who uses a motor vehicle for less than 24 hours must pay a surcharge of $1.00 per usage. A member of a car-sharing service who uses the same motor vehicle for at least 24 consecutive hours must pay a surcharge of $2.00 per day or any part of a day.

The bill defines a "car-sharing service" as a membership-based organization or business which requires payment of a membership fee and provides the member with access to motor vehicles:

- Only at locations that are not staffed by service personnel employed solely for the purpose of interacting with members;
- Twenty-four hours per day, seven days per week;
- Only through automated means;
- On an hourly basis or shorter period of time;

[9] DOR Technical Assistance Advisement 12A-022, https://revenuelaw.state.fl.us/LawLibraryDocuments/2012/09/TAA-111870_deleted%20with%20summary%2012A-022.pdf#search="technical assistance advisement 12A-022" (last visited February 3, 2014).

[10] To support its finding, DOR cited Rule Code 12A-16.002(3)(b), F.A.C.: "When the terms of a lease or rental agreement authorize the lessee to extend the lease or rental beyond the initial lease term without executing an additional lease or agreement and without any action on the part of the lessor, the extension period will not be considered a new lease or rental."

- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

The bill provides that the new hourly surcharge does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, leased by or for the benefit of an airport or airport authority.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

PCS/CS/SB 484 will reduce the amount of the municipalities' and counties' local option sales tax collections, thereby reducing their revenue-raising authority. However, an exemption from the mandates provision may apply because the reduction in local governments' revenue-raising authority may result in an insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the impact of PCS/CS/SB 484. Staff estimates that the bill will have an insignificant, negative impact to the General Revenue Fund and a negative, recurring impact of $0.4 million to trust funds.

B. Private Sector Impact:

Individuals using car-sharing services for less than a 24-hour period will see a reduction in the rental car surcharge that they pay.

C. Government Sector Impact:

The Department of Revenue estimated an insignificant operational impact.[11]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.0606, Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on April 9, 2014:
The committee substitute provides that a member of a car-sharing service who uses a motor vehicle for less than 24 hours must pay a surcharge of $1.00 per usage.

CS by Commerce and Tourism on February 10, 2014
The committee substitute changes the bill's effective date to January 1, 2015.

B. Amendments:

None.

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

[11] Department of Revenue, *Analysis SB 484*, (February 24, 2014).

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576-04119-14

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to the rental car surcharge; amending s. 212.0606, F.S.; providing an alternative surcharge for use of a motor vehicle pursuant to an agreement with a car-sharing service for less than a specified number of consecutive hours; defining the term "car-sharing service"; providing applicability; making technical changes; providing an effective date.

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

Section 1. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

(1) Except as provided in subsection (2), a surcharge of $2 ~~$2.00~~ per day or any part of a day is imposed upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers regardless of whether the ~~such~~ motor vehicle is licensed in this state ~~Florida~~. The surcharge applies to only the first 30 days of the term of a ~~any~~ lease or rental. The surcharge is subject to all applicable taxes imposed by this chapter.

(2) A member of a car-sharing service who uses a motor vehicle as described in subsection (1) for less than 24 hours pursuant to an agreement with the car-sharing service shall pay a surcharge of $1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a

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576-04119-14

surcharge of $2 per day or any part of a day as provided in subsection (1). As used in this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:

(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;

(b) Twenty-four hours per day, 7 days per week;

(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;

(d) On an hourly basis or for a shorter increment of time;

(e) Without a separate fee for refueling the motor vehicle;

(f) Without a separate fee for minimum financial responsibility liability insurance; and

(g) Owned or controlled by the car-sharing service or its affiliates.

The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(3)(a) ~~(2)(a)~~ Notwithstanding s. ~~the provisions of section~~ 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust

Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, "proceeds" of the surcharge means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other provision of law, ~~in fiscal year 2007-2008 and each year thereafter,~~ the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to ~~for~~ each district shall be based on ~~upon~~ the amount of proceeds attributed to the counties within each respective district.

(4) ~~(3)(a)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(a) ~~(b)~~ The department shall require dealers to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into.

(b) ~~(c)~~ Dealers who collect the rental car surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The

provisions of this chapter which apply to interest and penalties on delinquent taxes ~~shall~~ apply to the surcharge. The surcharge may ~~shall~~ not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does ~~shall~~ not apply to any amount collected under this section.

(5) ~~(4)~~ The surcharge imposed by this section does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 484
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senators Braynon and Brandes
SUBJECT:	Rental Car Sales and Use Tax Surcharges
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	Hrdlicka	CM	**Fav/CS**
2.	Cote	Diez-Arguelles	AFT	**Fav/CS**
3.	Cote	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Section 212.0606(1), F.S., imposes a surcharge of $2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers.

CS/CS/SB 484 provides that a member of a car-sharing service who uses a motor vehicle for less than 24 hours must pay a surcharge of $1.00 per usage. A member of a car-sharing service who uses the same motor vehicle for at least 24 consecutive hours must pay a surcharge of $2.00 per day or any part of a day.

The bill provides that the new hourly surcharge on a car-sharing service does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, leased by or for the benefit of an airport or airport authority.

The Revenue Estimating Conference has not determined the impact of the bill. Staff estimates that the bill will have an insignificant, negative impact to the General Revenue Fund and a negative, recurring impact of $0.4 million to trust funds.

II. Present Situation:

Rental Car Surcharge

Section 212.0606(1), F.S., imposes a surcharge of $2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether such vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections by county, attributing the surcharge to the county where the rental agreement was made.

The surcharge applies to only the first 30 days of the term of any lease or rental, whether or not the vehicle is licensed in Florida. If the rental or lease of a vehicle is for longer than 30 days, only the first 30 days are subject to the surcharge. If the lease is renewed, the first 30 days of the renewed lease is subject to the surcharge. If payment for the lease or rental of a motor vehicle is made in Florida, the surcharge applies.

The surcharge is not imposed on leases or rentals to tax-exempt entities.[1] Section 212.0606(4), F.S., exempts from payment of the surcharge a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

After deduction for administrative fees, the rental car surcharge is distributed as follows:
- 80 percent of the surcharge to the State Transportation Trust Fund (STTF);
- 15.75 percent of the surcharge to the Tourism Promotional Trust Fund; and
- 4.25 percent of the surcharge to the Florida International Trade and Promotion Trust Fund.

The proceeds of the rental car surcharge deposited into the STTF are allocated to each Florida Department of Transportation (FDOT) district, except the Turnpike District, for transportation projects based on the amount of proceeds collected in the counties within each respective district.

For-Hire Vehicles

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> "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal

[1] Section 212.08, F.S.; Rule 12A-1.1038, F.A.C.

> corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."

Rental Car Industry

In recent years there has been a growing sub-industry of rental cars known as "car-sharing" services. Companies, or programs, like "Zipcar"[2], "car2go"[3], and "Hertz 24/7"[4] allow members to reserve the use of a car without visiting a rental car location. This model is seen as an alternative to the traditional rental car business model as well as an alternative to owning a car in a major metropolitan area. As a new and developing industry, car-sharing services are facing the challenge of varying regulations and taxes across different local and state governments. The CarSharing Association (CSA) represents several car-sharing companies and "works with shared-use mobility operators to advance industry standards, best practices and public policy advocacy."[5] Car-sharing services are promoted by some organizations as a form of "collaborative consumption," which is described as a "shift in consumer values from ownership to access."[6]

Three major varieties of car-sharing models exist currently:[7]

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- Not-For-Profit or Co-Op: "A local organization or community that facilitates car sharing with the goal of changing driving habits over making a profit."

A 2006 study conducted by Travelocity[8] (an online travel agency) found that taxes imposed by state and local governments accounted for an average of 28 percent of the total cost of renting a motor vehicle at airport locations and an average of almost 15 percent at neighborhood locations. Many rental companies also charge additional fees for drivers under 25 years of age, additional drivers, airport concession fees, refueling charges, loss and damage waivers, drop-off charges, partial days, mileage limits, frequent flyer fees, child safety seats, and GPS rental.

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[2] Zipcar website, http://www.zipcar.com/ (last visited February 3, 2014).
[3] car2go website, https://www.car2go.com/en/austin/ (last visited February 3, 2014).
[4] Hertz website, https://www.hertz.com/rentacar/productservice/index.jsp?targetPage=hertzondemand.jsp (last visited February 4, 2014).
[5] CSA website, http://carsharing.org/ (last visited February 3, 2014).
[6] Collaborative Consumption website, http://www.collaborativeconsumption.com/ (last visited February 3, 2014).
[7] Collaborative Fund and Hyperakt, *The Bright Future of CarSharing*, http://futureofcarsharing.com/ (last visited February 3, 2014).
[8] Travelocity, *2006/2007 Study Rates U.S. Airports in Terms of Sticker Shock and Compares Taxes When Renting at On-Airport vs. Neighborhood Locations*, December 12, 2006, http://news.travelocity.com/phoenix.zhtml?c=75787&p=irol-newsArticle&ID=941259 (last visited February 3, 2014).

Rental Car Surcharge and Car-Sharing Services

On September 17, 2012, the Department of Revenue (DOR) issued Technical Assistance Advisement 12A-022 which answered the question of whether a member based car-sharing service is subject to the Florida rental car surcharge. The facts presented to DOR were as follows:

> Taxpayer [the car-sharing service] offers a member based car-sharing service with a fleet of vehicles available for use by registered members at any time of the day, seven days a week. A member can reserve a vehicle before use, or simply locate one and access it. Each use is labeled as a "trip" and can last up to four consecutive days. A unique feature of Taxpayer's car-sharing service is members may, and often do, use a car for a much shorter period of time than typical car rentals. According to Taxpayer, the typical trip lasts twenty-five to forty minutes, costing between $7 and $10 before taxes. Members are invoiced daily for all trips that occur and Taxpayer adds the rental car surcharge and sales tax to this invoice.[9]

Despite the taxpayer's assertion that it is not engaged in the "traditional" rental of cars, DOR concluded that the taxpayer is renting cars and, therefore, the rental car surcharge does apply. The DOR further concluded that because the taxpayer's members may make multiple trips in one day without executing any additional agreement and without any action required of the taxpayer, and because members are charged for every trip within the same 24-hour period on a single daily invoice, the rental car "surcharge is due from Taxpayer's members once a day, regardless of the number of trips taken by a member in a twenty-four hour period."[10]

III. Effect of Proposed Changes:

The bill provides that a member of a car-sharing service who uses a motor vehicle for less than 24 hours must pay a surcharge of $1.00 per usage. A member of a car-sharing service who uses the same motor vehicle for at least 24 consecutive hours must pay a surcharge of $2.00 per day or any part of a day.

The bill defines a "car-sharing service" as a membership-based organization or business which requires payment of a membership fee and provides the member with access to motor vehicles:

- Only at locations that are not staffed by service personnel employed solely for the purpose of interacting with members;
- Twenty-four hours per day, seven days per week;
- Only through automated means;
- On an hourly basis or shorter period of time;

[9] DOR Technical Assistance Advisement 12A-022, https://revenuelaw.state.fl.us/LawLibraryDocuments/2012/09/TAA-111870_deleted%20with%20summary%2012A-022.pdf#search="technical assistance advisement 12A-022" (last visited February 3, 2014).

[10] To support its finding, DOR cited Rule Code 12A-16.002(3)(b), F.A.C.: "When the terms of a lease or rental agreement authorize the lessee to extend the lease or rental beyond the initial lease term without executing an additional lease or agreement and without any action on the part of the lessor, the extension period will not be considered a new lease or rental."

- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

The bill provides that the new hourly surcharge does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, leased by or for the benefit of an airport or airport authority.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

PCS/CS/SB 484 will reduce the amount of the municipalities' and counties' local option sales tax collections, thereby reducing their revenue-raising authority. However, an exemption from the mandates provision may apply because the reduction in local governments' revenue-raising authority may result in an insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the impact of CS/CS/SB 484. Staff estimates that the bill will have an insignificant, negative impact to the General Revenue Fund and a negative, recurring impact of $0.4 million to trust funds.

B. Private Sector Impact:

Individuals using car-sharing services for less than a 24-hour period will see a reduction in the rental car surcharge that they pay.

C. Government Sector Impact:

The Department of Revenue estimated an insignificant operational impact.[11]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.0606, Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The committee substitute provides that a member of a car-sharing service who uses a motor vehicle for less than 24 hours must pay a surcharge of $1.00 per usage.

CS by Commerce and Tourism on February 10, 2014
The committee substitute changes the bill's effective date to January 1, 2015.

B. Amendments:

None.

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

[11] Department of Revenue, *Analysis SB 484*, (February 24, 2014).

By the Committee on Commerce and Tourism; and Senators Braynon and Brandes

577-01741-14 2014484c1

A bill to be entitled

An act relating to rental car sales and use tax surcharges; amending s. 212.0606, F.S.; providing that the surcharge for car-sharing services shall be imposed on an hourly basis rather than a daily basis; defining the term "car-sharing service"; providing an effective date.

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

Section 1. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

(1) Except as provided under subsection (2), a surcharge of $2 ~~$2.00~~ per day or any part of a day is imposed upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers regardless of whether the ~~such~~ motor vehicle is licensed in this state ~~Florida~~. The surcharge applies to only the first 30 days of the term of a ~~any~~ lease or rental. The surcharge is subject to all applicable taxes imposed under ~~by~~ this chapter.

(2) A member of a car-sharing service who uses a motor vehicle as described in subsection (1) pursuant to an agreement with the car-sharing service for less than 24 hours shall pay a surcharge of 8 cents per hour of usage, with portions of an hour rounded up to the nearest hour. A member of a car-sharing service who uses the same motor vehicle for at least 24 consecutive hours shall pay a surcharge of $2 per day or any part of a day as provided under subsection (1).

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

Florida Senate - 2014 **CS for SB 484**

577-01741-14 2014484c1

(a) For purposes of this subsection, a "car-sharing service" is a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:

1. Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with members;

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, smartphone applications and electronic membership cards;

4. On an hourly basis or for a shorter increment of time;

5. Without a separate fee for refueling the motor vehicle;

6. Without a separate fee for minimum financial responsibility liability insurance; and

7. Owned or controlled by the car-sharing service or its affiliates.

(b) The surcharge described in this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(3) ~~(2)(a)~~ Notwithstanding s. ~~the provisions of section~~ 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund.

(a) For the purposes of this subsection, "proceeds" of the

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

surcharge means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other provision of law, ~~in fiscal year 2007-2008 and each year thereafter,~~ the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to ~~for~~ each district shall be based on ~~upon~~ the amount of proceeds attributed to the counties within each respective district.

(4)~~(3)(a)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(a)~~(b)~~ The department shall require dealers to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into.

(b)~~(c)~~ Dealers who collect the rental car surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The provisions of this chapter which apply to interest and penalties on delinquent taxes ~~shall~~ apply to the surcharge. The surcharge is ~~shall~~ not ~~be~~ included in the calculation of estimated taxes

pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does ~~shall~~ not apply to any amount collected under this section.

(5)~~(4)~~ The surcharge imposed by this section does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Car Sharing

Bill Number 484 *(if applicable)*

Name Nelson Diaz

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 999 Ponce de Leon #1105 *Street*

Phone 305-490-3414

Miami FL 33134 *City State Zip*

E-mail diaz@sostrategy.com

Speaking: ☑ For ☐ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 550 (435328)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Hukill
SUBJECT:	Traveling Across County Lines to Commit a Felony Offense
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Favorable**
2.	Stearns	Yeatman	CA	**Favorable**
3.	Clodfelter	Sadberry	ACJ	**Fav/CS**
4.	Clodfelter	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 550 creates section 843.22, Florida Statutes, which makes it a third degree felony for a person to travel any distance with the intent to commit a felony offense in a Florida county that is not their residence. The bill also makes persons who are charged with committing the new offense ineligible for pretrial release without appearing before a judge.

The Criminal Justice Impact Conference found the bill as originally filed would have an insignificant impact on prison bed space. The changes made to the original bill are likely to reduce this fiscal impact. The bill will also have some impact on county jails because a person charged with the new offense cannot be released on pre-trial release without appearing before a judge. In some cases, this will result in a minimum of an overnight stay in jail which would not otherwise occur.

II. Present Situation:

According to Martin County Sheriff William Snyder, there has been a recent phenomenon in Martin County, and most Florida counties, where traveling burglars dubbed "the pillowcase burglars" break into houses near the interstate, stuff the most valuable items into pillowcases and immediately flee to another county. According to Snyder, traditional methods of law enforcement such as using local pawn shop databases, confidential informants, normal proactive

police patrols, or targeted patrols based on time and place of burglary are less effective because of the burglars' speedy departure from the county of the burglary.[1]

Bail Determinations

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.[2] Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.[3]

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger.[4] Courts must consider certain things when determining whether to release a defendant on bail and what level bail should be set at (e.g., the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition, etc.).[5]

Sentencing Guidelines

Chapter 921, F.S., contains the Criminal Punishment Code, which provides sentencing criteria to guide the imposition of criminal penalties for the commission of a felony offense. The "offense severity ranking chart," provided in s. 921.0022, F.S., has ten offense levels, ranked from least severe, which are level one offenses, to most severe, which are level ten offenses. In the event that a particular felony does not have a specific sentencing severity level set in s. 921.0022, F.S., its severity level is decided according to the following parameters:

- A felony of the third degree is within offense level one.
- A felony of the second degree is within offense level four.
- A felony of the first degree is within offense level seven.
- A felony of the first degree punishable by life is within offense level nine.
- A life felony is within offense level ten.[6]

III. Effect of Proposed Changes:

Section 1 creates s. 843.22, F.S., which makes it a third degree felony for a person to travel any distance with the intent to commit burglary in a Florida county that is not his or her county of

[11] Sascha Cordner, *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: 'Pillowcase Burglars,'* WFSU-FM, Dec. 18, 2013, *available at*, http://news.wfsu.org/post/sheriff-enlists-legislative-help-crack-down-growing-problem-pillowcase-burglars.

[2] Report No. 10-08, "*Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010 (on file with Community Affairs Committee).

[3] *Id.*

[4] Section 903.046, F.S.

[5] *Id.*

[6] Section 921.0023, F.S.

residence. An additional element of the offense is that the travel must have been for the purpose of thwarting law enforcement attempts to track items stolen in the burglary.

The bill defines "county of residence" as the county within Florida in which a person resides. Evidence of a person's county of residence includes, but is not limited to:

- The address on a person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which a person's motor vehicle is registered;
- The county in which a person is enrolled in an educational institution; and
- The county in which a person is employed.

Section 2 amends s. 903.046(2)(l), F.S., to prohibit those charged with traveling across county lines with the intent to commit a felony from being released on bail until first appearance to ensure the full participation of the prosecutor and the protection of the public. The bill makes the crossing of a county line with the intent to commit a felony a factor to be considered by the court when making a bail determination.

Section 3 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that SB 550 would have an insignificant negative impact on state prison beds because the bill

creates a new third degree felony offense. The bill may also have a negative jail bed impact because it prohibits persons charged under s. 843.22, F.S., from being released on bail until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant. Because of the changes made to the original bill, PCS/SB 550 is likely to have a smaller fiscal impact.

According to the Department of Corrections (DOC), there will be a $3,400 fiscal impact on the agency's technology systems due to the need for a new offense code and additional changes to existing codes and tables. The DOC estimates 40 hours of work at $85.00 an hour. This amount can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not allocate an "offense severity level" to the newly created crime for sentencing purposes. Therefore, pursuant to s. 921.0023(1), F.S., the severity level will be level one, which will score 0.7 points as an additional offense on a score sheet.[7]

VIII. Statutes Affected:

This bill substantially amends section 903.046 of the Florida Statutes.

This bill creates section 843.22 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 9, 2014:

The committee substitute:

- Limits the definition of the term "felony offense" as used in the bill to include only burglary.
- Adds an element to the new offense requiring that the person's travel must have been for the purpose of thwarting law enforcement efforts to track items stolen in the burglary.

B. Amendments:

None.

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

[7] Office of the State Courts Administrator, *2014 Judicial Impact Statement – SB 550* (March 13, 2014) (on file with the Senate Committee on Community Affairs).

240590

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment

Delete lines 38 - 40
and insert:
person's county of residence commits an additional felony of the

435328

576-04094-14

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

A bill to be entitled

An act relating to traveling across county lines to commit a felony offense; creating s. 843.22, F.S.; defining the terms "county of residence" and "felony offense" for the purpose of the crime of traveling across county lines with the intent to commit a felony offense; providing a criminal penalty; amending s. 903.046, F.S.; adding the crime of traveling across county lines with the intent to commit a felony offense to the factors a court must consider in determining whether to release a defendant on bail; providing an effective date.

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

Section 1. Section 843.22, Florida Statutes, is created to read:

843.22 Traveling across county lines with intent to commit a felony offense.—

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

(a) "County of residence" means the county within this state in which a person resides. Evidence of a person's county of residence includes, but is not limited to:

1. The address on a person's driver license or state identification card;

2. Records of real property or mobile home ownership;

3. Records of a lease agreement for residential property;

435328

576-04094-14

4. The county in which a person's motor vehicle is registered;

5. The county in which a person is enrolled in an educational institution; and

6. The county in which a person is employed.

(b) "Felony offense" means burglary as defined in s. 810.02, including an attempt, solicitation, or conspiracy to commit such offense.

(2) A person who travels any distance with the intent to commit a felony offense in a county in this state other than the person's county of residence, if the purpose of the person's travel is to thwart law enforcement attempts to track the items stolen in the burglary, commits an additional felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (l) of subsection (2) of section 903.046, Florida Statutes, is amended to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider:

(l) Whether the crime charged is a violation of s. 843.22 or chapter 874 or alleged to be subject to enhanced punishment under chapter 874. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she is ~~shall~~ not ~~be~~ eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the

435328

576-04094-14

public.

Section 3. This act shall take effect October 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 550
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Hukill
SUBJECT:	Traveling Across County Lines to Commit a Felony Offense
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Favorable**
2.	Stearns	Yeatman	CA	**Favorable**
3.	Clodfelter	Sadberry	ACJ	**Fav/CS**
4.	Clodfelter	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 550 creates section 843.22, Florida Statutes, which makes it a third degree felony for a person to travel any distance with the intent to commit a felony offense in a Florida county that is not their residence. The bill also makes persons who are charged with committing the new offense ineligible for pretrial release without appearing before a judge.

The Criminal Justice Impact Conference found the bill as originally filed would have an insignificant impact on prison bed space. The changes made to the original bill are likely to reduce this fiscal impact. The bill will also have some impact on county jails because a person charged with the new offense cannot be released on pre-trial release without appearing before a judge. In some cases, this will result in a minimum of an overnight stay in jail which would not otherwise occur.

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police patrols, or targeted patrols based on time and place of burglary are less effective because of the burglars' speedy departure from the county of the burglary.[1]

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Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger.[4] Courts must consider certain things when determining whether to release a defendant on bail and what level bail should be set at (e.g., the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition, etc.).[5]

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Chapter 921, F.S., contains the Criminal Punishment Code, which provides sentencing criteria to guide the imposition of criminal penalties for the commission of a felony offense. The "offense severity ranking chart," provided in s. 921.0022, F.S., has ten offense levels, ranked from least severe, which are level one offenses, to most severe, which are level ten offenses. In the event that a particular felony does not have a specific sentencing severity level set in s. 921.0022, F.S., its severity level is decided according to the following parameters:

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III. Effect of Proposed Changes:

Section 1 creates s. 843.22, F.S., which makes it a third degree felony for a person to travel any distance with the intent to commit burglary in a Florida county that is not his or her county of

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[1] Sascha Cordner, *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: 'Pillowcase Burglars,'* WFSU-FM, Dec. 18, 2013, *available at*, http://news.wfsu.org/post/sheriff-enlists-legislative-help-crack-down-growing-problem-pillowcase-burglars.

[2] Report No. 10-08, "*Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010 (on file with Community Affairs Committee).

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[4] Section 903.046, F.S.

[5] *Id.*

[6] Section 921.0023, F.S.

residence. An additional element of the offense is that the travel must have been for the purpose of thwarting law enforcement attempts to track items stolen in the burglary.

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- The address on a person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which a person's motor vehicle is registered;
- The county in which a person is enrolled in an educational institution; and
- The county in which a person is employed.

Section 2 amends s. 903.046(2)(l), F.S., to prohibit those charged with traveling across county lines with the intent to commit a felony from being released on bail until first appearance to ensure the full participation of the prosecutor and the protection of the public. The bill makes the crossing of a county line with the intent to commit a felony a factor to be considered by the court when making a bail determination.

Section 3 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that SB 550 would have an insignificant negative impact on state prison beds because the bill

creates a new third degree felony offense. The bill may also have a negative jail bed impact because it prohibits persons charged under s. 843.22, F.S., from being released on bail until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant. Because of the changes made to the original bill, CS/SB 550 is likely to have a smaller fiscal impact.

According to the Department of Corrections (DOC), there will be a $3,400 fiscal impact on the agency's technology systems due to the need for a new offense code and additional changes to existing codes and tables. The DOC estimates 40 hours of work at $85.00 an hour. This amount can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not allocate an "offense severity level" to the newly created crime for sentencing purposes. Therefore, pursuant to s. 921.0023(1), F.S., the severity level will be level one, which will score 0.7 points as an additional offense on a score sheet.[7]

VIII. Statutes Affected:

This bill substantially amends section 903.046 of the Florida Statutes.

This bill creates section 843.22 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 24, 2014:
The committee substitute:

- Limits the definition of the term "felony offense" as used in the bill to include only burglary.
- Adds an element to the new offense requiring that the person's travel must have been for the purpose of thwarting law enforcement efforts to track items stolen in the burglary.

B. Amendments:

None.

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

[7] Office of the State Courts Administrator, *2014 Judicial Impact Statement – SB 550* (March 13, 2014) (on file with the Senate Committee on Community Affairs).

By Senator Hukill

8-00792-14 2014550__

A bill to be entitled

An act relating to traveling across county lines to commit a felony offense; creating s. 843.22, F.S.; defining the terms "county of residence" and "felony offense" for the purpose of the crime of traveling across county lines with the intent to commit a felony offense; providing a criminal penalty; amending s. 903.046, F.S.; adding the crime of traveling across county lines with the intent to commit a felony offense to the factors a court must consider in determining whether to release a defendant on bail; providing an effective date.

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

Section 1. Section 843.22, Florida Statutes, is created to read:

843.22 Traveling across county lines with intent to commit a felony offense.—

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

(a) "County of residence" means the county within this state in which a person resides. Evidence of a person's county of residence includes, but is not limited to:

1. The address on a person's driver license or state identification card;

2. Records of real property or mobile home ownership;

3. Records of a lease agreement for residential property;

4. The county in which a person's motor vehicle is registered;

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

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5. The county in which a person is enrolled in an educational institution; and

6. The county in which a person is employed.

(b) "Felony offense" means any of the following felony offenses, including an attempt, solicitation, or conspiracy to commit such offense:

1. Battery as provided in chapter 784.

2. Stalking as provided in s. 784.048.

3. Kidnapping as defined in s. 787.01.

4. Sexual battery as defined in s. 794.011.

5. Lewdness as defined in s. 796.07.

6. Prostitution as defined in s. 796.07.

7. Arson as provided in s. 806.01.

8. Burglary as defined in s. 810.02.

9. Theft as provided in s. 812.014.

10. Robbery as defined in s. 812.13.

11. Carjacking as defined in s. 812.133.

12. Home-invasion robbery as defined in s. 812.135.

13. Trafficking in a controlled substance as provided in s. 893.135.

14. Racketeering as provided in chapter 895.

(2) A person who travels any distance with the intent to commit a felony offense in a county in this state other than the person's county of residence commits an additional felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (l) of subsection (2) of section 903.046, Florida Statutes, is amended to read:

903.046 Purpose of and criteria for bail determination.—

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

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider:

(l) Whether the crime charged is a violation of s. 843.22 or chapter 874 or alleged to be subject to enhanced punishment under chapter 874. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she is ~~shall~~ not ~~be~~ eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 3. This act shall take effect October 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

April 10, 2014

The Honorable Joe Negron
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 550 – Traveling Across County Lines to Commit a Felony Offense

Dear Chairman Negron:

Senate Bill 550, relating to Traveling Across County Lines to Commit a Felony Offense, has been referred to the Appropriations Committee. I am requesting your consideration to include SB 550 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: Cindy Kynoch, Staff Director of the Appropriations Committee
Alicia Weiss, Administrative Assistant of the Appropriations Committee

SENATE APPROPRIATIONS
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Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 550 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22
Meeting Date

Topic SB550 Traveling Across Countylines Bill Number 550 *(if applicable)*

Name William Snyder Amendment Barcode _____ *(if applicable)*

Job Title Sheriff of Martin County

Address 800 SE Monterey Phone _____
Street

_____ E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing _____

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 22, 2014
Meeting Date

Topic Traveling Across County Lines — Bill Number SB - 550 *(if applicable)*

Name Eric Westfall — Amendment Barcode _____ *(if applicable)*

Job Title Lieutenant

Address 123 W. Indiana Ave — Phone 386.736.5961
Street

DeLand — FL — 32720 — E-mail _____
City — *State* — *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Sheriff Ben F. Johnson / FSA

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 582
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Clemens
SUBJECT:	Substance Abuse Services
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Fav/CS**
2.	Stearns	Yeatman	CA	**Favorable**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 582 requires sober house transitional living homes (sober houses) to annually register with the Department of Children & Families (DCF) in order to operate in the state and provides a criminal penalty for operating without a valid certificate of registration. The bill provides definitions of "recovery residences," "registrable components," and "residential dwelling units." The registration fee is capped at $200. The bill authorizes the DCF to conduct inspections, and issue, deny, suspend, or revoke a certificate of registration. The bill requires certain personnel of a sober house to comply with level 2 background screening as provided in s. 435.04, F.S. Requirements for advertising a sober house are included in the bill.

The fiscal impact of the bill is indeterminate but likely significant.

II. Present Situation:

Sober Houses

The operation of sober houses is motivated by the theory that housing addicts in a low-crime, drug-free community fosters rehabilitation and is essential to the success of any addict's treatment.[1] Proponents of sober houses believe that "such environments foster sobriety and

[1] M.M. Gorman *et al.*, *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

encourage trust and camaraderie between home residents"[2] and that living in a sober house affords a recovering addict the opportunity to develop practical life skills and build self-confidence.[3]

"Sober houses" and "sober housing" are new terms for facilities formerly known as "halfway houses." Halfway houses were used by those leaving a residential center who had limited residential options. Sober houses offer the same vital services to addicts in the early stages of recovery.[4]

The facilities, operators and organizational design of sober houses vary greatly. Some sober house advocates argue that the location of the home is critical to promoting recovery. They argue that placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.[5] Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.[6]

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)[7] prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a "handicap" to mean those mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The FHA also protects persons who have a record of such impairment or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for the illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.[8]

The Florida Fair Housing Act provides in s. 760.23(7)(b), F.S., that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available. The statute defines "discrimination" to include a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

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[2] *Id.*
[3] 12 Step Treatment Centers, *Sober Living Home Transitional Housing, available at* http://www.12steptreatmentcentres.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited March 13, 2014).
[4] *Id.*
[5] M.M. Gorman *et al., supra* note 2.
[6] *Id.*
[7] 42 U.S.C. 3601 *et seq.*
[8] *See* U.S. Department of Justice, *The Fair Housing Act, available at* http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited March 13, 2014).

Americans with Disabilities Act

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).[9] In its opinion, the court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing regulation, as requiring states to administer their services, programs, and activities, "in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities." The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.[10] In addition, in the *United States of America v. City of Boca Raton*, the court held that the city's ordinance excluding substance abuse treatment facilities from residential areas violates the FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.[11]

III. Effect of Proposed Changes:

Section 1 provides legislative findings, intent, and purpose.

Section 2 amends s. 397.311, F.S., to add the following definitions:

- "Recovery residence" means a democratically run, peer-managed, and peer-supported dwelling for a resident who is established in his or her recovery and who is a party to a single lease agreement to occupy a dwelling which has a single beginning date and a single termination date.
- "Registrable component" means a sober house transitional living home that is a residential dwelling unit that provides, offers, or advertises housing in an alcohol-free and drug-free living environment to persons needing room and board while receiving treatment services as provided in s. 397.311(18), F.S., at a licensed facility. The term includes the community housing component of a day or night treatment facility of a residential treatment facility that offers level 5 treatment programs, but the term does not include a recovery residence.
- "Residential dwelling unit" means a single unit used primarily for living and sleeping which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- "Sober house operator" means a person who operates a sober house transitional living home.

Section 3 creates s. 397.487, F.S., which requires sober houses to comply with the DCF's annual application process for a certificate of registration to operate. A sober house licensed by the DCF as a residential treatment facility that offers level 5 treatment programs or serves as a community housing component of a day or night treatment facility is not required to obtain additional licensure or registration for the housing component of the license.

The application process will require a sober house to provide:

[9] *Olmstead v. L.C.*, 527 U.S. 581, (1999).
[10] U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?*, *available at* http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited March 13, 2014).
[11] *United States of America vs. City of Boca Raton*, 1008 WL 686689 (S.D. Fla. 2008).

- Name and physical address of the sober house transitional living home;
- Name of the sober house operator;
- Number of individuals served at the sober house;
- Proof of screening and background checks as required under ch. 435, F.S.;
- Written eviction procedures;
- Proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances; and
- A registration fee not to exceed $200.

The bill requires sober houses in existence on July 1, 2014, to apply for a certificate of registration by September 1, 2014. Sober houses in existence on July 1, 2014, that have a license as the community housing component of a day or night treatment facility or are licensed as a residential treatment facility offering level 5 treatment programs, do not have to apply for additional licensure or certification by September 1, 2014. The bill provides that operating a sober house without a valid certificate of registration is a first degree misdemeanor. The DCF is required to adopt rules pertaining to the application process for obtaining a certificate of registration.

The bill also provides that the owner, director, manager, operator, and chief financial officer of a sober house are subject to level 2 background screening as provided in s. 435.04, F.S. The bill prohibits the DCF from granting a certificate of registration:

- If a sober house fails to provide proof that background screening information has been submitted in accordance with ch. 435, F.S.; or
- If one of the above-named individuals has been arrested for and pled to an offense prohibited under the level 2 screening standards established in s. 435.04, F.S., unless an exemption from disqualification has been granted by the DCF under ch. 435, F.S.

If one of the above-named individuals is arrested or pleads guilty to an offense prohibited under s. 435.04, F.S., while acting in his or her professional capacity, the bill requires the DCF to immediately suspend the certificate of registration of a sober house until the individual resigns or is removed and replaced by another qualified individual.

Under the bill, all advertising by a person who owns or operates a sober house must include the home's state registration number in the advertisement. Violation of this requirement is a first degree misdemeanor.

The bill provides authority to the DCF's authorized agent to enter and inspect a sober house with a certificate of registration at any time to determine if it is in compliance with certification requirements. Additionally, with the permission of the person in charge of the premises or pursuant to a warrant, the DCF's authorized agent may enter and inspect a residential dwelling unit that is reasonably suspected to be operating as a sober house in violation of the Florida Statutes. The DCF's designated and authorized agent may access the records of the individuals served by a sober house solely for certification, monitoring, and investigation. Prior to granting or denying a certificate of registration, the DCF's authorized agent may enter and inspect the premises of an applicant sober house at any time. The bill requires the DCF to maintain certificates of registration and inspection reports of sober houses as public records available to

any person upon request and payment of a reasonable charge for copying as provided in s. 119.07, F.S.

Under the bill, if the DCF determines that an applicant or a sober house is not in compliance with statutory and regulatory requirements, the DCF may deny, suspend, revoke, or impose reasonable restrictions or penalties on the certificate of registration or any portion of the certificate. The DCF may:

- Impose an administrative penalty of up to $500 per day; or
- Suspend or revoke a sober house certificate of registration that, after notice, has failed to correct a substantial or chronic violation of a statutory or regulatory requirement that impacts the safety of the individuals served in the house.

If a sober house's certificate of registration is revoked, the house is barred for one year after the revocation from submitting an application for a certificate of registration. Proceedings for the denial, suspension, or revocation of a sober house certificate of registration must be conducted pursuant to ch. 120, F.S. The DCF has the authority to maintain an action in court to enjoin the operation of an uncertified sober house.

Under the bill, to avoid increased homelessness and crime and to ensure the due process rights of sober house tenants are not violated, a sober house that is not subject to Florida's Landlord and Tenant Act, ch. 83, F.S., must provide 48 hours' advance, written notice of eviction to a tenant or must provide immediate shelter to that tenant for at least 48 hours after eviction at an alternative temporary dwelling unit.

The DCF is required to adopt rules to administer this section.

Section 4 amends s. 212.055(5)(e)2., F.S., to refer to s. 397.311, F.S., instead of 397.311(35), F.S., when incorporating the definition of "stabilization."

Section 5 amends s. 440.102(1)(d) and (g), F.S., to refer to s. 397.311, F.S., instead of 397.311(33), F.S., when incorporating the definitions of "drug rehabilitation program" and "employee assistance program."

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fair Housing Act (FHA) prohibits a large range of practices that are considered to discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. The term "disability" has been interpreted to include individuals recovering from drug or alcohol addiction.[12] Therefore, discriminatory practices against recovering addicts are prohibited. As such, restrictions placed on sober houses by the bill may violate the FHA. An owner or operator of a home adversely affected by the bill may bring suit to seek relief under the FHA.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes the DCF to assess registration fees against sober homes not to exceed $200.

B. Private Sector Impact:

The bill could limit the number of sober houses due to increased qualifications for those homes not currently subject to licensure by the DCF. The sober houses would be assessed a certificate of registration fee not to exceed $200.

C. Government Sector Impact:

The bill would have a significant negative fiscal impact on the DCF. The DCF estimates it would need one full-time equivalent position for every 100 sober houses regulated under the bill. However, the number of sober houses statewide that would apply for certificates of registration and require initial and ongoing inspections and administrative oversight is indeterminate and cannot be reliably estimated, according to the DCF.

Additionally, the DCF would need funding to modify its existing licensure database and pay for additional data storage capacity at the shared resource center. The DCF would need staff to perform inspections, process applications, review background screenings, provide legal representation in ch. 120, F.S., proceedings in the event of a denial, revocation, or suspension of a registration, and update its licensing and technology systems. In 2013, the DCF estimated it would need $200,000 to modify its licensing and technology systems.

VI. Technical Deficiencies:

The bill makes three references to "level 5 treatment programs" (lines 66, 131, and 158) but does not define that term. The term also does not appear in the Florida Statutes in relation to substance abuse or treatment.

[12] M.M. Gorman *et al*, *supra* note 2.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.305, 397.311, 212.055, and 440.102.

This bill creates section 397.487 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 11, 2014:
The CS:

- Provides legislative intent;
- Adds a definition of a "recovery residence;" and
- Provides an exemption from certification for sober house transitional living homes licensed by the DCF as a residential treatment facility offering level 5 treatment program or one that serves and is licensed as a community housing component of a day or night treatment facility. These licensed facilities are also exempt from the September 1, 2014, application for certification deadline.

B. Amendments:

None.

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

647088

LEGISLATIVE ACTION

Senate . House

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. .

The Committee on Appropriations (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 397.487, Florida Statutes, is created to read:

397.487 Statewide Task Force on Recovery Residences.—

(1) The Legislature declares that the purpose of this section is to create a task force to examine and analyze emerging consumer protection problems pertaining to the health,

647088

safety, and welfare of individuals who are recovering from substance abuse addictions who reside in recovery residences.

(2)(a) The Statewide Task Force on Recovery Residences, a task force as defined in s. 20.03, is created within the Department of Children and Families for the express purpose of researching the operation of recovery residences and the effect on recovery residents, evaluating effective strategies for certification of recovery residences, and providing policy recommendations to the Legislature.

(b) The task force consists of the following members, or the members' designees:

1. The Secretary of Children and Families, who shall serve as chair.

2. The Secretary of Health Care Administration.

3. The executive director of the Department of Law Enforcement.

4. The State Fire Marshal.

5. Two members of the Senate, appointed by the President of the Senate.

6. Two members of the House of Representatives, appointed by the Speaker of the House of Representatives.

7. A representative from an addiction and recovery association, appointed by the Secretary of Children and Families.

8. Three local elected officials from impacted areas, appointed by the Secretary of Children and Families.

(c) Members of the task force are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

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(d) The Department of Children and Families shall provide the task force with staff necessary to assist the task force in the performance of its duties.

(3) The task force shall hold its organizational session by September 1, 2014. Thereafter, the task force shall meet at least six times per year. Additional meetings may be held if the chair determines that extraordinary circumstances require an additional meeting. A majority of the members of the task force constitutes a quorum.

(4) The task force shall submit an interim report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by January 15, 2015, and a final report of its recommendations by June 1, 2015.

(5) This section is repealed July 1, 2015.

Section 2. This act takes effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to substance abuse; creating s. 397.487, F.S.; creating the Statewide Task Force on Recovery Residences within the Department of Children and Families; providing the purpose of the task force; providing membership; providing reimbursement for per diem and travel expenses; requiring the department to provide the task force with staff; providing meeting times; providing for a quorum; requiring the task

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force to submit to the Legislature an interim report and a final report by specified dates; providing for repeal; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment to Amendment (647088) (with title amendment)

Between lines 4 and 5
insert:

Section 1. Present subsections (10) and (11) of section 394.9082, Florida Statutes, are renumbered as subsections (11) and (12), respectively, and a new subsection (10) is added to that section, to read:

394.9082 Behavioral health managing entities.—

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(10) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—The department shall develop, implement, and maintain standards under which a managing entity shall collect utilization data from all public receiving facilities situated within its geographic service area. As used in this subsection, the term "public receiving facility" means an entity that meets the licensure requirements of and is designated by the department to operate as a public receiving facility under s. 394.875 and that is operating as a licensed crisis stabilization unit.

(a) The department shall develop standards and protocols for managing entities and public receiving facilities to be used for data collection, storage, transmittal, and analysis. The standards and protocols must allow for compatibility of data and data transmittal between public receiving facilities, managing entities, and the department for the implementation and requirements of this subsection. The department shall require managing entities contracted under this section to comply with this subsection by August 1, 2014.

(b) A managing entity shall require a public receiving facility within its provider network to submit data, in real time or at least daily, to the managing entity for:

1. All admissions and discharges of clients receiving public receiving facility services who qualify as indigent, as defined in s. 394.4787; and

2. Current active census of total licensed beds, the number of beds purchased by the department, the number of clients qualifying as indigent occupying those beds, and the total number of unoccupied licensed beds regardless of funding.

(c) A managing entity shall require a public receiving

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facility within its provider network to submit data, on a monthly basis, to the managing entity which aggregates the daily data submitted under paragraph (b). The managing entity shall reconcile the data in the monthly submission to the data received by the managing entity under paragraph (b) to check for consistency. If the monthly aggregate data submitted by a public receiving facility under this paragraph is inconsistent with the daily data submitted under paragraph (b), the managing entity shall consult with the public receiving facility to make corrections as necessary to ensure accurate data.

(d) A managing entity shall require a public receiving facility within its provider network to submit data, on an annual basis, to the managing entity which aggregates the data submitted and reconciled under paragraph (c). The managing entity shall reconcile the data in the annual submission to the data received and reconciled by the managing entity under paragraph (c) to check for consistency. If the annual aggregate data submitted by a public receiving facility under this paragraph is inconsistent with the data received and reconciled under paragraph (c), the managing entity shall consult with the public receiving facility to make corrections as necessary to ensure accurate data.

(e) After ensuring accurate data under paragraphs (c) and (d), the managing entity shall submit the data to the department on a monthly and annual basis. The department shall create a statewide database for the data described under paragraph (b) and submitted under this paragraph for the purpose of analyzing the payments for and the use of crisis stabilization services funded by the Baker Act on a statewide basis and on an

484920

individual public receiving facility basis.

(f) The department shall adopt rules to administer this subsection.

(g) The department shall submit a report by January 31, 2015, and annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides details on the implementation of this subsection, including the status of the data collection process and a detailed analysis of the data collected under this subsection.

(h) The implementation of this subsection is subject to specific appropriations provided to the department under the General Appropriations Act.

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

And the title is amended as follows:

Delete line 61

and insert:

An act relating to health and human services; amending s. 394.9082, F.S.; requiring the Department of Children and Families to develop standards and protocols for the collection, storage, transmittal, and analysis of utilization data from public receiving facilities; defining the term "public receiving facility"; requiring the department to require compliance by managing entities by a specified date; requiring a managing entity to require public receiving facilities in its provider network to submit certain data within specified timeframes; requiring managing entities to reconcile data to ensure

484920

accuracy; requiring managing entities to submit certain data to the department within specified timeframes; requiring the department to create a statewide database; requiring the department to adopt rules; requiring the department to submit an annual report to the Governor and the Legislature; providing that implementation is subject to specific appropriations; creating s.

By the Committee on Children, Families, and Elder Affairs; and Senator Clemens

586-01757-14 2014582c1

A bill to be entitled

An act relating to substance abuse services; amending s. 397.305, F.S.; providing legislative intent with regard to sober house transitional living homes; amending s. 397.311, F.S.; defining terms; creating s. 397.487, F.S.; prohibiting a sober house transitional living home from operating in this state without a valid certificate of registration from the Department of Children and Families; providing an exception; requiring a sober house operator to annually apply for a certificate of registration with the department; requiring certain sober house transitional living homes to apply for a certificate of registration by a specified date; providing for nonapplicability; requiring the department to adopt rules pertaining to the application process for obtaining a certificate of registration; requiring background screening of certain personnel; requiring the department to suspend and reinstate a certificate of registration of a sober house transitional living home under certain circumstances; providing a criminal penalty for operating a sober house transitional living home without a valid certificate of registration; providing certain requirements in advertising a sober house transitional living home; providing a criminal penalty; authorizing the department to conduct inspections; authorizing the department to deny, suspend, or revoke the certificate of registration of a sober house transitional home; providing eviction

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

586-01757-14 2014582c1

procedures; requiring the department to adopt rules; amending ss. 212.055 and 440.102, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (10) and (11) are added to section 397.305, Florida Statutes, to read:

397.305 Legislative findings, intent, and purpose.—

(10) It is recognized by the Legislature that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a supportive, sober environment after completing treatment.

(11) It is the intent of the Legislature to protect persons who live in a sober house transitional living home while they undergo treatment as provided in s. 397.311(18) at a licensed facility. These persons represent a vulnerable consumer population in need of adequate housing, whom this state and its subdivisions have a legitimate state interest in protecting.

Section 2. Subsections (30) through (39) of section 397.311, Florida Statutes, are amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(30) "Recovery residence" means a democratically run, peer-managed, and peer-supported dwelling for a resident who is established in his or her recovery and who is a party to a single lease agreement to occupy the dwelling which has a single beginning date and a single termination date.

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(31) "Registrable component" includes a sober house transitional living home that is a residential dwelling unit that provides, offers, or advertises housing in an alcohol-free and drug-free living environment to persons who need room and board while receiving treatment services as provided in s. 397.311(18) at a licensed facility. This term includes the community housing component of a day or night treatment facility or a residential treatment facility that offers level 5 treatment programs, but the term does not include a recovery residence.

(32) "Residential dwelling unit" means a single unit used primarily for living and sleeping which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(33) ~~(30)~~ "Screening" means the gathering of initial information to be used in determining a person's need for assessment, services, or referral.

(34) ~~(31)~~ "Secure facility," except where the context indicates a correctional system facility, means a provider that has the authority to deter the premature departure of involuntary individuals whose leaving constitutes a violation of a court order or community-based supervision as provided by law. The term "secure facility" includes addictions receiving facilities and facilities authorized by local ordinance for the treatment of habitual abusers.

(35) ~~(32)~~ "Service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components

include prevention, intervention, and clinical treatment as defined ~~described~~ in subsection (18).

(36) ~~(33)~~ "Service provider" or "provider" means a public agency, a private for-profit or not-for-profit agency, a person who is a private practitioner, or a hospital licensed under this chapter or exempt from licensure under this chapter.

(37) ~~(34)~~ "Service provider personnel" or "personnel" includes all owners, directors, chief financial officers, staff, and volunteers, including foster parents, of a service provider.

(38) "Sober house operator" means a person who operates a sober house transitional living home.

(39) ~~(35)~~ "Stabilization" connotes short-term emergency treatment and means:

(a) Alleviation of a crisis condition; or

(b) Prevention of further deterioration~~,~~

~~and connotes short-term emergency treatment~~.

(40) ~~(36)~~ "Substance abuse" means the misuse or abuse of, or dependence on alcohol, illicit drugs, or prescription medications. As an individual progresses along this continuum of misuse, abuse, and dependence, there is an increased need for substance abuse intervention and treatment to help abate the problem.

(41) ~~(37)~~ "Substate entity" means a departmental office designated to serve a geographical area specified by the department.

(42) ~~(38)~~ "System of care" means a coordinated continuum of community-based services and supports that are organized to meet the challenges and needs of individuals who are at risk of

developing substance abuse problems or individuals who have substance abuse problems.

(43) ~~(39)~~ "Treatment plan" means an immediate and a long-range plan based upon an individual's assessed needs and used to address and monitor an individual's recovery from substance abuse.

Section 3. Section 397.487, Florida Statutes, is created to read:

397.487 Sober house transitional living homes.—

(1) APPLICATION.—

(a) A sober house transitional living home may not operate in this state without a valid certificate of registration from the department. However, a sober house transitional living home that is licensed by the department as a residential treatment facility that offers level 5 treatment programs or a sober house transitional living home that is intended to serve as and has a license for the community housing component of a day or night treatment facility is not required to obtain additional licensure or registration for the housing component of the license.

(b) A sober house operator shall annually apply to the department for a certificate of registration to operate a sober house transitional living home by submitting the following:

1. The name and physical address of the sober house transitional living home.

2. The name of the sober house operator.

3. The number of individuals served at the sober house transitional living home.

4. Proof of screening and background checks as required

under chapter 435.

5. Written eviction procedures in accordance with subsection (7).

6. Proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances.

7. A registration fee, not to exceed $200.

(c) A sober house transitional living home in existence on July 1, 2014, shall apply for a certificate of registration by September 1, 2014. This paragraph does not apply to a sober house transitional living home in existence on July 1, 2014, which has a license for the community housing component of a day or night treatment facility or is licensed as a residential treatment facility that offers level 5 treatment programs.

(d) The department shall adopt rules pertaining to the application process for obtaining a certificate of registration.

(2) BACKGROUND SCREENING.—

(a) The owner, director, manager, operator, and chief financial officer of a sober house transitional living home are subject to level 2 background screening as provided in s. 435.04.

(b) The department may not grant a certificate of registration to a sober house transitional living home that fails to provide proof that background screening information has been submitted in accordance with chapter 435.

(c) If a background screening reveals that an individual specified in paragraph (a) has been arrested for and is awaiting final disposition of; has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to; or has been adjudicated delinquent and the record has not

been sealed or expunged for, an offense prohibited under the level 2 screening standards established in s. 435.04, the department may not grant a certificate of registration to the applicant's sober house transitional living home unless an exemption from disqualification has been granted by the department pursuant to chapter 435.

(d) The department shall immediately suspend the certificate of registration of a sober house transitional living home if an individual specified in paragraph (a), while acting in his or her professional capacity, is arrested for and is awaiting final disposition of; is found guilty of, regardless of adjudication, or enters a plea of nolo contendere or guilty to; or is adjudicated delinquent and the record has not been sealed or expunged for, an offense prohibited under the level 2 screening standards established in s. 435.04. The department shall reinstate the certificate of registration after such individual resigns or is removed from his or her position at the sober house transitional living home and replaced by another qualified individual who passes the level 2 background screening as provided in s. 435.04.

(3) PENALTIES.—A person or agency that operates a residential dwelling unit as a sober house transitional living home without a valid certificate of registration in accordance with this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) ADVERTISING.—A person, as defined in s. 1.01, who owns or operates a sober house transitional living home must include the home's state registration number within an advertisement of the sober house transitional living home. A person who violates

this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) INSPECTIONS.—

(a) An authorized agent of the department may enter and inspect at any time a sober house transitional living home that has a certificate of registration from the department to determine whether it is in compliance with s. 397.411 and rules 65D-30.004 and 65D-30.0081, Florida Administrative Code.

(b) An authorized agent of the department may, with the permission of the person in charge of the premises or pursuant to a warrant, enter and inspect a residential dwelling unit that the agent reasonably suspects to be operating as a sober house transitional living home in violation of this section.

(c) Notwithstanding the confidentiality provisions of this chapter, a designated and authorized agent of the department may access the records of the individuals served by a sober house transitional living home solely for purposes of certification, monitoring, and investigation. The department may interview these individuals as specified by rule.

(d) Before the department grants or denies a certificate of registration, an authorized agent of the department may enter and inspect at any time the premises of an applicant sober house transitional living home.

(e) The department shall maintain certificates of registration and reports of inspections of sober house transitional living homes as public records that are available to any person upon request and upon payment of a reasonable charge for copying as provided in s. 119.07.

(6) DENIAL; SUSPENSION; AND REVOCATION.—

(a) If the department determines that an applicant or a sober house transitional living home is not in compliance with statutory and regulatory requirements, the department may deny, suspend, revoke, or impose reasonable restrictions or penalties on the certificate of registration or any portion of the certificate. In such case, the department may:

1. Impose an administrative penalty of up to $500 per day against a sober house transitional living home that operates in violation of statutory or regulatory requirements.

2. Suspend or revoke a sober house transitional living home's certificate of registration if, after notice, the department determines that the home has failed to correct a substantial or chronic violation of a statutory or regulatory requirement which impacts the safety of the individuals served at the home.

(b) If a sober house transitional living home's certificate of registration is revoked, the home is barred from submitting an application for a certificate of registration to the department for a period of 1 year after the revocation.

(c) Proceedings for the denial, suspension, or revocation of a sober house transitional living home's certificate of registration must be conducted in accordance with chapter 120.

(d) The department may maintain an action in court to enjoin the operation of an uncertified sober house transitional living home that violates this section.

(7) EVICTIONS.—In order to avoid increased homelessness and crime and to ensure that the due process rights of a tenant are not violated, a sober house transitional living home that is not subject to chapter 83 must provide 48 hours' advance, written

notice of eviction to a tenant or immediate shelter to that tenant for at least 48 hours after eviction at an alternative temporary dwelling unit. As used in this subsection, the term "tenant" means an individual entitled to occupy or reside at a sober house transitional living home in accordance with a written agreement.

(8) The department shall adopt rules to administer this section.

Section 4. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for

the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311 ~~s. 397.311(35)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered

following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined prior to program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board,

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agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 5. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider, as defined in s. 397.311, which ~~established pursuant to s. 397.311(33), that~~ provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall

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in all cases be provided by service providers as defined in s. 397.311 ~~pursuant to s. 397.311(33)~~.

Section 6. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS
27th District

March 19, 2014

Senator Joe Negron, Chair
Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Negron:

I respectfully request that SB 582 – Substance Abuse Services be added to the agenda for the next Committee on Appropriations meeting.

SB 582 will allow the state to track sober house transitional living homes by providing rules for the registration and operation of these type of substance abuse service facilities. Currently, sober homes can be established anywhere by anyone and, while claiming to provide assistance for recovering addicts, oftentimes do not offer treatment programs or services. The proposed legislation will outline where and how sober homes can be operated and address public safety issues that result from poorly run facilities.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

Senator Jeff Clemens
Florida Senate District 27

SENATE APPROPRIATIONS
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☐ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
☐ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22
Meeting Date

Topic SB 582 Bill Number 582 *(if applicable)*

Name Casey Cook Amendment Barcode *(if applicable)*

Job Title Legislative Advocate

Address PO Box 1757 Phone 701 3701
Street

Tallahassee FL 32302 E-mail ccook@flcities.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida League of Cities

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Substance Abuse Services

Bill Number 582 *(if applicable)*

Name Chris Dawson

Amendment Barcode *(if applicable)*

Job Title

Address 301 E. Pine Street Suite 1400
Street
Orlando FL 32801
City *State* *Zip*

Phone 850. 449. 0066

E-mail chris.dawson@gray-robinson.com

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

Representing FL Smart Justice Alliance

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 634
INTRODUCER:	Appropriations Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Brandes
SUBJECT:	Guardianship
DATE:	April 23, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Harkness	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 634 expands the authority of judges and clerks of court to oversee guardians and assets held by guardians. For this purpose, the bill:

- Redefines the term "audit" to include various practices that meet professional audit standards.
- Requires persons, other than corporate guardians, seeking appointment as a guardian, including employees of a professional guardian to submit to a credit history investigation and background screening.
- Upon petition by an interested party or on the court's own motion, the court may waive the requirement of a credit history investigation or a level 2 background screening for persons, other than a corporate guardian, seeking appointment by the court.
- Authorizes clerks of court to obtain and review documents and records reasonably relating to guardianship assets and, upon application to the court, to issue subpoenas to do so.
- Allows a guardian or ward who receives notice and a proposed subpoena to object to a clerk's request for authority from the court to subpoena documents from a third party.
- Allows the court to remove a guardian for a failure in bad faith to submit records during a clerk's audit.
- Requires a person seeking a guardianship appointment to acknowledge arrests covered by an expunged or sealed record.

The bill has no fiscal impact on state government.

II. Present Situation:

Guardianships serve as a mechanism to protect vulnerable individuals in our society who do not have a family or loved on or someone who is willing and able to manage their property or other personal matters. A guardian may be described as a person "who has the legal authority and duty to care for another's person or property, esp[ecially] because of the other's infancy, incapacity, or disability."[1] Guardianships are governed completely and exclusively under statutes in Florida.[2] Any adult may petition a court to initiate guardianship proceedings to determine the incapacity of any person.[3] An "incapacitated person" is a "person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person."[4]

A guardian is a surrogate decision-maker appointed by the court to make personal or financial decisions for a minor or an adult having mental or physical disabilities.[5] Under Florida law, a ward is defined as a person for whom a guardian has been appointed.[6]

The procedure to determine an alleged person's incapacity is prescribed by statute.[7] Any person may file, under oath, a petition in circuit court for determination of incapacity alleging that a person is incapacitated.[8] After a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.[9] If the examining committee determines the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.[10] If the examining committee determines the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If after a hearing, the court determines a person is incapacitated, the court must also find alternatives to guardianship were considered and that no alternatives to guardianship will sufficiently address the problems of the incapacitated person and appoint a guardian.[11]

Guardians

Upon a finding by the court a guardianship sufficiently addresses the problem of the incapacitated person, a guardian will be appointed. There are many different types of guardians available for court appointment such as a "limited guardian," "nonprofit guardian," "preneed guardian," and "professional guardian." A "professional guardian," is any guardian who has at any time rendered services to three or more wards as their guardian.[12] A professional guardian

[1] BLACK'S LAW DICTIONARY (9th ed. 2009).
[2] *Poling v. City Bank & Trust Co. of St. Petersburg,* 189 So. 2d 176, 182 (Fla 2d DCA 1966).
[3] Section 744.3201, F.S.
[4] Section 744.102(12), F.S.
[5] *See e.g.,* s. 744.102(9), F.S.
[6] Section 744.102(22), F.S.
[7] Section 744.331, F.S.
[8] *Id.* In Florida, circuit courts have exclusive jurisdiction of proceedings relating to the determination of incompetency. Section 26.12(2)(b), F.S.
[9] Section 744.331(3), F.S.
[10] Section 744.331(4), F.S.
[11] *See* s. 744.331(6)(b), F.S.
[12] Section 744.102(17), F.S.

must comply with statutory application, bond, and educational requirements. Each professional guardian must allow, at the guardian's expense, an investigation of the guardian's credit history, and the credit history of employees of the guardian, in a manner prescribed by the Department of Elderly Affairs.[13] Each professional guardian shall allow a level two background screening of the guardian and employees of the guardian.[14]

Any resident of this state who is *sui juris* (someone with full legal rights or capacity and not under any legal disability or power of another such as guardianship)[15] and is 18 years of age or older is qualified to act as a guardian of the ward.[16] A nonresident of the state may serve as a guardian of a resident if he or she is:

- Related by lineal consanguinity[17] to the ward;
- A legally adopted child or adoptive parent of the ward;
- A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or[18]

Every prospective guardian must complete an application for appointment as a guardian. The application must list the person's qualifications to serve as a guardian.[19] A professional guardian and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense:

- A level two background screening, before and at least once every five years after the date the guardian is registered.[20]
- A level one background screening[21], at least once every two years after the date the guardian is registered.[22]
- An investigation of his or her credit history before and at least once every two years after the date of the guardian's registration with the Statewide Public Guardianship Office.[23]

If the guardian appointed by the court does not meet the definition of "professional guardian," the guardian is considered a nonprofessional guardian. For nonprofessional guardians, the court must accept the satisfactory completion of a criminal history record check.[24] The nonprofessional

[13] Section 744.1085(4), F.S.
[14] Section 744.1085(5), F.S.
[15] *See e.g.*, "*Sui juris*" means of full age and capacity; possessing full social and civil rights. BLACK'S LAW DICTIONARY (9th ed. 2009).
[16] Section 744.309(1), F.S.
[17] "Lineal consanguinity" means the relationship between persons who are directly descended or ascended from one another (for example, mother and daughter, great-grandfather and grandson, etc.). BLACK'S LAW DICTIONARY (9th ed. 2009).
[18] Section 744.309(2), F.S.
[19] Section 744.3125(1), F.S.
[20] Section 744.3135(4)(a), F.S.
[21] A "Level one" background screening includes, but is not limited to, checks of: employment history; statewide criminal history through the Florida Department of Law Enforcement; the Dru Sjodin National Sex Offender Public website; and optional checks through local law enforcement agencies. Section 435.03, F.S. A Level one screening also identifies arrests that have not been adjudicated and pleas of nolo contendere to certain enumerated felonies or any history of domestic violence. Section 435.03(2) and (3), F.S. A "Level two" background screening includes the Level one check, plus the submission of fingerprints and a national history records check through the Federal Bureau of Investigation. Section 435.04(1)(a), F.S.
[22] *Id.*
[23] Section 744.3135(5), F.S.
[24] Section 744.3135(2), F.S.

guardian can satisfy this requirement by undergoing a state and national criminal history record check using fingerprints. The nonprofessional guardian shall have his or her fingerprints taken and provide them to the Department of Law Enforcement with the appropriate fee for processing. The results shall be forwarded to the clerk of the court, maintained in the nonprofessional guardian's file and made available to the court.[25] A guardian may be removed for reasons set forth in the law and the removal shall be in addition to any other penalties prescribed by law.[26]

Annual Accounting

Each guardian of the property of the ward must file an annual accounting with the court.[27] The annual accounting must include a full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period. However, the requirement for an accounting does not apply to any property or trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.[28]

Responsibilities of the Clerk of the Court

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure it contains information about the ward that addresses mental and physical health care, physical and mental health examinations, personal and social services, residential setting, the application of insurance, private benefits and government benefits and the initial verified inventory or the annual accounting.[29] The clerk has certain timeframes within which to review reports, audit verified inventory and accountings, and report to the court when a report is not timely filed.[30]

Court-ordered Sealing of Criminal Records

Sections 943.0585 and 943.059, F.S., provide for the court-ordered expunction or sealing of certain criminal history records. Any court of competent jurisdiction may order a criminal justice agency to seal or expunge the criminal history records of a minor or an adult under certain circumstances. The person seeking to seal a criminal history must apply for and receive a certificate of eligibility for sealing. [31] When a court orders a criminal history record of a minor or an adult to be sealed or expunged, he or she may lawfully deny or fail to acknowledge the arrests covered by the sealed records except under certain circumstances.[32]

III. Effect of Proposed Changes:

This bill expands the authority of judges and clerks of court to oversee guardians and guardianship assets.

[25] Section 744.3135(3), F.S.
[26] Section 744.474, F.S.
[27] Section 744.3678(1), F.S.
[28] Section 744.3678(2)(a), F.S.
[29] Section 744.368(1), F.S.
[30] Section 744.368, F.S.
[31] Section 943.059, F.S.
[32] Section 943.059(4)(a), F.S.

Section 1 amends s. 744.102(2), F.S., which contains the definition of "audit." Currently the term refers to a systematic review of financial and other documents to ensure compliance with court rules and generally accepted accounting principles. Under the bill, the term "audit" also includes various practices that meet professional audit standards such as verifications, reviews of substantiating papers and accounts, interviews, inspections, and investigations.

Section 2 amends s. 744.3135(1), F.S. to require all persons seeking appointment as a guardian (other than a person seeking appointment as a corporate guardian) to submit, at his or her own expense, to an investigation of the person's credit history and undergo a level two background screening. The court, on its own motion, or by petition of any interested party, may waive the requirement of a credit history investigation or a level two background screening for persons, other than a corporate guardian as described in s. 744.309(4), F.S., seeking appointment by the court. Under existing law, a credit history check and criminal history record check are up to the discretion of the court. If appointed, a nonprofessional guardian may petition the court for reimbursement of reasonable expenses incurred for credit history investigation and background screening.

Section 3 amends s. 744.368, F.S., to expand the authority of the clerk of the court at the direction of the court to obtain or review records and documents that reasonably relate to guardianship assets, including beginning inventory balances and fees charged to the guardianship. If a guardian fails to produce records or documents to the clerk upon request, the clerk may file an affidavit requesting the court to issue an order that identifies the records or documents requested and which shows good cause as to why the documents or records should be produced. In addition, the clerk may apply to the court for the issuance of a subpoena to nonparties to compel production of records or documents. The clerk must properly notice the guardian and the ward and attach a copy of the affidavit for the subpoena to compel production of documents or records from third parties other than the guardian or ward. The guardian or ward may object to the production of such documents or records.

Section 4 amends s. 744.3685, F.S., to create a procedure for the guardian to object upon a showing of good cause to a request for records by the clerk pursuant to an audit. After a timely objection, the clerk must obtain a court order to compel the production of the records.

Section 5 amends s. 744.474, F.S., to provide the failure of a guardian to submit guardianship records during the audit by a clerk as required by s. 744.368, F.S., due to bad faith is grounds for the removal of the guardian.

Section 6 amends s. 943.0585 F.S., to require a person seeking appointment as a guardian to disclose arrests covered by a court-ordered expunction.

Section 7 amend s. 943.059, F.S., to require a person seeking appointment as a guardian to disclose arrests covered by a sealed record.

Section 8 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issue:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Nonprofessional guardians currently pay the costs for fingerprinting and background checks.[33] The cost to require nonprofessional guardians to be subject to a credit history investigation and level two background screening ranges between $50 and $85, depending on which livescan service provider is used to obtain fingerprints.[34] If appointed, CS/CS/CS/SB 634 authorizes a nonprofessional guardian to petition the court for reimbursement of reasonable expenses incurred for the investigation of the credit history and level two background screening.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 58 - 61 of the bill provide: "[i]f appointed, a nonprofessional guardian may petition the court for reimbursement of the reasonable expenses of the credit history investigation and

[33] According to the Florida Department of Law Enforcement, during the last six months, 572 state and national criminal history checks for nonprofessional guardians were received from the clerks of courts. Email from the Florida Association of Clerks and Comptroller (February 20, 2014) (on file with the Senate Committee on Judiciary).

[34] Informal telephone survey of livescan service providers obtained from the Florida Department of Law Enforcement's website at: https://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx#Service_Providers (last visited on February 26, 2014).

background screening." The Legislature may wish to specify whether this should borne as a guardianship expense or should be paid by another source.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 744.102, 744.3135, 744.368, 744.3685, 744.474, 943.0585, and 943.059.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 22, 2014:
The committee substitute allows the court, on its own motion or by petition of any interested party, to waive the requirement for the credit history investigation or level two background screening for all persons, other than a corporate guardian as described in s. 744.309(4), F.S. seeking appointment by the court.

CS/CS by Judiciary on March 4, 2014:
The amendment makes minor technical wording changes to clarify the meaning of the bill.

CS by Children, Families, and Elder Affairs on February 11, 2014:
Provides additional responsibilities for the clerk of the court if there is reason to believe further review of records and documents that impact the guardianship assets are appropriate. Provides a process for the clerk to request a court order based on an affidavit that identifies records and documents requested and a show of good cause as to why the records and documents are needed to complete the audit. Provides a process for the clerk to issue a subpoena to nonparties for production of documents and records supported by an affidavit and requires the clerk to give notice to guardian and ward. Provides the guardian or ward a timeframe within which to object to the production of documents.

B. Amendments:

None.

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

569002

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete line 59
and insert:
required under s. 435.04. On petition by any interested person or on the court's own motion, the court may waive the requirement of a credit history investigation or a level 2 background screening, or both. If appointed, a nonprofessional

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

569002

And the title is amended as follows:

Delete line 7

and insert:

and background screening; authorizing the court to waive a credit history investigation, background screening, or both under certain circumstances; authorizing a

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Brandes

590-02120A-14 2014634c2

A bill to be entitled

An act relating to guardianship; amending s. 744.102, F.S.; redefining the term "audit"; amending s. 744.3135, F.S.; revising the requirements and authorizations of the court to require specified guardians to submit to a credit history investigation and background screening; authorizing a nonprofessional guardian to petition the court for reimbursement for the credit history investigation and background screening; amending s. 744.368, F.S.; authorizing a clerk of the court to obtain and review records and documents relating to guardianship assets and to issue subpoenas to nonparties upon application to the court; providing requirements for affidavits, notice, and subpoenas; providing for objection to a subpoena; amending s. 744.3685, F.S.; authorizing the court to require the production of records and documents by a guardian who fails to submit them during an audit; amending s. 744.474, F.S.; providing for the removal of a guardian for a bad faith failure to submit records during an audit; amending ss. 943.0585 and 943.059, F.S.; providing that a person seeking an appointment as guardian may not lawfully deny or fail to acknowledge the arrests covered by an expunged or sealed record; reenacting s. 943.0585(4)(c), F.S., relating to court-ordered expunction of criminal history records, to incorporate the amendments made to s. 943.0585, F.S., in a reference thereto; reenacting s. 943.059(4)(c), F.S.,

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590-02120A-14 2014634c2

relating to court-ordered sealing of criminal history records, to incorporate the amendments made to s. 943.059, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (2) of section 744.102, Florida Statutes, is amended to read:

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

(2) "Audit" means a systematic review of financial and all other documents to ensure compliance with s. 744.368, rules of court, and local procedures using generally accepted accounting principles. The term includes various practices that meet professional audit standards, such as verifications, reviews of substantiating papers and accounts, interviews, inspections, and investigations.

Section 2. Subsection (1) of section 744.3135, Florida Statutes, is amended to read:

744.3135 Credit and criminal investigation.—

(1) The court shall require all persons who are seeking appointment by the court, other than a corporate guardian as described in s. 744.309(4) ~~may require a nonprofessional guardian and shall require a professional or public guardian~~, and all employees of a professional guardian, other than a corporate guardian as described in s. 744.309(4), who have a fiduciary responsibility to a ward, to submit, at their own expense, to a ~~an investigation of the guardian's~~ credit history investigation and to undergo level 2 background screening as

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required under s. 435.04. If appointed, a nonprofessional guardian may petition the court for reimbursement of the reasonable expenses of the credit history investigation and background screening. ~~If a credit or criminal history record check is required,~~ The court must consider the results of any investigation before appointing a guardian. At any time, the court may require a guardian or the guardian's employees to submit to an investigation of the person's credit history and complete a level 1 background screening pursuant to ~~as set forth in~~ s. 435.03. The court shall consider the results of any investigation in determining whether to reappoint ~~when reappointing~~ a guardian. The clerk of the court shall maintain a file on each guardian appointed by the court and retain in the file documentation of the result of any investigation conducted under this section. A professional guardian shall ~~must~~ pay the clerk of the court a fee of up to $7.50 for handling and processing professional guardian files.

Section 3. Subsections (5) through (7) are added to section 744.368, Florida Statutes, to read:

744.368 Responsibilities of the clerk of the circuit court.—

(5) If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably relate to the guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.

(6) If a guardian fails to produce records or documents to the clerk upon request, the clerk may request the court to enter an order pursuant to s. 744.3685(2) by filing an affidavit that

identifies the records or documents requested and shows good cause as to why the records or documents requested should be produced.

(7) Upon application to the court supported by an affidavit pursuant to subsection (6), the clerk may issue subpoenas to nonparties to compel production of records or documents. Before issuance of a subpoena by affidavit, the clerk must serve notice on the guardian and the ward, unless the ward is a minor or totally incapacitated, of the intent to serve subpoenas to nonparties.

(a) The clerk must attach the affidavit and the proposed subpoena to the notice to the guardian and, if appropriate, to the ward. The notice must:

1. State the time, place, and method for production of the records or documents, and the name and address of the person who is to produce the documents or items, if known, or if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs;

2. Include a designation of the records or documents to be produced; and

3. State that the person who will be asked to produce the records or documents has the right to object to the production under this section and that the person is not required to surrender the records or documents.

(b) A copy of the notice and proposed subpoena may not be furnished to the person upon whom the subpoena is to be served.

(c) If the guardian or ward serves an objection to production under this subsection within 10 days after service of the notice, the records or documents may not be required to be

produced until resolution of the objection. If an objection is not made within 10 days after service of the notice, the clerk may issue the subpoena to the nonparty. The court may shorten the period within which a guardian or ward must file an objection if the clerk's affidavit shows that the ward's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

Section 4. Section 744.3685, Florida Statutes, is amended to read:

744.3685 Order requiring guardianship report; contempt.—

(1) If ~~When~~ a guardian fails to file the guardianship report, the court shall order the guardian to file the report within 15 days after the service of the order upon her or him or show cause why she or he may ~~should~~ not be compelled to do so.

(2) If a guardian fails to comply with the submission of records or documents requested by the clerk during the audit, upon a showing of good cause by affidavit of the clerk which shows the reasons the records must be produced, the court may order the guardian to produce the records or documents within a period specified by the court unless the guardian shows good cause as to why the guardian may not be compelled to do so before the deadline specified by the court. The affidavit of the clerk shall be served with the order.

(3) A copy of an ~~the~~ order entered pursuant to subsection (1) or subsection (2) shall be served on the guardian or on the guardian's resident agent. If the guardian fails to comply with the order ~~file her or his report~~ within the time specified by the order without good cause, the court may cite the guardian for contempt of court and may fine her or him. The fine may not

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be paid out of the ward's property.

Section 5. Subsection (21) is added to section 744.474, Florida Statutes, to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(21) The failure in bad faith to submit a guardianship record during the audit pursuant to s. 744.368.

Section 6. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended, and paragraph (c) of that subsection is reenacted, to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or

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any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the

expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract

with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly; ~~or~~

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or~~.~~

7. Is seeking to be appointed as a guardian pursuant to s. 744.3125.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 7. for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access

authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended, and paragraph (c) of that subsection is reenacted, to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that

offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal

history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for

Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; ~~or~~

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or~~.~~

8. Is seeking to be appointed as a guardian pursuant to s. 744.3125.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)8. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such

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entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. This act shall take effect July 1, 2014.

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The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 6, 2014

I respectfully request that **Senate Bill #634**, relating to Guardianship, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

SENATE APPROPRIATIONS
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14 MAR -6 PM 3:03
STAFF DIR. _____ STAFF _____

File signed original with committee office

S-020 (03/2004)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 12, 2014

I respectfully request that **Senate Bill # 634**, relating to Guardianship, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

SENATE APPROPRIATIONS
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14 MAR 12 PM 3:31
CHAIRMAN
STAFF DIR.
STAFF

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 638 (932242)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senator Brandes
SUBJECT:	Charities
DATE:	April 21, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	**Fav/CS**
2.	Fournier	Diez-Arguelles	AFT	**Fav/CS**
3.	Fournier	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 638 updates the Solicitation of Contributions Act to provide increased oversight by the Department of Agriculture and Consumer Services (DACS) of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors. It requires additional financial disclosure for a charitable organization that had more than $1 million in total revenue and devoted less than a specified proportion of its spending to program service costs in the preceding year, and allows the DACS to disqualify a charitable organization from receiving a sales tax exemption certificate if the organization failed to spend at least 25 percent of total annual functional expenses on program costs for the 3 previous years.

The bill creates a license for professional solicitors that is expected to increase revenue to the DACS General Inspection Trust Fund by $250,000 annually. It also requires fingerprinting of professional solicitors. Fingerprint processing fees will increase revenue to the FDLE Operating Trust Fund (net of payments to the FBI) by $60,000 in the first year and an indeterminate amount in subsequent years. The bill also increases administrative fines for violations of the Florida Deceptive and Unfair Trade Practices Act.

The bill appropriates $235,352 in recurring funds and $239,357 in nonrecurring funds from the DACS General Inspection Trust Fund, and four full-time equivalent positions to the DACS to implement this act.

II. Present Situation:

In Florida, the solicitation of contributions by charitable organizations and sponsors is regulated by the Solicitation of Contributions Act (the SCA).[1] There are currently over 18,000 charitable organizations and sponsors, 404 professional fundraising consultants, and 87 professional solicitors registered in Florida. Of those 87 professional solicitors, 54 are headquartered outside Florida.[2]

The SCA contains basic registration, financial disclosure, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Recent news reports suggest current regulations under the SCA may be insufficient to effectively monitor and regulate these entities to ensure they are fulfilling their purpose as charitable entities.[3]

(See a detailed analysis of the bill's effect on each part of the SCA below.)

III. Effect of Proposed Changes:

The bill makes the following changes to statutes regulating charitable organizations and sponsors, professional fundraising consultants, and professional solicitors. The bill:

- Requires that any changes to information in a registration statement be submitted to the Department of Agriculture and Consumer Services (DACS) within 10 days of the change.
- Requires automatic suspension of a registration for failure to disclose any information related to certain criminal or administrative actions.
- Permits increased processing times for the DACS if the applicant discloses any information related to certain criminal or administrative actions against it.
- Authorizes the DACS to deny or revoke an application if the applicant or its agent has had certain criminal or administrative action taken against it.
- Prohibits the employment of persons with certain criminal history.[4]
- Requires notices to be provided for all solicitations and confirmations.
- Requires professional fundraising consultants and professional solicitors to only enter into contracts with charitable organizations and sponsors registered under ch. 496, F.S.

[1] Chapter 496, F.S. The majority of the provisions in the SCA "do not apply to bona fide religious institutions, educational instructions, and state agencies or other government entities or persons or organizations who solicit or act as professional fundraising consultants solely on their behalf." Section 496.403, F.S. Nor do the majority of the provisions in the SCA apply to political contributions solicited in accordance with election laws. *Id.*

[2] Conversation with Amy Topol, Assistant Director, Division of Consumer Services, the DACS, Jan. 4, 2014.

[3] The Tampa Bay Times, in conjunction with the CNN and The Center for Investigative Reporting, recently published a number of articles related to charities. *America's Worst Charities*, Tampa Bay Times website, available at http://www.tampabay.com/topics/specials/worst-charities.page (last visited Feb. 4, 2014).

[4] Disqualifying crimes include fraud, theft, larceny, embezzlement, fraudulent conversion, and misappropriation of property.

Charitable Organizations and Sponsors[5]

Summary

The bill:

- Authorizes the DACS to enter a disqualification order for certain charities not meeting expense requirements, which disqualifies the charity from receiving sales tax exempt status for at least a year.
- Clarifies the requirements related to financial statements.
- Requires certain charities to adopt conflict of interest policies.
- Requires certain charities to file supplemental financial disclosures and quarterly disaster relief statements.

Present Situation - Registration Statements

Currently, under s. 495.405, F.S., any charitable organization or sponsor[6] that intends to solicit donations in Florida must register annually with the DACS and pay a registration fee[7] before soliciting donations.[8] Registration includes a financial report,[9] a statement of the purpose of the charity, how donations will be used, names of individuals in charge of solicitation activities, and proof of federal tax exempt status. The charity must also identify any professional solicitors and fundraising consultants the charity will use, along with the terms of the arrangements for compensation to be paid to the consultant and solicitor. The registration must also include a statement related to the charity's activity in other states, including whether the charity is authorized to operate in another state; whether the charity's registration has been denied, suspended, or revoked in another state; and whether the charity or any person associated with the charity has been subject to any adverse administrative actions or criminal convictions in any state.[10]

Each affiliate of a parent charity required to register under s. 495.405, F.S., must either file a separate registration and financial report or provide the information to the parent organization to file a consolidated registration. The consolidated registration must include financial reports for the parent organization and each of its Florida affiliates. However, if all contributions received by the affiliates are remitted directly into a single account with the parent organization, the parent organization may submit one consolidated financial report.[11]

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[5] A "sponsor" is "a group or person which is or holds itself out to be soliciting contributions by the use of any name which implies that the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and which is not a charitable organization." Section 496.404(21), F.S. For a sponsor to solicit contributions in this state, it must be a membership organization that, among other things, has a membership that consists of at least 10 percent or 100 members, whichever is less, who are employed as law enforcement officers or emergency services employees. Section 496.426, F.S.

[6] As used in this analysis, the term "charity" or "charities" refers to both charitable organizations and sponsors, unless otherwise indicated.

[7] The registration fee varies from $10 to $400 based on the amount of contributions received by the charity. Section 496.405(4), F.S.

[8] *Id.* at (1)(a) and (c), F.S. Certain small charities (with less than $25,000 total annual revenue) are exempt from the registration and financial reporting requirements in ss. 496.405 and 496.407, F.S. *See id.*; s. 496.406, F.S.

[9] The information that must be included in the financial report is identified in s. 496.407, F.S. *See* "*Financial Statements*" section below.

[10] Section 496.405(2), F.S.

[11] *Id*.

A charity must renew its registration annually; if any information submitted on the original registration statement changes, the charity must update that information on its renewal registration. The DACS may extend the time for filing an annual renewal statement or financial report for up to 60 days, during which time the charity's previous registration remains in effect. However, a charity's registration may not continue in effect after the date the charity should have filed its financial report and the charity may not file its renewal statement until it has filed its financial report.[12] Failure to file a renewal statement by the date on which the statement and financial report were due may result in a late filing fee of $25 per month.[13]

After receiving a registration statement, the DACS has 15 business days to either approve, deny, or notify the charity that it must provide additional information. If, after 15 days, no additional information is requested, and the DACS has not approved or denied the registration, it is deemed approved. If additional information is requested, the DACS has 15 days after the information is received to either approve or deny the registration.[14]

Effect of Proposed Changes

Section 5 amends s. 496.405, F.S., to require that any changes to the information in a charity's registration statement related to the charity's activity in other states, including criminal, administrative, or other actions against the charity, must be reported to the DACS within 10 days of the change occurring. If the charity discloses any information related to criminal, administrative, or other actions against the charity in its initial registration statement or annual renewal statement, the bill allows the DACS additional time to process the applications under the processing time limits in ch. 120, F.S.[15] Additionally, if a charity fails to disclose any information related to criminal, administrative, or other actions against the charity, its registration will be automatically suspended until the charity submits the required information related to those actions to the DACS.

The bill also requires that the consolidated financial statements filed by charities with affiliates must reflect the activities of each affiliate, including all contributions received by each entity, all payments made to each entity, and all administrative fees assessed to each entity. A copy of Internal Revenue Service Form 990 or Form 990-EZ, and attached schedules for the preceding year for the parent organization and each Florida chapter, branch, or affiliate, must be attached to the consolidated financial statement.

The bill repeals the DACS' authority to extend the time for filing an annual renewal statement or financial statement. The bill also provides that a charity's registration will expire with no further action required by the DACS if the charity fails to timely file its renewal statement or it fails to provide a financial statement within the extension periods under s. 496.407, F.S.[16]. Additionally, the DACS will have the authority to deny or revoke a charity's registration if the charity or any

[12] *Id.* at (1).
[13] *Id.* at (4)(b).
[14] *Id.* at (7).
[15] The time limits for processing a registration under ch. 120, F.S., are longer than those in ch. 496, F.S. For example, under ch. 120, F.S., an agency has 30 days to request additional information from an application, and the agency has 90 days after receipt of a completed application to approve or deny a registration.
[16] *See* "*Financial Statements*" section below.

of its officers, directors, or trustees, has had the right to solicit contributions revoked in any state or has been ordered by any court or agency to cease soliciting contributions in any state.

Lastly, the bill requires a charity to immediately notify the DACS in writing when it ceases solicitation activities or participation in charitable sales promotions in Florida.

Present Situation - Fundraising Restrictions for Individuals with Criminal Records

Currently, under s. 496.405(8), F.S., a charity is prohibited from allowing any of its officers, directors, trustees, or employees to solicit contributions on behalf of the charity if he or she has, within the last 10 years, been convicted of or pled guilty to any felony or any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.

Effect of Proposed Changes

Section 5 of the bill also amends s. 496.405(8), F.S., to clarify that in addition to the charity, no officer, director, trustee, or employee of the charity may allow any of its officers, directors, trustees, or employees to solicit contributions on behalf of the charity if he or she has a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states and any misdemeanor in another state that constitutes a disqualifying felony in Florida.

Present Situation – Conflict of Interest Transactions

Currently, ch. 496, F.S., does not regulate conflict of interest transactions involving charities.

Effect of Proposed Changes

Section 6 creates s. 496.4055, F.S., to require the board of directors, or a board committee, of a charity required to register with the DACS pursuant to s. 496.405, F.S., to adopt a policy regarding conflict of interest transactions. A "conflict of interest" is defined as a transaction between a charity and another party in which a director, officer, or trustee of the charity has a direct or indirect financial interest. The term includes the sale, lease, or exchange of property to or from the charity; the lending to or borrowing of money from the charity; and the payment for services provided to or from the charity. The policy adopted by the board must require an annual certification of compliance with the policy, and the organization must provide a copy of the policy to the department with the annual registration statement.

Present Situation – Financial Statements

Currently, under s. 496.407, F.S., a charity that is required to register with the DACS must file an annual financial report for the preceding year with the DACS. The report must include the following: a balance sheet; a statement of support, revenue, and expenses; identification of any charities, professional fundraising consultants, professional solicitors, and commercial co-venturers used and the amounts received from each of them; and a statement of functional expenses that must include program expenses, management and general expenses, and

fundraising expenses.[17] A charity may choose to include a financial report that has been audited by an independent certified public accountant (CPA) or an audit with an opinion by an independent CPA. In lieu of the financial report a charity may submit a copy of its IRS Form 990 or Form 990-EZ.

Effect of Proposed Changes

Section 7 amends s. 496.407, F.S., to change the name of the financial reporting document required by the DACS from "financial report" to "financial statement."[18] The bill clarifies and adds new information that must be included in the required financial statement. Specifically, the financial statement must include a statement of functional expenses[19] that must include program service costs, management and general costs, and fundraising costs.[20] "Management and general costs" are defined in the bill as all costs of a charity that are not identifiable with a single program or fundraising activity but which are necessary to conducting the charity's programs and activities and necessary to the charity's existence. The term includes expenses for business management, salaries, and overhead. "Program service costs" are defined in the bill to means all expenses incurred primarily to accomplish the charity's purposes; however, the term does not include fundraising costs.

The bill also provides the option for a charity that receives less than $500,000 in annual contributions to submit a copy of its IRS Form 990 or Form 990-EZ in lieu of a financial statement. The bill also repeals the option for charities to include an audited financial report and replaces it with a requirement that financial statements be audited or reviewed. The type of audit or review required varies based on the amount of annual contributions received by the charity: for charities that receive less than $500,000 in annual contributions, an audit or review is optional; for charities that receive at least $500,000 but less than $1 million in annual contributions, the financial statement must be reviewed or audited by an independent CPA; and for charities that receive $1 million or more in annual contributions, the financial statement must be audited by an independent CPA. The bill also requires that audits must be performed by an independent CPA in accordance with generally accepted auditing standards and that reviews must be performed by an independent CPA in accordance with the Statements on Standards for Accounting and Review Services. Audited and reviewed financial statements must be accompanied by a report signed and prepared by the independent CPA that performed the audit or review. The bill provides that a charitable organization that receives at least $500,000 in annual revenue may submit a copy of its IRS Form 990 or Form 990-EZ in lieu of a financial

[17] "Fundraising costs" are defined in current law as "those costs incurred in inducing others to make contributions to a charitable organization or sponsor for which the contributors will receive no direct economic benefit. Fundraising costs include, but are not limited to, salaries, rent, acquiring and obtaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions." Section 496.404(11), F.S. However, ch. 496, F.S., currently does not define "program expenses" or "management and general expenses."

[18] Section 4 of the bill updates the phrase "financial report" to "financial statement" in s. 496.405, F.S., to reflect the changes made to s. 496.407, F.S., in section 6 of the bill.

[19] Section 406.707(1)(d), F.S. Internal Revenue Forms 990 and 990-EZ also require a Statement of Functional Expenses; instructions are found at http://www.irs.gov/pub/irs-pdf/i990.pdf.

[20] Definitions of "program service costs" and "management and general costs" are added to s. 496.404, F.S., in Section 3 of the bill.

statement if these forms are prepared by a certified public accountant or professional tax preparer.

Lastly, the bill authorizes the DACS, upon a showing of good cause by a charity, to extend the time for filing a financial statement up to 180 days. The DACS is also authorized to require that an audit or review be conducted for any financial statement submitted by a charity.

Present Situation – Supplemental Financial Disclosure

Currently, ch. 496, F.S., does not require a supplemental financial disclosure.

Effect of proposed changes:

Section 8 creates s. 496.4071, F.S., to require a charity with more than $1 million in total revenue that spent less than 25 percent of the charity's total annual functional expenses on program service costs in the preceding fiscal year to file a supplemental financial disclosure in addition to the financial statement required under s. 496.407, F.S. The supplemental financial disclosure must be filed within 30 days of receiving a request by the DACS to provide such information and must include:

- The dollar amount and the percentage of total revenue and charitable contributions allocated to administrative functions related to managing and administering the charity, including information about payments to and contributions received from professional solicitors.
- The name of and amount earned by or paid to all employees or consultants who earned or were paid more than $100,000.
- The name of and amount paid to all service providers who were paid $100,000 or more and a description of the services provided.
- The amount and percentage of total revenue and charitable contributions allocated to programs.
- The details of any transactions between the charity and an officer, trustee, or director of the charity or his or her immediate family; any entity controlled by an officer, trustee, or director of the charity or his or her the immediate family; and any entity that employed or engaged for consultation an officer, trustee, or director the charity or his or her immediate family.[21]

Present Situation – Specific Disaster Relief Solicitations

Currently, ch. 496, F.S., does not have special regulations for disaster relief solicitations.

Effect of Proposed Changes

Section 9 creates s. 497.4072, F.S., to require charities that solicit donations related to a specific disaster or crisis and receive at least $100,000 in donations in response to such solicitations to file quarterly disaster relief statements with the DACS. A "crisis" is defined in the bill as an event that garners widespread national or global media coverage due to an actual or perceived threat of harm to an individual, a group, or a community. Likewise, a "disaster" is defined in the bill as a natural, technological, or civil event, including an explosion, chemical spill, wildfire, tornado, hurricane, drought, or flood, which affects one or more countries and causes sufficient

[21] The term "immediate family" is defined in section 8 of the bill to mean a parent, spouse, child, sibling, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.

damage to result in an official declaration of a state of emergency or an official request for international assistance.[22] The bill requires the DACS to provide a list on its website of disasters and crises that are subject to the quarterly disaster relief statement within 10 days of the disaster or crisis occurring.

The quarterly statement must detail the donations received and how the funds were expended. A charity must file the first quarterly statement 3 months after it has received at least $100,000 in donations following commencement of solicitations for the specific disaster or crisis, and the charity must continue to file quarterly statements until the quarter after all donations raised in response to the solicitation are expended.

Present Situation – Notice Statements

Currently, s. 496.411(3), F.S., requires every charity that is required to register under s. 496.405, F.S., to conspicuously display the following statement in capital letters on every printed solicitation, written confirmation, receipt, or reminder of a contribution: "A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply endorsement, approval, or recommendation by the state." The statement must also include a toll-free number for the DACS.

Effect of Proposed Changes

Section 13 amends s. 496.411(3), F.S., to require charities that are exempt from registration under s. 496.406(1)(d), F.S.,[23] to provide a notice statement. Additionally, the notice statement must be included with all solicitations and confirmations, regardless of form. The notice statement must also include the DACS website address where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on the webpage where donations are requested.

Present Situation – Tax-Exempt Status and Disqualifying Events

Currently, organizations that are exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, such as charities, are exempt from Florida's sales and use tax.[24] To receive an exemption, the organization must submit to the Florida Department of Revenue (DOR) a copy of the Internal Revenue Service's (IRS) letter determining the organization's 501(c)(3) status.[25] After receiving the IRS determination letter and making a determination that the organization is actively engaged in an exempt endeavor, the DOR issues a certificate of exemption to the organization. Under current law, the DACS is not part of determining whether a charity operating in Florida should be exempt from sales tax. Specifically, the DACS does not have authority to disqualify a charity from receiving any sales tax exemption based on the charity's allocation of expenses to accomplish the charity's stated purpose.

[22] Definitions of "disaster" and "crisis" are added to s. 496.404, F.S., in Section 4 of the bill.
[23] A charitable organization or sponsor that has less than $25,000 in total revenue during a fiscal year if the fundraising activities of such organization or sponsor are carried on by volunteers, members, or officers who are not compensated and no part of the assets or income of such organization or sponsor inures to the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or commercial co-venturer.
[24] Section 212.08(7)(p), F.S.
[25] Section 212.084, F.S.

Effect of Proposed Changes

Section 19 creates s. 496.430, F.S., to give the DACS authority to disqualify a charity from receiving a sales tax exemption certificate from the DOR. The DACS must issue the disqualification order if it determines that the charity has failed to expend at least 25 percent of its total annual functional expenses on program service costs for the three most recent years. The DACS may decline to issue a disqualification order if the charity establishes that payments were made to affiliates that should be considered in calculating the program service costs, that revenue was accumulated for a specific program purpose consistent with the representations it made in solicitations, or any other mitigating circumstances. Additionally, charities that are not required to register under ch. 496, F.S., or that have been in existence less than 4 years regardless of whether they are registered in Florida, are exempt from the disqualification provisions of s. 496.30, F.S.

A disqualification order must remain in effect for at least 1 year and until the DACS receives sufficient evidence from the charity that demonstrates it spends at least 25 percent of its total annual functional expenses on program service costs. The charity may not submit such evidence to the DACS earlier than 1 year after the disqualification order becomes final and may not submit such information to the DACS more than once a year. The DACS must also consider any financial statement that was submitted by the charity pursuant to s. 496.407, F.S., after the disqualification order became final.

The DACS must submit a disqualification order to the DOR within 30 days after the order becomes final, and the DOR must revoke or refuse to grant a sales tax exemption certificate within 30 days after receiving the final order. A final disqualification order is conclusive as to the charity's entitlement to any sales tax exemption, and a charity may not appeal the revocation or denial of a sales tax exemption certificate by the DOR if the revocation or denial is based upon a final disqualification order from the DACS. A charity may appeal a disqualification order from the DACS by requesting a hearing within 21 days of being notified the order has been issued. The hearing will be conducted pursuant to ch. 120, F.S.

Sections 1 and 2 of the bill amend ss. 212.08 and 212.084, F.S., to disqualify any charity that is subject to a final disqualification order issued by the DACS from the sales and use tax exemption for 501(c)(3) organizations. The DOR's revocation or denial of a tax exempt certificate may be challenged under ch. 120, F.S., only as to whether a disqualification order is in effect. If a charitable organization wishes to challenge the validity of a disqualification order issued by the DACS, it must do so pursuant to the procedures under s. 496.430(2), F.S.

Professional Fundraising Consultants

Present Situation - Registration

Currently, professional fundraising consultants are required to register annually and pay a $300 fee to the DACS pursuant to s. 496.409, F.S., before operating in Florida.[26] In addition to name and address information, the registration must also indicate whether any of the owners, directors, officers, or employees of the consultant are related to any other directors, officers, owners, or

[26] Section 496.409(1)(3), F.S.

employees, any charity under contract to the consultant, or any supplier or vendor providing goods or services to any charity under contract with the consultant. Additionally, the registration must indicate and explain whether the consultant or any of its officers, directors, trustees, or employees have been convicted or pled guilty within the past 10 years to any felony or a crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity. Finally, the registration must indicate and explain whether the consultant or any of its officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable solicitation.[27]

After receiving the registration statement, the DACS has 15 business days to either approve the registration or notify the consultant that the registration requirements are not satisfied. If, after 15 days the DACS has not notified the consultant, the registration is deemed approved.[28]

In addition to the registration requirement, every agreement between a fundraising consultant and a charity must be in writing and signed by two authorized officials of the charity and must be filed with the DACS at least 5 days before the consultant begins providing services.[29]

Effect of Proposed Changes

Sections 10 amends s. 496.409, F.S., to provide that professional fundraising consultants who enter into agreements with charities may do so only if the charity has complied with ch. 496, F.S. If the consultant discloses in its initial registration or renewal application any information related to criminal, administrative, or other actions against the consultant, its officers, directors, trustees, or employees, the bill gives the DACS additional time to process the application under the processing time limits in ch. 120, F.S.[30] Additionally, if a consultant fails to disclose any information related to criminal, administrative, or other actions against the consultant, its officers, directors, trustees, or employees, its registration will be automatically suspended until the consultant submits required information to the DACS. The DACS will also have the authority to deny or revoke a consultant's registration if the consultant or any of its officers, directors, or trustees, has had the right to solicit contributions revoked in any state or has been ordered by any court or agency to cease soliciting contributions.

Present Situation – Restrictions on Individuals with Criminal Records

Currently, under s. 495.409(9), F.S., a person may not act as a professional fundraising consultant, and a professional fundraising consultant may not employ any person, if, within the last 10 years, the person has been convicted of or pled guilty to any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.[31]

[27] *Id.* at (2).
[28] *Id.* at (6).
[29] *Id.* at (4).
[30] *Supra* note 15.
[31] Section 496.409(9), F.S.

Effect of Proposed Changes

Section 10 also amends s. 495.409(9), F.S., to clarify that in addition to the consultant, no officer, director, trustee, or employee of the consultant may employ anyone with a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states.

Professional Solicitor

Summary

The bill:

- Creates a new, annual license for officers, directors, trustees, and owners of a professional solicitor and any employee of the solicitor conducting telephone solicitations.
- Updates the definition of "professional solicitor" to include solicitors located in Florida that solicit outside of Florida.
- Creates an annual license fee of $100 and a $10 fee, similar to telemarketers, for application updates for the professional solicitors license.
- Requires professional solicitation businesses to include additional application information, such as all of the telephone numbers the solicitor will use and a copy of any script, presentation, or sales literature used.
- Requires professional solicitors to include additional information in the notice required before beginning a solicitation campaign, such as a statement of the minimum percentage of gross receipts from contributions that will be remitted to the charity.
- Prohibits a professional solicitor from failing to remit to a charity the disclosed guaranteed minimum percentage of gross receipts from the solicitation campaign.

Present Situation - Registration

Currently, s. 496.410, F.S., requires a professional solicitor to register annually and pay a $300 fee to the DACS before operating in Florida.[32] Information that must be provided for registration includes the address of the business, the names and addresses of owners, officers, and directors, and the names of anyone in charge of any solicitation activity. The registration must also indicate whether any of the owners, directors, officers, or employees of the solicitor are related to any other directors, officers, owners, or employees of the solicitor, any charity under contract to the solicitor, or any supplier or vendor providing goods or services to any charity under contract with the solicitor. Additionally, the registration must indicate and explain whether the solicitor or any of its officers, directors, trustees, or employees or agents involved in solicitation have been convicted or pled guilty within the past 10 years to any felony or a crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity. Finally, the registration must indicate and explain, if applicable, whether the solicitor or any of its officers, directors, trustees, or employees or agents involved in solicitation have been enjoined from violating any law relating to a charitable solicitation.[33]

[32] "A professional solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees." Section 496.410(3), F.S. Additionally, professional solicitors are required to maintain a $50,000 bond. *Id.* at (4).
[33] *Id.* at (2).

After receiving the registration statement, the DACS has 15 business days to either approve the registration or notify the solicitor that the registration requirements are not satisfied. If, after 15 days the DACS has not notified the solicitor, the registration is deemed approved.[34]

In addition to being required to register, solicitors must also file a solicitation notice with the DACS at least 15 days before beginning a solicitation campaign or event.[35] Section 496.410(6), F.S., requires the notice to include a description of the solicitation campaign; each location and telephone number from which the solicitation will be conducted; the name and address of each person responsible for supervising the campaign; a statement as to whether the solicitor will have custody of donations; the account information for each account where receipts from the campaign are to be deposited; a description of the charity for which the campaign is being carried; the fundraising methods to be used; and copy of the contract between the solicitor and charity.

Effect of Proposed Changes

Section 4 of the bill amends s. 496.404, F.S., to update the definition of "professional solicitor" to include professional solicitors located in Florida that solicit outside of Florida.

Section 11 amends s. 495.410, F.S., to require professional solicitors to include the following additional information in its registration: a list of all telephone numbers the solicitor will use to solicit contributions and the address associated with each telephone number and any fictitious names associated with such address; a copy of any script, outline, or presentation used by the solicitor; and a copy of sales information or literature provided to a donor or potential donor.

The bill also repeals a provision in s. 496.410(3), F.S. that permits a professional solicitor that is a partnership or corporation to register as and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees. Instead being included under the solicitor's registration, these individuals will now be required to obtain a solicitor's license under s. 496.4101, F.S., which is created in section 12 of the bill.[36]

If a solicitor discloses in its initial registration or renewal application any information related to criminal, administrative, or other actions against the solicitor, its officers, directors, trustees, or employees or agents, the bill allows the DACS to have additional time to process the application under the processing time limits in ch. 120, F.S.[37] If a solicitor fails to disclose any information related to criminal, administrative, or other actions against the solicitor, its officers, directors, trustees, employees, or agents, the solicitor's registration will be automatically suspended until the solicitor submits the required information to the DACS. The DACS will also have the authority to deny or revoke a solicitor's registration if the solicitor or any of its officers, directors, trustees, or agents has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, or has been ordered by any court or agency to cease soliciting contributions.

[34] *Id.* at (5).
[35] *Id.* at (6).
[36] Conversation with Amy Topol, Assistant Director, Division of Consumer Services, the DACS, Jan. 5, 2014.
[37] *Supra* note 15.

The bill requires professional solicitors to include the following additional information in the solicitation notice required under s. 495.410(6), F.S., before beginning a solicitation campaign:

- A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charity, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charity.
- The percentage of a contribution that may be tax-deductible.
- A statement as to whether any owner, director, officer, trustee, or employee of the solicitor is related to another officer, director, owner, trustee, or employee of the solicitor, a charity under contract with the solicitor, or any supplier or vendor providing goods or services to a charity under contract with the solicitor.
- The beginning and ending dates of the campaign.
- A copy of any script, outline, or presentation used by the solicitor.
- A copy of sales information or literature provided to a donor or potential donor.

The bill provides that professional solicitors who enter into agreements with charities may do so only if the charity has complied with ch. 496, F.S.

Present Situation – Restrictions on Individuals with Criminal Records

Under s. 496.410(14), F.S, a person may not act as a professional solicitor, and a solicitor may not employ any person, who has been convicted or pled guilty within the last 10 years to a felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or who has been enjoined from violating any law relating to a charitable solicitation.

Effect of Proposed Changes

Section 11 also amends s. 495.410(14), F.S., to clarify that in addition to the solicitor, no officer, director, trustee, or employee of the solicitor may employ anyone with a criminal history as described above. The bill clarifies that the applicable criminal history includes crimes or events that occurred in other states and any misdemeanor in another state that constitutes a disqualifying felony in Florida.

Present Situation – Licensure of Professional Solicitors

Beyond the registration and notice provisions for professional solicitors in s. 496.410, F.S., current law does not require solicitors or their employees to be licensed to operate in Florida.

Effect of Proposed Changes

Section 11 creates s. 496.4101, F.S., to establish a licensing requirement for professional solicitors. The bill requires each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations to obtain a solicitor license from the DACS. A license can be obtained by paying a $100 application fee and completing an application that includes the following information:

- The name, address, date of birth, and identification number of a government-issued ID of the applicant.

- Whether the applicant has been convicted of or pled guilty in any state to any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined from violating any law relating to a charitable solicitation.
- Whether the applicant is involved in pending litigation in any state or has had entered against her or him an injunction, a temporary restraining order, a final judgment or order, or any similar document, in any civil or administrative action involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property.

The DACS must adopt rules that allow applicants to temporarily engage in solicitation activities while the solicitor license is being processed.

Applicants must be fingerprinted by an agency, entity, or vendor that meets state and federal standards,[38] and fees for state and national fingerprint processing and retention must be borne by the applicant. The Florida Department of Law Enforcement (FDLE) must retain the fingerprints and enroll them in the Federal Bureau of Investigation's (FBI) national retained print arrest notification program once the FDLE begins participating in the program. The DACS is required to screen background results to determine if an applicant meets licensure requirements. When a person is no longer licensed, the DACS must notify the FDLE.

Any material change to the information submitted in the licensing application must be reported to the DACS within 10 days of the change along with payment of a $10 fee.[39] A license must be renewed annually; an un-renewed license automatically expires. The annual renewal fee is $100. All fees, less administrative costs, will be deposited into the General Inspection Trust Fund of the DACS.

The bill also makes it a violation of ch. 496, F.S., to provide inaccurate or incomplete information in an initial or renewal application for a solicitor license; for any person to fail to maintain a license; and for a solicitor to allow, require, permit, or authorize an employee without an active license to conduct telephonic solicitations.

Additionally, the DACS may deny or revoke a solicitor's license if the solicitor has had the right to solicit contributions revoked in any state or is subject to any disqualification specified in s. 496.410(14), F.S., relating to the solicitor's criminal history.

Present Situation – Notice Statements and Requested Information

Currently, s. 496.412(1), F.S., requires that in the course of requesting a donation, a solicitor must clearly disclose the name of the solicitor, the name and state of the principal place of business of the charity, and a description of how the contributions raised by the solicitation will be used. Like charities, solicitors are also required to conspicuously state the following in capital letters on every written solicitation, written confirmation, receipt, or reminder of a contribution: "A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply

[38] Section 943.053(13), F.S.
[39] The $10 change fee is also charged to telemarketers under s. 501.609(2), F.S.

endorsement, approval, or recommendation by the state." The statement must include a toll-free number for the DACS.[40]

Additionally, if a person being solicited requests the percentage of the gross revenue that the charity will receive from the solicitation campaign or requests the percentage of the contribution which may be tax-deductible, the solicitor must provide the requested information in writing within 14 days of the request.[41]

Effect of Proposed Changes

Section 14 amends s. 496.412(1), F.S., to expand the use of notice statements by solicitors to all solicitations rather than only on written solicitations and confirmations. The notice statement must also include the DACS website where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on the webpage where donations are requested.

The bill also provides an alternate to the written response required when a person being solicited requests the percentage of the gross revenue that the charity will receive from the solicitation campaign or requests the percentage of the contribution which may be tax-deductible as a charitable contribution. The solicitor may immediately notify the person that the information is available on the DACS' website or by calling the Division of Consumer Services' toll-free number.

Present Situation – Collection Receptacles Used for Donations

Some charities utilize collection receptacles located in parking lots or along roads as a place for people to donate clothing and other goods. Recent reports indicate that for-profit businesses have begun using collection receptacles that look similar to those used by charities. The business uses the receptacles to collect clothes and sell them at a profit. [42] Current law does not regulate the use of collection receptacles either by charities or by for-profit businesses.[43]

Effect of Proposed Changes

Section 15 creates s. 496.4121, F.S., to regulate the use of collection receptacles. The bill defines a "collection receptacle" as a receptacle used to collect donated clothing, household items, or other goods for resale. The bill requires all collection receptacles to display a permanent sign on each side of the receptacle. The information on the sign must be printed in letters that are at least 3 inches in height and no less than one-half inch in width, in a color that contrasts with the color

[40] Section 496.412(1)(c), F.S.
[41] *Id.* at (d)-(e).
[42] *See* Evan Williams, *Recycling companies co-opt the look of charity for profit*, FORT MYERS FLORIDA WEEKLY, Jan. 23, 2013, *available at* http://fortmyers.floridaweekly.com/news/2013-01-23/Top_News/Recycling_companies_coopt_the_look_of_ charity_for_.html (last visited Jan 30, 2014).
[43] In response to the rapid increase in the number of collection receptacles used by for-profit businesses, some Florida cities have enacted restrictions on their use. *See* Ariel Barkhurst, *Deerfield Beach passed a law allowing nonprofit clothing bins*, SUN SENTINEL, Feb. 22, 2013, *available at* http://articles.sun-sentinel.com/2013-02-22/news/fl-deerfield-donation-bins-20130218_1_donation-bins-salvation-army-commissioner-bill-ganz (last visited Jan. 30, 2014); Heather Carney, *Miramar cracks down on clothing donations bins*, SUN SENTINEL, Nov. 11, 2013, *available at* http://articles.sun-sentinel.com/2013-11-11/news/fl-miramar-regulates-clothing-donations-bins-20131110_1_for-profit-bins-reuse-clothes-donations (last visited Jan. 30, 2014).

of the receptacle. For receptacles used by a charity required to register under ch. 496, F.S., the sign must provide the name, address, telephone number, and registration number of the charity. For receptacles placed by an organization not required to register under ch. 496, F.S., or not claiming an exemption pursuant to s. 496.406, F.S., the sign must include the name, telephone number, and address of the business and the statement: "This is not a charity. Donations made here support a for-profit business and are not tax deductible." The bill also requires a charity using a collection receptacle to provide a donor with documentation of its tax-exempt status and registration, if requested.

Present Situation – Prohibited Acts and Penalties

Currently, s. 496.415, F.S., contains a list of seventeen acts that are prohibited for any person when done in connection with any solicitation or charity sales promotion. Examples of prohibited acts include: violating any of the requirements in ch. 496, F.S.; knowingly submitting false, misleading, or inaccurate information in a document that is filed with the DACS, provided to the public, or offered in response to a request or investigation by the DACS, the Department of Legal Affairs, or the state attorney; and representing that a charity will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the DACS, or that a charity will receive an actual or estimated dollar amount or percentage of goods or services purchased or used in the charity sales promotion that is greater than that agreed to with a vendor.

Any violation of ch. 496, F.S., including engaging in any of the prohibited acts identified in s. 496.415, F.S., is a violation of the Florida Deceptive and Unfair Practices Act[44] and may also result in a civil action filed by the DACS.[45] Additionally, any willful and knowing violation of ch. 496, F.S., is a third-degree felony punishable by up to 5 years in prison and a fine of up to $5,000, and any subsequent conviction is a second-degree felony punishable by up to 15 years in prison and a fine of up to $10,000.[46]

Currently, under s. 496.419, F.S., after the DACS has investigated and found that a person or entity has violated ch. 496, F.S., it can enter an order imposing a range of administrative penalties, including imposing an administrative fine up to $1,000 for each act or omission. However, for 501(c)(3) organizations, the maximum penalty is limited to $500 per violation.

Effect of Proposed Changes

Section 16 amends s. 496.415, F.S., to prohibit a person from submitting false, misleading, or inaccurate information in a document that is filed with the DACS, provided to the public, or offered in response to a request or investigation by the DACS, the Department of Legal Affairs, or the state attorney regardless of whether the person knows he or she is submitting false, misleading, or inaccurate information. The bill also prohibits a person from failing to remit to a charity the disclosed guaranteed minimum percentage of gross receipts from contributions as indicated with its agreement with a charity, or, if the solicitation involved the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price as agreed to in the agreement.

[44] Chapter 501, part II, F.S.; Section 496.416, F.S.
[45] Section 496.420, F.S.
[46] Section 496.417, F.S.

Section 17 amends s. 496.419, F.S., to increase the fine the DACS may levy to $5,000 for each act or omission and makes this fine applicable to 501(c)(3) organizations. The bill limits the fine for 501(c)(3) organizations that fail to register under s. 496.405, F.S., or file an exemption under s. 496.406(2), F.S., to $500 per violation. The DACS may also levy a fine up to $10,000 for any violation of ch. 496, F.S., which involves fraud or deception.

Section 18 creates. s. 496.4191, F.S., to require the DACS to suspend immediately the registration or the processing of a registration of any organization if the DACS receives written notification and verification by law enforcement, a court, a state attorney, or the FDLE, that the registrant, applicant, or any officer or director of the registrant or applicant is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor. The suspension will remain in effect until final disposition of the case or removal or resignation of the officer or director.

Other Provisions

Section 3 of the bill amends s. 496.403, F.S., to remove blood establishments from the list of regulated charitable institutions.

Section 20 creates s. 496.431, F.S., to provide a severability clause for ch. 496, F.S.

Section 21 amends s. 741.0305, F.S., to correct a cross-reference due to the amendments to s. 496.404, F.S., in section 3 of the bill.

Section 22 appropriates $235,352 in recurring funds and $239,357 in nonrecurring funds from the DACS General Inspection Trust Fund, and four full-time equivalent positions with associated salary rate of 143,264, to the DACS to implement this act.

Section 23 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

PCS/CS/SB 638 creates a $100 application fee for a professional solicitor license and a $10 fee to report material changes associated with changes to information submitted with the license application. The Department of Agriculture and Consumer Services (DACS) estimates that the $100 application and renewal fee for a professional solicitor license will result in an estimated recurring revenue increase of $250,000 annually.[47] The DACS did not estimate the revenue impact from the $10 fee.

The cost for a state and national criminal history record check is $40.50, which goes into the FDLE Operating Trust Fund. From that amount, $16.50 is transferred from the FDLE Operating Trust Fund to the FBI; the remaining $24 stays in the FDLE Operating Trust Fund for state processing. Based on the DACS estimate of 2,500 applications for professional solicitor licenses, the FDLE Operating Trust Fund will receive an additional $60,000 (net of payments to the FBI) in the first year of the program, and an indeterminate amount in subsequent years as new license applications are submitted. Additionally, the bill requires that all fingerprints be retained by the FDLE. The fee for state retention of fingerprints is $6 annually after the year of the original fingerprint processing.

The impact of losing sales tax exempt status by a charity is unknown at this time.

The bill has not been evaluated by the Revenue Estimating Conference.

B. Private Sector Impact:

Charities may incur increased administrative and record keeping costs to comply with the provisions of the bill requiring the updated requirements for reporting, notice, registration, financial statement, auditing and review, and establishment a conflict of interest policy. Similarly, some charities that raise funds in response to a specific disaster or crisis will incur additional administrative costs associated with filing quarterly relief statements. Additionally, charities and for-profit entities may incur increased costs to comply with the signage requirement for collection receptacles.

Professional fundraising consultants may incur minimal administrative and record keeping costs to comply with the updated registration and reporting requirements.

Officers, directors, trustees, or owners of a professional solicitor and any employee of a solicitor conducting telephonic solicitations will have to annually apply and pay a $100 fee for a solicitor license. Additionally, solicitors are likely to incur increased administrative and record keeping costs to comply with the updated reporting and

[47] The DACS Analysis, SB 638, 5, Feb. 5, 2014, on file with the Committee on Commerce and Tourism. The DACS estimates 2,500 licenses at $100 per license, but did not provide a breakdown of renewal applicants versus new applicants in outlying years. The DACS has not yet submitted an analysis of the CS at this time.

disclosure requirements, updated financial statement requirements, and updated notice statement requirements.

The fingerprinting cost for a new applicant for a professional solicitor license is $53.50 in total: $40.50 for the state and federal background check and $13 for lifetime federal fingerprint retention, after FDLE begins to participate in the Federal Bureau of Investigation's national retained print arrest notification program.[48]For annual renewal of a license, an applicant will pay the $6 state fingerprint retention fee.

Charities, consultants, and solicitors may also incur greater costs due to any fines levied by the DACS and any violations prosecuted by the Attorney General or the State Attorney.

C. Government Sector Impact:

Expenditures

The DACS anticipates the additional rules and licensing required by the bill will necessitate the hiring of two Regulatory Consultants and the development of new software for the Division of Consumer Services.[49] Similarly, the DACS anticipates the bill will result in an additional 500 cases that will be referred to the department's Office of Agriculture Law Enforcement (OALE) for regulatory investigation.[50] To meet the increased workload, OALE estimates it will require two additional Senior Financial Investigators as well as a vehicle for each investigator.[51] The DACS projects it will need $474,709 in additional funding in Fiscal Year 2014-2015 and $235,352 each year thereafter.

The Criminal Justice Impact Conference has not yet determined the impact of this bill on prison beds.

Revenues

The DACS expects annual revenues of an additional $112,000 due to the increase in the maximum administrative fine for violations of the Florida Deceptive and Unfair Practices Act from $1,000 to $5,000.[52] The DACS did not provide information related to revenue impacts for the $10,000 fine or for fines from increased criminal prosecutions of willful and knowing violations of the Florida Deceptive and Unfair Trade Practices Act. See Tax/Fee Issues.

According to the FDLE, it expects annual revenues in year 1 of $60,000 from the collection of the $24 fee for state criminal history record checks. The amount does not

[48] The bill also requires fingerprints submitted by applicants for professional solicitor licenses to be enrolled in the Federal Bureau of Investigation's national retained print arrest notification program when FDLE begins participation in the program. The annual fee for fingerprint retention in this program will be $13. (Information provided by FDLE fiscal analyst Cynthia Barr, March 13, 2014.)
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.* This amount was calculated by multiplying the number of administrative fines (28) levied in FY 2012-2013 by the $4,000 increase fines.

include the $6 state fingerprint retention fee because it is paid only by those seeking annual license renewals.

The impact of this bill on the Attorney General or state attorneys has not been determined; however, it may increase caseloads for these agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Department of Law Enforcement (FDLE) recommended in its bill analysis that the fingerprinting provisions be amended to require that the fingerprints be taken by an authorized entity and to clarify that fingerprint fees will be paid by the applicant.[53]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.08, 212.084, 496.403, 496.404, 496.405, 496.407, 496.409, 496.410, 496.411, 496.412, 496.415, 496.419, and 741.0305.

This bill creates the following sections of the Florida Statutes: 496.4055, 496.4071, 496.4072, 496.4101, 496.4121, 496.4191, 496.430, and 496.431.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on March 19, 2014:
The committee substitute:

- Exempts blood banks from many of the requirements in chapter 496.
- Removes references to specific types of "management and general costs."
- Makes the definition of "religious institution" consistent with current law.
- Requires a charity that files a consolidated financial statement to include its IRS form 990 with its annual consolidated financial statement. Consolidated financial statements are required of certain charities that have separate branches or affiliates.
- Requires a conflict of interest policy be annually certified by the charity and provided to the Department of Agriculture and Consumer Services (DACS) with its annual registration.
- Permits a charity to submit its IRS form 990 in lieu of a financial statement.
- Requires the DACS to show good cause before it can require an audit or review of a charity's financial statement.
- Clarifies the fingerprinting retention procedures for professional solicitor licenses.

[53] *Id.* at 7.

- Requires the DACS to disqualify a charity's sale tax exemption certificate if the charity fails to meet the required expense threshold.
- Removes language that would have given the DACS authority to deny or revoke a registration or license if the entity has entered into a voluntary settlement agreement with another state.
- Makes technical corrections.

CS by Commerce and Tourism on February 10, 2014:
The committee substitute:

- Updates the definition of a professional solicitor regulated by ch. 496, F.S., to include professional solicitors located in Florida that solicit outside of Florida.
- Provides that only those charities that are required to register under s. 496.405, F.S., must enact a conflict of interest policy.
- Requires that audits and reviews of a charity's financial statement be prepared by an independent CPA.
- Clarifies that a charity must show good cause before DACS can grant an extension of time to file a financial statement.
- Authorizes DACS to require a charity to have its financial statement audited or reviewed.
- Replaces the words "ancestor" and "descendant" with "grandparent" and "grandchild."
- Requires DACS to provide a list of disasters and crises that are subject to the additional financial reporting requirement.
- Updates the fingerprinting requirements for professional solicitor licenses to:
  - Specify that the state cost for fingerprinting paid by the applicant is the statutory cost of $24.
  - Require FDLE to retain the fingerprints and enroll them in the FBI's national arrest notification program once FDLE begins participating in the program.
  - Require DACS to notify FDLE when a person loses his or her license.
  - Require DACS to screen background results to determine if an applicant meets licensure requirements.
- Clarifies that the signage requirement for collection receptacles operated by for-profit businesses does not apply to charities.
- Clarifies that a sales tax exemption certificate is issued by DOR.
- Adds a severability clause.
- Updates the amount appropriated to DACS to implement the bill.
- Makes technical corrections.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Before line 211
insert:
Section 1. Section 196.1955, Florida Statutes, is created to read:
196.1955 Preparing property for educational, literary, scientific, religious, or charitable use.—
(1) Property owned by an exempt organization is used for an exempt purpose if the owner has taken affirmative steps to

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prepare the property for an exempt educational, literary, scientific, religious, or charitable use and no portion of the property is being used for a nonexempt purpose. The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment to prepare the property for an exempt use.

(2) If property owned by an organization granted an exemption under this section is transferred for a purpose other than an exempt use; is transferred for a purpose other than for directly providing affordable homeownership or rental housing to persons or families defined as extremely-low-income persons, very-low-income persons, low-income persons, or moderate-income persons under s. 420.0004; or is not in actual exempt use within 5 years after the date the organization is granted an exemption, the property appraiser making such determination shall serve upon the organization that received the exemption a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that organization in the county, and such property must be identified in the notice of tax lien. The organization owning such property is subject to the taxes otherwise due and owing as a result of the failure to use the property in an exempt manner plus 15 percent interest per annum.

(a) Upon filing, the lien attaches to any property identified in the notice of tax lien owned by the organization that received the exemption. If the organization no longer owns

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property in the county but owns property in any other county in the state, the property appraiser shall record in each such county a notice of tax lien identifying the property owned by the organization in each respective county, which shall become a lien against the identified property.

(b) Before such lien may be filed, the organization so notified must be given 30 days to pay the taxes and interest.

(c) If an exemption is improperly granted as a result of a clerical error or an omission by the property appraiser, the organization improperly receiving the exemption may not be assessed interest.

(d) The 5-year limitation specified in this subsection may be extended if the holder of the exemption continues to take affirmative steps to develop the property for the purposes specified in this subsection.

(e) This subsection does not apply to property owned by an exempt organization and used for educational or religious purposes as specified in subsection (1).

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to charities; creating s. 196.1955, F.S.; consolidating provisions relating to obtaining an ad valorem exemption for property owned by an exempt organization, including the requirement that the owner of an exempt organization take affirmative steps to demonstrate an exempt use; authorizing the

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property appraiser to serve a notice of tax lien on exempt property that is not in actual exempt use after a certain time; providing that the lien attaches to any property owned by the organization identified in the notice of lien; providing an exception for certain property; amending s. 212.08,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1157 - 1359

and insert:

solicitor conducting telephonic solicitations during which a donor's or potential donor's personal financial information is requested or provided must, before engaging in solicitation activities, obtain a solicitor license from the department. As used in this subsection the term "personal financial information" includes, but is not limited to, social security

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numbers, credit card numbers, banking information, and credit reports.

(2) Persons required to obtain a solicitor license under subsection (1) shall submit to the department, in such form as the department prescribes, an application for a solicitor license. The application must include all of the following information:

(a) The true name, date of birth, unique identification number of a driver license or other valid form of identification, and home address of the applicant.

(b) If the applicant, in any state, regardless of adjudication, has previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined, in any state, from violating any law relating to a charitable solicitation.

(c) If the applicant, in any state, is involved in pending litigation or has had entered against her or him an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, cease and desist, or any similar document, in any civil or administrative action involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or has been enjoined from

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violating any law relating to a charitable solicitation.

(3)(a) Each applicant shall submit a complete set of his or her fingerprints to an agency, entity, or vendor authorized by s. 943.053(13). The fingerprints shall be forwarded to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(b) Fees for state and national fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing is that authorized in s. 943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

(c) All fingerprints submitted to the Department of Law Enforcement as required under this subsection shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. Fingerprints may not be enrolled in the national retained print arrest notification program until the Department of Law Enforcement begins participation with the Federal Bureau of Investigation. Arrest fingerprints will be searched against the retained prints by the Department of Law Enforcement and the Federal Bureau of Investigation.

(d) For any renewal of the applicant's license, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the applicant is enrolled in the national retained print arrest notification program described in paragraph (c). The fee for the national criminal

history check will be paid as part of the renewal fee to the department and forwarded by the department to Department of Law Enforcement. If the applicant's fingerprints are retained in the national retained print arrest notification program, the applicant shall pay the state and national retention fee to the department which will forward the fee to the Department of Law Enforcement.

(e) The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed under this chapter.

(f) The department shall screen background results to determine if an applicant meets licensure requirements.

(4) A solicitor license must be renewed annually by the submission of a renewal application. A solicitor license that is not renewed expires without further action by the department.

(5) Each applicant for a solicitor license shall remit a license fee of $50 to the department at the time the initial application is filed with the department and an annual renewal fee of $50 thereafter. All fees collected, less the cost of administration, shall be deposited into the General Inspection Trust Fund.

(6) Any material change to the information submitted to the department in the initial application or renewal application for a solicitor license shall be reported to the department by the applicant or licensee within 10 days after the change occurs. The applicant or licensee shall also remit a fee in the amount of $10 for processing the change to the initial or renewal application.

(7) It is a violation of this chapter:

(a) For an applicant to provide inaccurate or incomplete information to the department in the initial or renewal application for a solicitor license.

(b) For any person specified in subsection (1) to fail to maintain a solicitor license as required by this section.

(c) For a professional solicitor to allow, require, permit, or authorize an employee without an active solicitor license issued under this section to conduct telephonic solicitations.

(8) The department shall adopt rules that allow applicants to engage in solicitation activities on an interim basis until such time as a solicitor license is granted or denied.

(9) The department may deny or revoke any solicitor license if the applicant or licensee has had the right to solicit contributions revoked in any state, has been ordered by any court or governmental agency to cease soliciting contributions within any state, or is subject to any disqualification specified in s. 496.410(14).

(10) Any administrative proceeding that could result in entry of an order under this section shall be conducted in accordance with chapter 120.

Section 13. Subsections (2) and (3) of section 496.411, Florida Statutes, are amended to read:

496.411 Disclosure requirements and duties of charitable organizations and sponsors.—

(2) A charitable organization or sponsor soliciting in this state must include all of the following disclosures at the point of solicitation:

(a) The name of the charitable organization or sponsor and state of the principal place of business of the charitable

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organization or sponsor.~~;~~

(b) A description of the purpose or purposes for which the solicitation is being made.~~;~~

(c) Upon request, the name and either the address or telephone number of a representative to whom inquiries could be addressed.~~;~~

(d) Upon request, the amount of the contribution which may be deducted as a charitable contribution under federal income tax laws.~~;~~

(e) Upon request, the source from which a written financial statement may be obtained. Such financial statement must be for the immediate preceding ~~past~~ fiscal year and must be consistent with the annual financial statement ~~report~~ filed under s. 496.407. The written financial statement must be provided within 14 days after the request and must state the purpose for which funds are raised, the total amount of all contributions raised, the total costs and expenses incurred in raising contributions, the total amount of contributions dedicated to the stated purpose or disbursed for the stated purpose, and whether the services of another person or organization have been contracted to conduct solicitation activities.

(3) Every charitable organization or sponsor that ~~which~~ is required to register under s. 496.405 or is exempt under s. 496.406(1)(d) shall ~~must~~ conspicuously display ~~in capital letters~~ the following statement on every ~~printed~~ solicitation, ~~written~~ confirmation, receipt, or reminder of a contribution:

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF

CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

The statement must include a toll-free number and website for the division which ~~that~~ can be used to obtain the registration information. If ~~When~~ the solicitation consists of more than one piece, the statement must be displayed prominently in the solicitation materials. If the solicitation occurs through a website, the statement must be conspicuously displayed on any webpage that identifies a mailing address where contributions are to be sent, identifies a telephone number to call to process contributions, or provides for online processing of contributions.

Section 14. Subsection (1) of section 496.412, Florida Statutes, is amended to read:

496.412 Disclosure requirements and duties of professional solicitors.—

(1) A professional solicitor must comply with and be responsible for complying or causing compliance with the following disclosures:

(a) Before ~~Prior to~~ orally requesting a contribution, or contemporaneously with a written request for a contribution, a professional solicitor must clearly disclose:

1. The name of the professional solicitor as on file with the department.

2. If the individual acting on behalf of the professional solicitor identifies himself or herself by name, the individual's legal name.

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3. The name and state of the principal place of business of the charitable organization or sponsor and a description of how the contributions raised by the solicitation will be used for a charitable or sponsor purpose; or, if there is no charitable organization or sponsor, a description as to how the contributions raised by the solicitation will be used for a charitable or sponsor purpose.

(b) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, any written confirmation, receipt, or reminder sent to any person who has contributed or has pledged to contribute, shall include a clear disclosure of the information required by paragraph (a).

(c) In addition to the information required by paragraph (a), any written confirmation, receipt, or reminder of contribution made pursuant to an oral solicitation and any ~~written~~ solicitation shall conspicuously state ~~in capital letters~~:

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

The statement must include a toll-free number and website for the division which ~~that~~ can be used to obtain the registration information. If ~~When~~ the solicitation consists of more than one piece, the statement must be displayed prominently in the solicitation materials. If the solicitation occurs through a

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website, the statement must be conspicuously displayed on any webpage that identifies a mailing address where contributions are to be sent, identifies a telephone number to call to process contributions, or provides for online processing of contributions.

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

And the title is amended as follows:

Delete lines 124 - 131

and insert:

certain telephonic solicitations to obtain a solicitor license from the department; specifying application information and the application procedure for a solicitor license; requiring that each applicant for a solicitor license submit a complete set of their fingerprints to certain agencies, entities, or vendors; requiring that the applicant's fingerprints be submitted to the Department

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1465 - 1560
and insert:
(1) In addition to the penalties provided for in s. 496.419(5), the department may issue an order to disqualify a charitable organization or sponsor from receiving any sales tax exemption certificate issued by the Department of Revenue if the department finds a violation of s. 496.419(4).
(2) A charitable organization or sponsor may appeal a

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disqualification order by requesting a hearing within 21 days after notification from the department that it has issued a disqualification order under this section. The hearing must be conducted in accordance with chapter 120.

(3) A disqualification order issued by the department pursuant to this section is effective for 1 year after such order becomes final.

(4) The department shall provide a disqualification order to the Department of Revenue within 30 days after such order becomes final. A final disqualification order is conclusive as to the charitable organization's or sponsor's entitlement to any sales tax exemption. The Department of Revenue shall revoke or refuse to grant a sales tax exemption certificate to a charitable organization or sponsor subject to a final disqualification order within 30 days after receiving such disqualification order. A charitable organization or sponsor may not appeal or challenge the revocation or denial of a sales tax exemption certificate by the Department of Revenue if such revocation or denial is based upon a final disqualification order issued pursuant to this section.

Section 20. Section 496.431, Florida Statutes, is created to read:

496.431 Severability.—If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 21. Paragraph (a) of subsection (3) of section

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741.0305, Florida Statutes, is amended to read:

741.0305 Marriage fee reduction for completion of premarital preparation course.—

(3)(a) All individuals electing to participate in a premarital preparation course shall choose from the following list of qualified instructors:

1. A psychologist licensed under chapter 490.

2. A clinical social worker licensed under chapter 491.

3. A marriage and family therapist licensed under chapter 491.

4. A mental health counselor licensed under chapter 491.

5. An official representative of a religious institution which is recognized under s. 496.404(23) ~~s. 496.404(19)~~, if the representative has relevant training.

6. Any other provider designated by a judicial circuit, including, but not limited to, school counselors who are certified to offer such courses. Each judicial circuit may establish a roster of area course providers, including those who offer the course on a sliding fee scale or for free.

Section 22. For the 2014-2015 fiscal year, there is appropriated to the Department of Agriculture and Consumer Services, the sums of $179,944 in recurring and $235,584 in nonrecurring funds from the General Inspection Trust Fund, and 3 full-time equivalent positions with associated salary rate of 110,441 are authorized for the purpose of implementing this act.

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

And the title is amended as follows:

Delete lines 190 - 207

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and insert:

procedure; providing that a disqualification order remains effective for a specified period; requiring the department to provide a final disqualification order to the Department of Revenue within a specified period; providing that a final disqualification order is conclusive as to a charitable organization or sponsor's right to a sales tax exemption; requiring the Department of Revenue to revoke or deny a sales tax exemption to a charitable organization or sponsor subject to a final disqualification order within a specified period; prohibiting a charitable organization or sponsor from appealing or challenging the revocation or denial of a sales tax exemption certificate under certain circumstances; creating s. 496.431, F.S.; providing for severability; amending s. 741.0305, F.S.; conforming a cross-reference; providing an appropriation and authorizing positions; providing an effective date.

932242

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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to charities; amending s. 212.08, F.S.; excluding charitable organizations or sponsors disqualified by the Department of Agriculture and Consumer Services from receiving certain tax exemptions; amending s. 212.084, F.S.; requiring the Department of Revenue to revoke or deny a sales tax exemption to charitable organizations or sponsors disqualified by the department; providing for a limited appeal of the denial or revocation of the sales tax exemption; amending s. 496.403, F.S.; revising the applicability of the Solicitation of Contributions Act; amending s. 496.404, F.S.; defining terms; redefining the term "professional solicitor"; amending s. 496.405, F.S.; revising the timeframe within which a charitable organization or sponsor must report changes to certain information provided to the department on an initial or renewal registration statement; providing for the automatic expiration of a registration for failure to file a renewal or financial statement by a certain date; deleting a provision to extend the time to file a renewal statement; deleting a requirement that the renewal statement be filed subsequent to the financial statement; specifying the information that must be submitted by a parent organization on a consolidated financial statement; requiring a parent organization

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to attach certain Internal Revenue Service forms and schedules to a consolidated financial statement; extending the time allowed for the department to review certain initial or renewal registration statements; providing that failure of a charitable organization or sponsor to make certain disclosures in a registration statement results in the automatic suspension of an active registration for a specified period; prohibiting the officers, directors, trustees, or employees of a charitable organization or sponsor from allowing certain persons to solicit contributions on behalf of the charitable organization or sponsor; specifying that the prohibition against certain persons soliciting contributions on behalf of a charitable organization or sponsor due to the commission of certain felonies includes those felonies committed in any state as well as any misdemeanor in another state which constitutes a disqualifying felony in this state; authorizing the department to deny or revoke the registration of a charitable organization or sponsor under certain circumstances; requiring a charitable organization or sponsor that has ended solicitation activities in this state to notify the department in writing; making technical changes; creating s. 496.4055, F.S.; defining the term "conflict of interest transaction"; requiring the board of directors of a charitable organization or sponsor, or an authorized committee thereof, to adopt a policy regarding conflict of interest transactions;

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specifying certain requirements of the policy; requiring a charitable organization or sponsor to provide the department with a copy of the policy; amending s. 496.407, F.S.; requiring that the financial statements of certain charitable organizations or sponsors be audited or reviewed; specifying requirements and standards for the audit or review of a financial statement; requiring that an alternative financial statement submitted by certain charitable organizations or sponsors be prepared by a certified public accountant or other professional; authorizing the department to require an audit or review of any financial statement and to extend the time to file a financial statement under certain circumstances; providing that the registration of a charitable organization or sponsor be suspended upon its failure to file a financial statement within an extension period; making technical changes; creating s. 496.4071, F.S.; requiring certain charitable organizations or sponsors to report specified supplemental financial information to the department by a certain date; creating s. 496.4072, F.S.; requiring certain charitable organizations or sponsors who solicit contributions for a specific disaster relief effort to submit quarterly financial statements to the department; specifying information to be included in the quarterly financial statement and the length of the required reporting period; requiring the department to post notice of specific disaster relief

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efforts subject the reporting requirements; amending ss. 496.409 and 496.410, F.S.; prohibiting a professional fundraising consultant or professional solicitor from entering into a contract or agreement with a charitable organization or sponsor that has not complied with certain requirements; extending the time that the department may review initial or renewal registration statements of professional fundraising consultants or professional solicitors which contain certain disclosures; providing that the failure of a professional fundraising consultant or professional solicitor to make certain disclosures in an initial or renewal registration statement results in automatic suspension of an active registration; prohibiting the officers, trustees, directors, or employees of a professional fundraising consultant or a professional solicitor from allowing certain persons to solicit contributions on behalf of the professional fundraising consultant or professional solicitor; specifying that the prohibition against acting as a professional solicitor or the employment of certain persons by a professional solicitor due to the commission of certain felonies includes those felonies committed in any state as well as any misdemeanor in another state which constitutes a disqualifying felony in this state; authorizing the department to deny or revoke the registration of a professional fundraising consultant or professional solicitor under certain circumstances; revising required information in the

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initial or renewal application of a professional solicitor; deleting a provision authorizing the payment of a single registration fee for certain professional solicitors; requiring a professional solicitor to provide additional specified information to the department in a solicitation notice; creating s. 496.4101, F.S.; requiring each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor that conducts telephone solicitations to obtain a solicitor license from the department; specifying application information and the application procedure for a solicitor license; requiring that each applicant for a solicitor license to be fingerprinted by certain agencies, entities, or vendors; requiring such agencies, entities, or vendors to submit a complete set of the applicant's fingerprints to the Department of Law Enforcement for state processing; requiring the Department of Law Enforcement to forward the applicant's fingerprints to the Federal Bureau of Investigation for national processing; providing that fees for fingerprint processing and retention be borne by the applicant; providing for retention of the fingerprints; requiring the department to notify the Department of Law Enforcement of individuals who are no longer licensed; requiring that a solicitor license be renewed annually or expire automatically upon nonrenewal; requiring that an applicant for a solicitor license pay certain licensing fees;

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providing that licensing fees be deposited into the General Inspection Trust Fund; requiring that an applicant for a solicitor license report changes in information submitted to the department in a specified manner along with a processing fee; specifying violations; requiring the department to adopt rules allowing applicants to engage in solicitation activities without a solicitor license on an interim basis; authorizing the department to deny or revoke a solicitor license under specified circumstances; requiring that certain administrative proceedings be conducted pursuant to chapter 120; amending ss. 496.411 and 496.412, F.S.; expanding and revising required solicitation disclosures of charitable organizations, sponsors, and professional solicitors; requiring that certain exempt charitable organizations or sponsors also provide such solicitation disclosures; requiring that such solicitation disclosures be placed online under certain circumstances; creating s. 496.4121, F.S.; defining the term "collection receptacle"; requiring that collection receptacles display permanent signs or labels; specifying requirements for the physical appearance of such labels or signs and the information displayed thereon; requiring that a charitable organization or sponsor using a collection receptacle provide certain information to a donor upon request; amending s. 496.415, F.S.; providing that the submission of false, misleading, or inaccurate

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information in a document connected with a solicitation or sales promotion is unlawful; providing that the failure to remit specified funds to a charitable organization or sponsor is unlawful; amending s. 496.419, F.S.; increasing administrative fines for violations of the Solicitation of Contributions Act; creating s. 496.4191, F.S.; requiring the department to immediately suspend a registration or processing of an application for registration for a specified period if the registrant, applicant, or any officer or director thereof is criminally charged with certain offenses; creating s. 496.430, F.S.; requiring the department to disqualify a charitable organization or sponsor from receiving a sales tax exemption under specified circumstances; providing that a charitable organization or sponsor may appeal a disqualification order; specifying appeal procedure; providing exceptions; providing that a disqualification order remains effective for a specified period; specifying the procedure to lift a disqualification order; requiring the department to provide a final disqualification order to the Department of Revenue within a specified period; providing that a final disqualification order is conclusive as to a charitable organization or sponsor's right to a sales tax exemption; requiring the Department of Revenue to revoke or deny a sales tax exemption to a charitable organization or sponsor subject to a final disqualification order within a

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specified period; providing for a limited appeal of the revocation or denial of the sales tax exemption; providing applicability; creating s. 496.431, F.S.; providing for severability; amending s. 741.0305, F.S.; conforming a cross-reference; making an appropriation; providing an effective date.

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

Section 1. Paragraph (p) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made

with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(p) *Section 501(c)(3) organizations.*—Also exempt from the tax imposed by this chapter are sales or leases to organizations determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, if ~~when~~ such leases or purchases are used in carrying on their customary nonprofit activities, unless such organizations are subject to a final disqualification order issued by the Department of Agriculture and Consumer Services pursuant to s. 496.430.

Section 2. Subsection (3) of section 212.084, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

212.084 Review of exemption certificates; reissuance; specified expiration date; temporary exemption certificates.—

(3) After review is completed and it has been determined that an institution, organization, or individual is actively engaged in a bona fide exempt endeavor and is not subject to a final disqualification order issued by the Department of Agriculture and Consumer Services pursuant to s. 496.430, the department shall reissue an exemption certificate to the entity. However, each certificate so reissued is valid for 5 consecutive years, at which time the review and reissuance procedure provided by this section apply again. If the department

determines that an entity no longer qualifies for an exemption, it shall revoke the tax exemption certificate of the entity.

(7) The department shall revoke or refuse to grant a sales tax exemption certificate to an institution, organization, or individual that is the subject of a final disqualification order issued by the Department of Agriculture and Consumer Services pursuant to s. 496.430. A revocation or denial under this subsection is subject to challenge under chapter 120 only as to whether a disqualification order is in effect. The institution, organization, or individual must appeal or challenge the validity of the disqualification order pursuant to s. 496.430(2).

Section 3. Section 496.403, Florida Statutes, is amended to read:

496.403 Application.—Sections 496.401-496.424 do not apply to bona fide religious institutions, educational institutions, and state agencies or other government entities or persons or organizations who solicit or act as professional fundraising consultants solely on ~~their~~ behalf of those entities, or to blood establishments as defined in s. 381.06014. Sections 496.401-496.424 do not apply to political contributions solicited in accordance with the election laws of this state.

Section 4. Section 496.404, Florida Statutes, is amended to read:

496.404 Definitions.—As used in ss. 496.401-496.424, the term:

(1) "Charitable organization" means a ~~any~~ person who is or holds herself or himself out to be established for any benevolent, educational, philanthropic, humane, scientific,

artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or a ~~any~~ person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation. The term ~~It~~ includes a chapter, branch, area office, or similar affiliate soliciting contributions within the state for a charitable organization that ~~which~~ has its principal place of business outside the state.

(2) "Charitable purpose" means any benevolent, philanthropic, patriotic, educational, humane, scientific, artistic, public health, social welfare or advocacy, environmental conservation, civic, or other eleemosynary objective.

(3) "Charitable sales promotion" means an advertising or sales campaign conducted by a commercial co-venturer which represents that the purchase or use of goods or services offered by the commercial co-venturer ~~are to~~ benefit a charitable organization. The provision of advertising services to a charitable organization does not, in itself, constitute a charitable sales promotion.

(4) "Commercial co-venturer" means a ~~any~~ person who, for profit, regularly and primarily is engaged in trade or commerce other than in connection with solicitation of contributions and who conducts a charitable sales promotion or a sponsor sales promotion.

(5) "Contribution" means the promise, pledge, or grant of any money or property, financial assistance, or any other thing of value in response to a solicitation. The term ~~"Contribution"~~

includes, in the case of a charitable organization or sponsor offering goods and services to the public, the difference between the direct cost of the goods and services to the charitable organization or sponsor and the price at which the charitable organization or sponsor or any person acting on behalf of the charitable organization or sponsor resells those goods or services to the public. The term ~~"Contribution"~~ does not include bona fide fees, dues, or assessments paid by members, if ~~provided that~~ membership is not conferred solely as consideration for making a contribution in response to a solicitation; ~~. "Contribution" also does not include~~ funds obtained by a charitable organization or sponsor pursuant to government grants or contracts; funds ~~, or~~ obtained as an allocation from a United Way organization that is duly registered with the department; or funds received from an organization that is exempt from federal income taxation under s. 501(a) of the Internal Revenue Code and described in s. 501(c) of the Internal Revenue Code which ~~that~~ is duly registered with the department.

(6) "Crisis" means an event that garners widespread national or global media coverage due to an actual or perceived threat of harm to an individual, a group, or a community.

(7) ~~(6)~~ "Department" means the Department of Agriculture and Consumer Services.

(8) "Disaster" means a natural, technological, or civil event, including, but not limited to, an explosion, chemical spill, earthquake, tsunami, landslide, volcanic activity, avalanche, wildfire, tornado, hurricane, drought, or flood, which affects one or more countries and causes damage of

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sufficient severity and magnitude to result in an official declaration of a state of emergency or an official request for international assistance.

(9) ~~(7)~~ "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

(10) ~~(8)~~ "Educational institutions" means those institutions and organizations described in s. 212.08(7)(cc)8.a. The term includes private nonprofit organizations, the purpose of which is to raise funds for schools teaching grades kindergarten through grade 12, colleges, and universities, including any nonprofit newspaper of free or paid circulation primarily on university or college campuses which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, any educational television network or system established pursuant to s. 1001.25 or s. 1001.26, and any nonprofit television or radio station that is a part of such network or system and that holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. The term also includes a nonprofit educational cable consortium that holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, whose primary purpose is the delivery of educational and instructional cable television programming and whose members are composed exclusively of educational organizations that hold a valid consumer certificate of exemption and that are either an educational institution as defined in this subsection or qualified as a nonprofit organization pursuant to s. 501(c)(3) of the Internal Revenue Code.

(11) ~~(9)~~ "Emergency service employee" means an ~~any~~ employee

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who is a firefighter, as defined in s. 633.102, or ambulance driver, emergency medical technician, or paramedic, as defined in s. 401.23.

(12) ~~(10)~~ "Federated fundraising organization" means a federation of independent charitable organizations that ~~which~~ have voluntarily joined together, including, but not limited to, a united way or community chest, for purposes of raising and distributing contributions for and among themselves and where membership does not confer operating authority and control of the individual organization upon the federated group organization.

(13) ~~(11)~~ "Fundraising costs" means those costs incurred in inducing others to make contributions to a charitable organization or sponsor for which the contributors will receive no direct economic benefit. Fundraising costs include, but are not limited to, salaries, rent, acquiring and obtaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions.

(14) ~~(12)~~ "Law enforcement officer" means a ~~any~~ person who is elected, appointed, or employed by any municipality or the state or any political subdivision thereof and:

(a) Who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the criminal, traffic, or highway laws of the state; or

(b) Whose responsibility includes supervision, protection, care, custody, or control of inmates within a correctional institution.

(15) "Management and general costs" means all such costs of a charitable organization or sponsor which are not identifiable with a single program or fundraising activity but which are indispensable to the conduct of such programs and activities and the charitable organization's or sponsor's existence.

(16)~~(13)~~ "Membership" means the relationship of a person to an organization which ~~that~~ entitles her or him to the privileges, professional standing, honors, or other direct benefit of the organization in addition to the right to vote, elect officers, and hold office in the organization.

(17)~~(14)~~ "Owner" means a ~~any~~ person who has a direct or indirect interest in any professional fundraising consultant or professional solicitor.

(18)~~(15)~~ "Parent organization" means that part of a charitable organization or sponsor which coordinates, supervises, or exercises control over policy, fundraising, and expenditures or assists or advises one or more of the organization's chapters, branches, or affiliates in this state.

(19)~~(16)~~ "Person" means an ~~any~~ individual, organization, trust, foundation, group, association, entity, partnership, corporation, society, or any combination thereof ~~of them~~.

(20)~~(17)~~ "Professional fundraising consultant" means a ~~any~~ person who is retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, carry on, advise, consult, or prepare material for a solicitation of contributions in this state, but who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions and who does not at any time have custody or control of contributions. A bona fide

volunteer or bona fide employee or salaried officer of a charitable organization or sponsor maintaining a permanent establishment in this state is not a professional fundraising consultant. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a professional fundraising consultant as the result of such advice.

(21)~~(18)~~ "Professional solicitor" means a ~~any~~ person who, for compensation, performs for a charitable organization or sponsor any service in connection with which contributions are or will be solicited in, or from a location in, this state by the compensated person or by any person it employs, procures, or otherwise engages, directly or indirectly, to solicit contributions, or a person who plans, conducts, manages, carries on, advises, consults, ~~whether~~ directly or indirectly, in connection with the solicitation of contributions for or on behalf of a charitable organization or sponsor, but who does not qualify as a professional fundraising consultant. A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor maintaining a permanent establishment in this state is not a professional solicitor. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a professional solicitor as the result of such advice.

(22) "Program service costs" means all expenses incurred primarily to accomplish the charitable organization or sponsor's stated purposes. The term does not include fundraising costs.

(23)~~(19)~~ "Religious institution" means any church,

ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and includes those bona fide religious groups which do not maintain specific places of worship. The term ~~"Religious institution"~~ also includes any separate group or corporation which forms an integral part of a religious institution which is exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, and which is not primarily supported by funds solicited outside its own membership or congregation.

(24)~~(20)~~ "Solicitation" means a request, directly or indirectly, for money, property, financial assistance, or any other thing of value on the plea or representation that such money, property, financial assistance, or other thing of value or a portion of it will be used for a charitable or sponsor purpose or will benefit a charitable organization or sponsor. The term ~~"Solicitation"~~ includes, but is not limited to, the following methods of requesting or securing the promise, pledge, or grant of money, property, financial assistance, or any other thing of value:

(a) Making any oral or written request;

(b) Making any announcement to the press, on radio or television, by telephone or telegraph, or by any other communication device concerning an appeal or campaign by or for any charitable organization or sponsor or for any charitable or sponsor purpose;

(c) Distributing, circulating, posting, or publishing any handbill, written advertisement, or other publication that

directly or by implication seeks to obtain any contribution; or

(d) Selling or offering or attempting to sell any advertisement, advertising space, book, card, coupon, chance, device, magazine, membership, merchandise, subscription, sponsorship, flower, admission, ticket, food, or other service or tangible good, item, or thing of value, or any right of any description in connection with which any appeal is made for any charitable organization or sponsor or charitable or sponsor purpose, or when the name of any charitable organization or sponsor is used or referred to in any such appeal as an inducement or reason for making the sale or when, in connection with the sale or offer or attempt to sell, any statement is made that all or part of the proceeds from the sale will be used for any charitable or sponsor purpose or will benefit any charitable organization or sponsor.

A solicitation is considered as having taken place whether or not the person making the solicitation receives any contribution. A solicitation does not occur when a person applies for a grant or an award to the government or to an organization that is exempt from federal income taxation under s. 501(a) of the Internal Revenue Code and described in s. 501(c) of the Internal Revenue Code and is duly registered with the department.

(25)~~(21)~~ "Sponsor" means a group or person that ~~which~~ is or holds itself out to be soliciting contributions by the use of any name that ~~which~~ implies that the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and the group or

person ~~which~~ is not a charitable organization. The term includes a chapter, branch, or affiliate that ~~which~~ has its principal place of business outside the state, if such chapter, branch, or affiliate solicits or holds itself out to be soliciting contributions in this state.

(26)~~(22)~~ "Sponsor purpose" means any program or endeavor performed to benefit emergency service employees or law enforcement officers.

(27)~~(23)~~ "Sponsor sales promotion" means an advertising or sales campaign conducted by a commercial co-venturer who represents that the purchase or use of goods or services offered by the commercial co-venturer will be used for a sponsor purpose or donated to a sponsor. The provision of advertising services to a sponsor does not, in itself, constitute a sponsor sales promotion.

Section 5. Subsection (1), paragraphs (a) and (g) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsections (7) and (8) of section 496.405, Florida Statutes, are amended, and subsections (9) and (10) are added to that section, to read:

496.405 Registration statements by charitable organizations and sponsors.—

(1)~~(a)~~ A charitable organization or sponsor, unless exempted pursuant to s. 496.406, which intends to solicit contributions in this state by any means or have funds solicited on its behalf by any other person, charitable organization, sponsor, commercial co-venturer, or professional solicitor, or that participates in a charitable sales promotion or sponsor sales promotion, must, before ~~prior to~~ engaging in any of these

activities, file an initial registration statement, and a renewal statement annually thereafter, with the department.

(a)~~(b)~~ Except as provided in paragraph (b), any changes in the information submitted on the initial registration statement or the last renewal statement must be updated annually on a renewal statement provided by the department on or before the date that marks 1 year after the date the department approved the initial registration statement as provided in this section. The department shall annually provide a renewal statement to each registrant by mail or by electronic mail at least 30 days before the renewal date.

(b) Any changes to the information submitted to the department pursuant to paragraph (2)(d) on the initial registration statement or the last renewal statement must be reported to the department on a form prescribed by the department within 10 days after the change occurs.

(c) A charitable organization or sponsor that is required to file an initial registration statement or annual renewal statement may not, before ~~prior to~~ approval of its statement by the department in accordance with subsection (7), solicit contributions or have contributions solicited on its behalf by any other person, charitable organization, sponsor, commercial co-venturer, or professional solicitor, or participate in a charitable sales promotion or sponsor sales promotion.

~~(d) For good cause shown, the department may extend the time for the filing of an annual renewal statement or financial report for a period not to exceed 60 days, during which time the previous registration remains in effect.~~

(d)~~(c)~~ ~~In no event shall~~ The registration of a charitable

organization or sponsor may not continue in effect and shall expire without further action of the department:

1. After the date the charitable organization or sponsor should have filed, but failed to file, its renewal statement ~~financial report~~ in accordance with this section.

2. For failure to provide a financial statement within any extension period provided under ~~and~~ s. 496.407. ~~The organization may not file a renewal statement until it has filed the required financial report with the department.~~

(2) The initial registration statement must be submitted on a form prescribed by the department, signed by an authorized official of the charitable organization or sponsor who shall certify that the registration statement is true and correct, and include the following information or material:

(a) A copy of the financial statement ~~report~~ or Internal Revenue Service Form 990 and all attached schedules or Internal Revenue Service Form 990-EZ and Schedule O required under s. 496.407 for the immediately preceding fiscal year. A newly organized charitable organization or sponsor with no financial history must file a budget for the current fiscal year.

(g) The following information must be filed with the initial registration statement and must be updated when any change occurs in the information that was previously filed with the initial registration statement:

1. The principal street address and telephone number of the charitable organization or sponsor and the street address and telephone numbers of any offices in this state or, if the charitable organization or sponsor does not maintain an office in this state, the name, street address, and telephone number of

the person who ~~that~~ has custody of its financial records. The parent organization that files a consolidated registration statement on behalf of its chapters, branches, or affiliates must additionally provide the street addresses and telephone numbers of all such locations in this state.

2. The names and street addresses of the officers, directors, trustees, and the principal salaried executive personnel.

3. The date when the charitable organization's or sponsor's fiscal year ends.

4. A list or description of the major program activities.

5. The names, street addresses, and telephone numbers of the individuals or officers who have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions.

(3) Each chapter, branch, or affiliate of a parent organization that is required to register under this section must ~~either~~ file a separate registration statement and financial statement ~~report~~ or ~~must~~ report the required information to its parent organization, which shall then file, on a form prescribed by the department, a consolidated registration statement for the parent organization and its Florida chapters, branches, and affiliates. A consolidated registration statement filed by a parent organization must include or be accompanied by financial statements ~~reports~~ as specified in s. 496.407 for the parent organization and each of its Florida chapters, branches, and affiliates that solicited or received contributions during the preceding fiscal year. However, if all contributions received by chapters, branches, or affiliates are remitted directly into a

depository account that ~~which~~ feeds directly into the parent organization's centralized accounting system from which all disbursements are made, the parent organization may submit one consolidated financial statement ~~report~~ on a form prescribed by the department. A copy of Internal Revenue Service Form 990 and all attached schedules filed for the preceding fiscal year, or a copy of Internal Revenue Form 990-EZ and Schedule O for the preceding fiscal year, for the parent organization and each Florida chapter, branch, or affiliate that is required to file such forms must be attached to the consolidated financial statement. The consolidated financial statement must comply with the requirements of s. 496.407 and must reflect the activities of each chapter, branch, or affiliate of the parent organization, including all contributions received in the name of each chapter, branch, or affiliate; all payments made to each chapter, branch, or affiliate; and all administrative fees assessed to each chapter, branch, or affiliate.

(4)

(b) A charitable organization or sponsor that ~~which~~ fails to file a registration statement by the due date may be assessed an additional fee for such late filing. The late filing fee is ~~shall be~~ $25 for each month or part of a month after the date on which the annual renewal statement was ~~and financial report were~~ due to be filed with the department.

(7)(a) The department must examine each initial registration statement or annual renewal statement and the supporting documents filed by a charitable organization or sponsor and shall determine whether the registration requirements are satisfied. Within 15 business ~~working~~ days

after its receipt of a statement, the department must examine the statement, notify the applicant of any apparent errors or omissions, and request any additional information the department is allowed by law to require. Failure to correct an error or omission or to supply additional information is not grounds for denial of the initial registration or annual renewal statement unless the department has notified the applicant within such period of 15 business days ~~the 15-working-day period~~. The department must approve or deny each statement, or must notify the applicant that the activity for which she or he seeks registration is exempt from the registration requirement, within 15 business ~~working~~ days after receipt of the initial registration or annual renewal statement or the requested additional information or correction of errors or omissions. Any statement that is not approved or denied within 15 business ~~working~~ days after receipt of the requested additional information or correction of errors or omissions is approved. Within 7 business ~~working~~ days after receipt of a notification that the registration requirements are not satisfied, the charitable organization or sponsor may request a hearing. The hearing must be held within 7 business ~~working~~ days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 business ~~working~~ days of the hearing. The final order must then be issued within 2 business ~~working~~ days after the recommended order. If a recommended order is not issued, the final order must be issued within 5 business ~~working~~ days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions set forth in this subsection prevail to

the extent of any conflict.

(b) If a charitable organization or sponsor discloses information specified in subparagraphs (2)(d)2.-7. in the initial registration statement or annual renewal statement, the time limits of this subsection are waived, and the department shall process such initial registration statement or annual renewal statement in accordance with the time limits in chapter 120. The registration of a charitable organization or sponsor shall be automatically suspended for failure to disclose any information specified in subparagraphs (2)(d)2.-7. until such time as the required information is submitted to the department.

(8) A ~~No~~ charitable organization or sponsor, or any officer, director, trustee, or employee thereof, may not ~~shall~~ knowingly allow any officer, director, trustee, or employee of the charitable organization or sponsor ~~of its officers, directors, trustees, or employees~~ to solicit contributions on behalf of such charitable organization or sponsor if such officer, director, trustee, or employee has, in any state, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony within the last 10 years or any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined, in any state, from violating any law relating to a charitable solicitation. The prohibitions in this subsection

also apply to any misdemeanor in another state which constitutes a disqualifying felony in this state.

(9) The department may deny or revoke the registration of a charitable organization or sponsor if the charitable organization or sponsor, or any officer, director, or trustee thereof, has had the right to solicit contributions revoked in any state or has been ordered by any court or governmental agency to cease soliciting contributions within any state.

(10) A charitable organization or sponsor registered under this section which ends solicitation activities or participation in charitable sales promotions in this state shall immediately notify the department in writing of the date such activities ceased.

Section 6. Section 496.4055, Florida Statutes, is created to read:

496.4055 Charitable organization or sponsor board duties.—

(1) As used in this section, the term "conflict of interest transaction" means a transaction between a charitable organization or sponsor and another party in which a director, officer, or trustee of the charitable organization or sponsor has a direct or indirect financial interest. The term includes, but is not limited to, the sale, lease, or exchange of property to or from the charitable organization or sponsor; the lending of moneys to or borrowing of moneys from the charitable organization or sponsor; and the payment of compensation for services provided to or from the charitable organization or sponsor.

(2) The board of directors, or an authorized committee thereof, of a charitable organization or sponsor required to

register with the department under s. 496.405 shall adopt a policy regarding conflict of interest transactions. The policy must require annual certification of compliance with the policy by all directors, officers, and trustees of the charitable organization or sponsor.

(3) The charitable organization or sponsor shall provide to the department a copy of the policy adopted under subsection (2) with the annual registration statement required under s. 496.405.

Section 7. Section 496.407, Florida Statutes, is amended to read:

496.407 Financial statement ~~report~~.—

(1) A charitable organization or sponsor that is required to initially register or annually renew registration must file an annual financial statement ~~report~~ for the immediately preceding fiscal year on ~~upon~~ a form prescribed by the department.

(a) The statement ~~report~~ must include the following:

1.~~(a)~~ A balance sheet.

2.~~(b)~~ A statement of support, revenue and expenses, and any change in the fund balance.

3.~~(c)~~ The names and addresses of the charitable organizations or sponsors, professional fundraising consultant, professional solicitors, and commercial co-venturers used, if any, and the amounts received from each of them, if any.

4.~~(d)~~ A statement of functional expenses that must include, but not be limited to, expenses in the following categories:

a.~~1.~~ Program service costs.

b.~~2.~~ Management and general costs.

c.~~3.~~ Fundraising costs.

(b) The financial statement must be audited, or reviewed as follows:

1. For a charitable organization or sponsor that receives less than $500,000 in annual contributions, a compilation, audit, or review of the financial statement is optional.

2. For a charitable organization or sponsor that receives at least $500,000 but less than $1 million in annual contributions, the financial statement shall be reviewed or audited by an independent certified public accountant.

3. For a charitable organization or sponsor that receives $1 million or more in annual contributions, the financial statement shall be audited by an independent certified public accountant.

(c) Audits and reviews shall be prepared in accordance with the following standards:

1. Audits shall be prepared by an independent certified public account in accordance with generally accepted auditing standards, including the Statements on Auditing Standards.

2. Reviews shall be prepared by an independent certified public accountant in accordance with the Statements on Standards for Accounting and Review Services.

(d) Audited and reviewed financial statements must be accompanied by a report signed and prepared by the independent certified public accountant performing such audit or review.

(2) In lieu of the financial statement ~~report~~ described in subsection (1), a charitable organization or sponsor may submit as its financial statement a copy of its Internal Revenue Service Form 990 and all attached schedules filed for the

preceding fiscal year, or a copy of its Internal Revenue Service Form 990-EZ and Schedule O filed for the preceding fiscal year. Such forms and schedules submitted by a charitable organization or sponsor that receives at least $500,000 in annual contributions must be prepared by a certified public accountant or other professional who normally prepares such forms and schedules in the ordinary course of their business.

(3) Upon a showing of good cause by a charitable organization or sponsor, the department may extend the time for the filing of a financial statement required under this section by up to 180 days, during which time the previous registration shall remain active. The registration shall be automatically suspended for failure to file the financial statement within the extension period.

(4) Upon a showing of good cause, the department may require that an audit or review be conducted for any financial statement submitted by any charitable organization or sponsor. As used in this subsection, the term "good cause" includes, but is not limited to, irregular or inconsistent information provided on a charitable organization's or sponsor's financial statement. ~~A charitable organization or sponsor may elect to also include a financial report that has been audited by an independent certified public accountant or an audit with opinion by an independent certified public accountant. In the event that a charitable organization or sponsor elects to file an audited financial report, this optional filing must be noted in the department's annual report submitted pursuant to s. 496.423.~~

Section 8. Section 496.4071, Florida Statutes, is created to read:

496.4071 Supplemental financial disclosure.—

(1) If, for the immediately preceding fiscal year, a charitable organization or sponsor had more than $1 million in total revenue and spent less than 25 percent of the organization's total annual functional expenses on program service costs, in addition to any financial statement required under s. 496.407, the charitable organization or sponsor shall file the following supplemental financial information on a form prescribed by the department:

(a) The dollar amount and the percentage of total revenue and charitable contributions allocated to funding each of the following administrative functions:

1. Total salaries of all persons employed by the charitable organization or sponsor.

2. Fundraising, including the names of any professional solicitors, amounts paid to the professional solicitors, and contributions received from a professional solicitor's campaign.

3. Travel expenses.

4. Overhead and other expenses related to managing and administering the charitable organization or sponsor.

(b) The name of and specific sum earned by or paid to all employees or consultants who earned or were paid more than $100,000 during the immediately preceding fiscal year.

(c) The name of and specific sum paid to all service providers who were paid $100,000 or more during the immediately preceding fiscal year and a brief description of the services provided.

(d) The dollar amount and percentage of total revenue and charitable contributions allocated to programs.

(e) The details of any economic or business transactions between the charitable organization or sponsor and an officer, trustee, or director of the charitable organization or sponsor; the immediate family of an officer, trustee, or director of the charitable organization or sponsor; any entity controlled by an officer, trustee, or director of the charitable organization or sponsor; any entity controlled by the immediate family of an officer, trustee, or director of the charitable organization or sponsor; any entity that employed or engaged for consultation an officer, trustee, or director of the charitable organization or sponsor; and any entity that employed or engaged for consultation the immediate family of an officer, trustee, or director of the charitable organization or sponsor. As used in this paragraph, the term "immediate family" means a parent, spouse, child, sibling, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.

(2) The supplemental financial information required under subsection (1) must be filed with the department by the charitable organization or sponsor within 30 days after receiving a request for such information from the department.

Section 9. Section 496.4072, Florida Statutes, is created to read:

496.4072 Financial statements for specific disaster relief solicitations.—

(1) A charitable organization or sponsor that solicits contributions in this state for a charitable purpose related to a specific disaster or crisis and receives at least $100,000 in contributions in response to such solicitation shall file

quarterly disaster relief financial statements with the department on a form prescribed by the department. The quarterly statements must detail the contributions secured as a result of the solicitation and the manner in which such contributions were expended.

(2) The first quarterly statement shall be filed on the last day of the third month following the accrual of at least $100,000 in contributions after the commencement of solicitations for the specific disaster or crisis. The charitable organization or sponsor shall continue to file quarterly statements with the department until the quarter after all contributions raised in response to the solicitation are expended.

(3) The department shall post notice on its website of the specific disasters and crises subject to the additional reporting requirements in this section within 10 days after such disaster or crisis.

Section 10. Subsections (4), (6), and (9) of section 496.409, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

496.409 Registration and duties of professional fundraising consultant.—

(4) A professional fundraising consultant may enter into a contract or agreement with a charitable organization or sponsor only if the charitable organization or sponsor has complied with all applicable provisions of this chapter. A ~~Every~~ contract or agreement between a professional fundraising consultant and a charitable organization or sponsor must be in writing, signed by two authorized officials of the charitable organization or

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sponsor, and filed by the professional fundraising consultant with the department at least 5 days before ~~prior to~~ the performance of any material service by the professional fundraising consultant. Solicitation under the contract or agreement may not begin before the filing of the contract or agreement.

(6)(a) The department shall examine each registration statement and all supporting documents filed by a professional fundraising consultant and determine whether the registration requirements are satisfied. If the department determines that the registration requirements are not satisfied, the department must notify the professional fundraising consultant within 15 business ~~working~~ days after its receipt of the registration statement; otherwise the registration statement is approved. Within 7 business ~~working~~ days after receipt of a notification that the registration requirements are not satisfied, the applicant may request a hearing. The hearing must be held within 7 business ~~working~~ days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 business ~~working~~ days after the hearing. The final order must then be issued within 2 business ~~working~~ days after the recommended order. If there is no recommended order, the final order must be issued within 5 business ~~working~~ days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions ~~set forth~~ in this subsection prevail to the extent of any conflict.

(b) If a professional fundraising consultant discloses information specified in paragraphs (2)(e)-(g) in the initial application for registration or renewal application, the

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processing time limits of this subsection are waived and the department shall process the initial application for registration or the renewal application in accordance with the time limits in chapter 120. The registration of a professional consultant shall be automatically suspended for failure to disclose any information specified in paragraphs (2)(e)-(g) until such time as the required information is submitted to the department.

(9) A ~~No~~ person may not act as a professional fundraising consultant, and a ~~no~~ professional fundraising consultant, or any officer, director, trustee, or employee thereof, may not ~~shall~~ knowingly employ any officer, trustee, director, or employee, if such person has, in any state, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined in any state from violating any law relating to a charitable solicitation.

(10) The department may deny or revoke the registration of a professional fundraising consultant if the professional fundraising consultant, or any of its officers, directors, or trustees, has had the right to solicit contributions revoked in any state or has been ordered by any court or governmental agency to cease soliciting contributions within any state.

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Section 11. Present subsections (3), (5), (7), (14), and (15) of section 496.410, Florida Statutes, are amended, paragraphs (j), (k), and (l) are added to subsection (2) of that section, paragraphs (i) through (n) are added to subsection (6) of that section, and a new subsection (15) is added to that section, to read:

496.410 Registration and duties of professional solicitors.—

(2) Applications for registration or renewal of registration must be submitted on a form prescribed by rule of the department, signed by an authorized official of the professional solicitor who shall certify that the report is true and correct, and must include the following information:

(j) A list of all telephone numbers the applicant will use to solicit contributions as well as the actual physical address associated with each telephone number and any fictitious names associated with such address.

(k) A copy of any script, outline, or presentation used by the applicant to solicit contributions or, if such solicitation aids are not used, written confirmation thereof.

(l) A copy of sales information or literature provided to a donor or potential donor by the applicant in connection with a solicitation.

(3) The application for registration must be accompanied by a fee of $300. ~~A professional solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees. In that case,~~ The names and street addresses of all the officers, employees, and agents of the professional

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solicitor and all other persons with whom the professional solicitor has contracted to work under its direction, including solicitors, must be listed in the application or furnished to the department within 5 days after the date of employment or contractual arrangement. Each registration is valid for 1 year and~~. The registration~~ may be renewed for an additional 1-year period upon application to the department and payment of the registration fee.

(5)(a) The department must examine each registration statement and supporting documents filed by a professional solicitor. If the department determines that the registration requirements are not satisfied, the department must notify the professional solicitor within 15 business ~~working~~ days after its receipt of the registration statement; otherwise the registration statement is approved. Within 7 business ~~working~~ days after receipt of a notification that the registration requirements are not satisfied, the applicant may request a hearing. The hearing must be held within 7 business ~~working~~ days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 business ~~working~~ days after the hearing. The final order must then be issued within 2 business ~~working~~ days after the recommended order. If there is no recommended order, the final order must be issued within 5 business ~~working~~ days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions ~~set forth~~ in this subsection prevail to the extent of any conflict.

(b) If a professional solicitor makes a disclosure specified in paragraphs (2)(f)-(h) in the initial application

for registration or the renewal application, the processing time limits of this subsection are waived and the department shall process the initial application for registration or renewal application in accordance with the time limits in chapter 120. The registration of a professional solicitor shall be automatically suspended for failure to disclose any information specified in paragraphs (2)(f)-(h) until such time as the required information is submitted to the department.

(6) No less than 15 days before commencing any solicitation campaign or event, the professional solicitor must file with the department a solicitation notice on a form prescribed by the department. The notice must be signed and sworn to by the contracting officer of the professional solicitor and must include:

(i) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization or sponsor, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charitable organization or sponsor, if any.

(j) The percentage of a contribution which may be deducted as a charitable contribution under federal income tax laws.

(k) A statement as to whether any owner, director, officer, trustee, or employee of the professional solicitor is related as a parent, spouse, child, sibling, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law to:

1. Another officer, director, owner, trustee, or employee

of the professional solicitor.

2. Any officer, director, owner, trustee, or employee of a charitable organization or sponsor under contract to the professional solicitor.

3. Any supplier or vendor providing goods or services to a charitable organization or sponsor under contract to the professional solicitor.

(l) The beginning and ending dates of the solicitation campaign.

(m) A copy of any script, outline, or presentation used by the professional solicitor to solicit contributions for the solicitation campaign. If such aids are not used, written confirmation thereof.

(n) A copy of sales information or literature provided to a donor or potential donor by the professional solicitor in connection with the solicitation campaign.

(7) A professional solicitor may enter into a contract or agreement with a charitable organization or sponsor only if the charitable organization or sponsor has complied with all applicable provisions of this chapter. A ~~Each~~ contract or agreement between a professional solicitor and a charitable organization or sponsor for each solicitation campaign must be in writing, signed by two authorized officials of the charitable organization or sponsor, one of whom must be a member of the organization's governing body and one of whom must be the authorized contracting officer for the professional solicitor, and contain all of the following provisions:

(a) A statement of the charitable or sponsor purpose and program for which the solicitation campaign is being conducted.

(b) A statement of the respective obligations of the professional solicitor and the charitable organization or sponsor.

(c) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization or sponsor, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charitable organization or sponsor, if any. Any stated percentage shall exclude any amount which the charitable organization or sponsor is to pay as fundraising costs.

(d) A statement of the percentage of the gross revenue which the professional solicitor will be compensated. If the compensation of the professional solicitor is not contingent upon the number of contributions or the amount of revenue received, his or her compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract must clearly disclose the assumptions upon which the estimate is based. The stated assumptions must be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor.

(e) The effective and termination dates of the contract.

(14) A ~~No~~ person may not act as a professional solicitor, and a ~~no~~ professional solicitor, or any officer, director, trustee, or employee thereof, may not ~~shall~~, to solicit for compensation, knowingly employ any officer, trustee, director, employee, or any person with a controlling interest therein, who

has, in any state, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a felony within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined in any state from violating any law relating to a charitable solicitation. The prohibitions in this subsection also apply to any misdemeanor in another state which constitutes a disqualifying felony in this state.

(15) The department may deny or revoke the registration of a professional solicitor if the professional solicitor, or any of its officers, directors, trustees, or agents, has had the right to solicit contributions revoked in any state or has been ordered by any court or governmental agency to cease soliciting contributions within any state.

(16)~~(15)~~ All registration fees must be paid to the department and deposited into the General Inspection Trust Fund.

Section 12. Section 496.4101, Florida Statutes, is created to read:

496.4101 Licensure of professional solicitors and certain employees thereof.—

(1) Each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations must, before engaging in solicitation activities, obtain a solicitor license

from the department.

(2) Persons required to obtain a solicitor license under subsection (1) shall submit to the department, in such form as the department prescribes, an application for a solicitor license. The application must include all of the following information:

(a) The true name, date of birth, unique identification number of a driver license or other valid form of identification, and home address of the applicant.

(b) If the applicant, in any state, regardless of adjudication, has previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined, in any state, from violating any law relating to a charitable solicitation.

(c) If the applicant, in any state, is involved in pending litigation or has had entered against her or him an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, cease and desist, or any similar document, in any civil or administrative action involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or has been enjoined from violating any law relating to a charitable solicitation.

(3)(a) Each applicant must be fingerprinted by an agency, entity, or vendor that meets the requirements of s. 943.053(13). The agency, entity, or vendor shall forward a complete set of the applicant's fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the applicant's fingerprints to the Federal Bureau of Investigation for national processing.

(b) Fees for state and national fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing is that authorized in s. 943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

(c) All fingerprints submitted to the Department of Law Enforcement as required under this subsection shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. Fingerprints may not be enrolled in the national retained print arrest notification program until the Department of Law Enforcement begins participation with the Federal Bureau of Investigation. Arrest fingerprints will be searched against the retained prints by the Department of Law Enforcement and the Federal Bureau of Investigation.

(d) For any renewal of the applicant's license, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the applicant is enrolled in the national retained print arrest notification program described in paragraph (c). The fee for the national criminal

history check will be paid as part of the renewal fee to the department and forwarded by the department to Department of Law Enforcement. If the applicant's fingerprints are retained in the national retained print arrest notification program, the applicant shall pay the state and national retention fee to the department which will forward the fee to the Department of Law Enforcement.

(e) The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed under this chapter.

(f) The department shall screen background results to determine if an applicant meets licensure requirements.

(4) A solicitor license must be renewed annually by the submission of a renewal application. A solicitor license that is not renewed expires without further action by the department.

(5) Each applicant for a solicitor license shall remit a license fee of $100 to the department at the time the initial application is filed with the department and an annual renewal fee of $100 thereafter. All fees collected, less the cost of administration, shall be deposited into the General Inspection Trust Fund.

(6) Any material change to the information submitted to the department in the initial application or renewal application for a solicitor license shall be reported to the department by the applicant or licensee within 10 days after the change occurs. The applicant or licensee shall also remit a fee in the amount of $10 for processing the change to the initial or renewal application.

(7) It is a violation of this chapter:

(a) For an applicant to provide inaccurate or incomplete information to the department in the initial or renewal application for a solicitor license.

(b) For any person specified in subsection (1) to fail to maintain a solicitor license as required by this section.

(c) For a professional solicitor to allow, require, permit, or authorize an employee without an active solicitor license issued under this section to conduct telephonic solicitations.

(8) The department shall adopt rules that allow applicants to engage in solicitation activities on an interim basis until such time as a solicitor license is granted or denied.

(9) The department may deny or revoke any solicitor license if the applicant or licensee has had the right to solicit contributions revoked in any state, has been ordered by any court or governmental agency to cease soliciting contributions within any state, or is subject to any disqualification specified in s. 496.410(14).

(10) Any administrative proceeding conducted pursuant to this section must be conducted in accordance with chapter 120.

Section 13. Subsections (2) and (3) of section 496.411, Florida Statutes, are amended to read:

496.411 Disclosure requirements and duties of charitable organizations and sponsors.—

(2) A charitable organization or sponsor soliciting in this state must include all of the following disclosures at the point of solicitation:

(a) The name of the charitable organization or sponsor and state of the principal place of business of the charitable organization or sponsor.~~,~~

(b) A description of the purpose or purposes for which the solicitation is being made.~~,~~

(c) Upon request, the name and either the address or telephone number of a representative to whom inquiries could be addressed.~~,~~

(d) Upon request, the amount of the contribution which may be deducted as a charitable contribution under federal income tax laws.~~,~~

(e) Upon request, the source from which a written financial statement may be obtained. Such financial statement must be for the immediate preceding ~~past~~ fiscal year and must be consistent with the annual financial statement ~~report~~ filed under s. 496.407. The written financial statement must be provided within 14 days after the request and must state the purpose for which funds are raised, the total amount of all contributions raised, the total costs and expenses incurred in raising contributions, the total amount of contributions dedicated to the stated purpose or disbursed for the stated purpose, and whether the services of another person or organization have been contracted to conduct solicitation activities.

(3) Every charitable organization or sponsor that ~~which~~ is required to register under s. 496.405 or is exempt under s. 496.406(1)(d) shall ~~must~~ conspicuously display ~~in capital letters~~ the following statement on every ~~printed~~ solicitation, ~~written~~ confirmation, receipt, or reminder of a contribution:

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE

STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

The statement must include a toll-free number and website for the division which ~~that~~ can be used to obtain the registration information. If ~~When~~ the solicitation consists of more than one piece, the statement must be displayed prominently in the solicitation materials. If the solicitation occurs through a website, the statement must be conspicuously displayed on the webpage where donations are requested.

Section 14. Subsection (1) of section 496.412, Florida Statutes, is amended to read:

496.412 Disclosure requirements and duties of professional solicitors.—

(1) A professional solicitor must comply with and be responsible for complying or causing compliance with the following disclosures:

(a) Before ~~Prior to~~ orally requesting a contribution, or contemporaneously with a written request for a contribution, a professional solicitor must clearly disclose:

1. The name of the professional solicitor as on file with the department.

2. If the individual acting on behalf of the professional solicitor identifies himself or herself by name, the individual's legal name.

3. The name and state of the principal place of business of the charitable organization or sponsor and a description of how the contributions raised by the solicitation will be used for a charitable or sponsor purpose; or, if there is no charitable

organization or sponsor, a description as to how the contributions raised by the solicitation will be used for a charitable or sponsor purpose.

(b) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, any written confirmation, receipt, or reminder sent to any person who has contributed or has pledged to contribute, shall include a clear disclosure of the information required by paragraph (a).

(c) In addition to the information required by paragraph (a), any written confirmation, receipt, or reminder of contribution made pursuant to an oral solicitation and any ~~written~~ solicitation shall conspicuously state ~~in capital letters~~:

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

The statement must include a toll-free number and website for the division which ~~that~~ can be used to obtain the registration information. If ~~When~~ the solicitation consists of more than one piece, the statement must be displayed prominently in the solicitation materials. If the solicitation occurs on a website, the statement must be conspicuously displayed on the webpage where donations are requested.

(d) If requested by the person being solicited, the professional solicitor shall inform that person in writing,

within 14 days after ~~of~~ the request, of the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue that the charitable organization or sponsor will receive as a benefit from the solicitation campaign or shall immediately notify the person being solicited that the information is available on the department's website or by calling the division's toll-free number.

(e) If requested by the person being solicited, the professional solicitor shall inform that person in writing, within 14 days after ~~of~~ the request, of the percentage of the contribution which may be deducted as a charitable contribution under federal income tax laws or shall immediately notify the person being solicited that the information is available on the department's website or by calling the division's toll-free number.

Section 15. Section 496.4121, Florida Statutes, is created to read:

496.4121 Collection receptacles used for donations.—

(1) As used in this section, the term "collection receptacle" means a receptacle used to collect donated clothing, household items, or other goods for resale.

(2) A collection receptacle must display a permanent sign or label on each side which contains the following information printed in letters that are at least 3 inches in height and no less than one-half inch in width, in a color that contrasts with the color of the collection receptacle:

(a) For collection receptacles used by a person required to register under this chapter, the name, business address, telephone number, and registration number of the charitable

organization or sponsor for whom the solicitation is made.

(b) For collection receptacles placed or maintained in public view by a person not required to register under this chapter or by a person not claiming an exemption pursuant to s. 496.406, the name, telephone number, and physical address of the business conducting the solicitation and the statement: "This is not a charity. Donations made here support a for-profit business and are not tax deductible."

(3) Upon request, a charitable organization or sponsor using a collection receptacle must provide the donor with documentation of its tax-exempt status and the registration issued under this chapter.

Section 16. Subsection (2) of section 496.415, Florida Statutes, is amended, and subsection (18) is added to that section, to read:

496.415 Prohibited acts.—It is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(2) ~~Knowingly~~ Submit false, misleading, or inaccurate information in a document that is filed with the department, provided to the public, or offered in response to a request or investigation by the department, the Department of Legal Affairs, or the state attorney.

(18) Fail to remit to a charitable organization or sponsor the disclosed guaranteed minimum percentage of gross receipts from contributions as required under s. 496.410(7)(c) or, if the solicitation involved the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price as agreed in the contract or agreement as required under this

chapter.

Section 17. Subsection (5) of section 496.419, Florida Statutes, is amended to read:

496.419 Powers of the department.—

(5) Upon a finding as set forth in subsection (4), the department may enter an order doing one or more of the following:

(a) Issuing a notice of noncompliance pursuant to s. 120.695;

(b) Issuing a cease and desist order that directs that the person cease and desist specified fundraising activities;

(c) Refusing to register or canceling or suspending a registration;

(d) Placing the registrant on probation for a period of time, subject to such conditions as the department may specify;

(e) Canceling an exemption granted under s. 496.406; ~~and~~

(f) Except as provided in paragraph (g), imposing an administrative fine not to exceed $5,000 ~~$1,000~~ for each act or omission that ~~which~~ constitutes a violation of ss. 496.401-496.424 or s. 496.426 or a rule or order. With respect to a s. 501(c)(3) organization, the penalty imposed pursuant to this subsection may ~~shall~~ not exceed $500 per violation for failure to register under s. 496.405 or file for an exemption under s. 496.406(2). The penalty shall be the entire amount per violation and is not ~~to be interpreted as~~ a daily penalty; and

(g) Imposing an administrative fine not to exceed $10,000 for a violation of this chapter that involves fraud or deception.

Section 18. Section 496.4191, Florida Statutes, is created

to read:

496.4191 Additional penalty; immediate suspension.—Upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Florida Department of Law Enforcement, the department shall immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or any officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor until final disposition of the case or removal or resignation of that officer or director.

Section 19. Section 496.430, Florida Statutes, is created to read:

496.430 Disqualification for certain tax exemptions.—

(1) The department shall issue an order to disqualify a charitable organization or sponsor from receiving any sales tax exemption certificate issued by the Department of Revenue if the department finds, based up on the average of functional expenses and program service costs provided to the department pursuant to s. 496.407 for the 3 most recent fiscal years, that the charitable organization or sponsor has failed to expend at least 25 percent of its total annual functional expenses on program service costs.

(2) A charitable organization or sponsor may appeal a disqualification order by requesting a hearing within 21 days after notification from the department that it has issued a disqualification order under this section. The hearing must be

conducted in accordance with chapter 120.

(3) Notwithstanding a finding under subsection (1) that a charitable organization or sponsor has failed to expend at least 25 percent of its total annual functional expenses on program service costs, the department may decline to issue a disqualification order if the charitable organization or sponsor establishes:

(a) That payments were made to affiliates which should be considered in calculating the program service costs;

(b) That revenue was accumulated for a specific program purpose consistent with representations in solicitations; or

(c) Such other mitigating circumstances as are defined by rule of the department.

(4) A disqualification order issued by the department pursuant to this section is effective for at least 1 year after such order becomes final and shall remain effective until such time as the department receives sufficient evidence from the disqualified charitable organization or sponsor which demonstrates it expends at least 25 percent of its total annual functional expenses on program service costs.

(a) The charitable organization or sponsor may not submit such evidence to the department sooner than 1 year after the disqualification order becomes final and may not submit such information more than once each year for consideration by the department.

(b) The department shall also consider any financial statement that was submitted by the charitable organization or sponsor to the department pursuant to s. 496.407 after the disqualification order became final.

(5) The department shall provide a disqualification order to the Department of Revenue within 30 days after such order becomes final. A final disqualification order is conclusive as to the charitable organization's or sponsor's entitlement to any sales tax exemption. The Department of Revenue shall revoke or refuse to grant a sales tax exemption certificate to a charitable organization or sponsor subject to a final disqualification order within 30 days after receiving such disqualification order. A charitable organization or sponsor may not appeal or challenge the revocation or denial of a sales tax exemption certificate by the Department of Revenue if such revocation or denial is based upon a final disqualification order issued pursuant to this section.

(6) This section does not apply to a charitable organization or sponsor that:

(a) Is not required to register under this chapter with the department; or

(b) Has been in existence for less than 4 years, regardless of whether the charitable organization or sponsor is registered in this state.

Section 20. Section 496.431, Florida Statutes, is created to read:

496.431 Severability.—If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 21. Paragraph (a) of subsection (3) of section

741.0305, Florida Statutes, is amended to read:

741.0305 Marriage fee reduction for completion of premarital preparation course.—

(3)(a) All individuals electing to participate in a premarital preparation course shall choose from the following list of qualified instructors:

1. A psychologist licensed under chapter 490.

2. A clinical social worker licensed under chapter 491.

3. A marriage and family therapist licensed under chapter 491.

4. A mental health counselor licensed under chapter 491.

5. An official representative of a religious institution which is recognized under s. 496.404(23) ~~496.404(19)~~, if the representative has relevant training.

6. Any other provider designated by a judicial circuit, including, but not limited to, school counselors who are certified to offer such courses. Each judicial circuit may establish a roster of area course providers, including those who offer the course on a sliding fee scale or for free.

Section 22. For the 2014-2015 fiscal year, there is appropriated to the Department of Agriculture and Consumer Services, the sums of $235,352 in recurring and $239,357 in nonrecurring funds from the General Inspection Trust Fund, and 4 full-time equivalent positions with associated salary rate of 143,264 are authorized for the purpose of implementing this act.

Section 23. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 638
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senator Brandes
SUBJECT:	Charities
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	**Fav/CS**
2.	Fournier	Diez-Arguelles	AFT	**Fav/CS**
3.	Fournier	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 638 updates the Solicitation of Contributions Act to provide increased oversight by the Department of Agriculture and Consumer Services (DACS) of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors. It requires additional financial disclosure for a charitable organization that had more than $1 million in total revenue and devoted less than a specified proportion of its spending to program service costs in the preceding year, and allows the DACS to disqualify a charitable organization from receiving a sales tax exemption certificate if the organization is found to be in violation of s. 496.419(4), F.S.

The bill creates a license for professional solicitors that is expected to increase revenue to the DACS General Inspection Trust Fund by $125,000 annually. It also requires fingerprinting of professional solicitors. Fingerprint processing fees will increase revenue to the FDLE Operating Trust Fund (net of payments to the FBI) by $60,000 in the first year and an indeterminate amount in subsequent years. The bill also increases administrative fines for violations of the Florida Deceptive and Unfair Trade Practices Act.

The bill appropriates $179,944 in recurring funds and $235.584 in nonrecurring funds from the DACS General Inspection Trust Fund, and three full-time equivalent positions to the DACS to implement this act.

II. Present Situation:

In Florida, the solicitation of contributions by charitable organizations and sponsors is regulated by the Solicitation of Contributions Act (the SCA).[1] There are currently over 18,000 charitable organizations and sponsors, 404 professional fundraising consultants, and 87 professional solicitors registered in Florida. Of those 87 professional solicitors, 54 are headquartered outside Florida.[2]

The SCA contains basic registration, financial disclosure, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Recent news reports suggest current regulations under the SCA may be insufficient to effectively monitor and regulate these entities to ensure they are fulfilling their purpose as charitable entities.[3]

(See a detailed analysis of the bill's effect on each part of the SCA below.)

III. Effect of Proposed Changes:

The bill makes the following changes to statutes regulating charitable organizations and sponsors, professional fundraising consultants, and professional solicitors. The bill:

- Requires that any changes to information in a registration statement be submitted to the Department of Agriculture and Consumer Services (DACS) within 10 days of the change.
- Requires automatic suspension of a registration for failure to disclose any information related to certain criminal or administrative actions.
- Permits increased processing times for the DACS if the applicant discloses any information related to certain criminal or administrative actions against it.
- Authorizes the DACS to deny or revoke an application if the applicant or its agent has had certain criminal or administrative action taken against it.
- Prohibits the employment of persons with certain criminal history.[4]
- Requires notices to be provided for all solicitations and confirmations.
- Requires professional fundraising consultants and professional solicitors to only enter into contracts with charitable organizations and sponsors registered under ch. 496, F.S.

[1] Chapter 496, F.S. The majority of the provisions in the SCA "do not apply to bona fide religious institutions, educational instructions, and state agencies or other government entities or persons or organizations who solicit or act as professional fundraising consultants solely on their behalf." Section 496.403, F.S. Nor do the majority of the provisions in the SCA apply to political contributions solicited in accordance with election laws. *Id.*

[2] Conversation with Amy Topol, Assistant Director, Division of Consumer Services, the DACS, Jan. 4, 2014.

[3] The Tampa Bay Times, in conjunction with the CNN and The Center for Investigative Reporting, recently published a number of articles related to charities. *America's Worst Charities*, Tampa Bay Times website, available at http://www.tampabay.com/topics/specials/worst-charities.page (last visited Feb. 4, 2014).

[4] Disqualifying crimes include fraud, theft, larceny, embezzlement, fraudulent conversion, and misappropriation of property.

Charitable Organizations and Sponsors[5]

Summary

The bill:

- Authorizes the DACS to enter a disqualification order for a charity found to be in violation of s. 496.419(4), F.S., which disqualifies the charity from receiving sales tax exempt status for at least a year.
- Clarifies the requirements related to financial statements.
- Requires certain charities to adopt conflict of interest policies.
- Requires certain charities to file supplemental financial disclosures and quarterly disaster relief statements.

Present Situation - Registration Statements

Currently, under s. 495.405, F.S., any charitable organization or sponsor[6] that intends to solicit donations in Florida must register annually with the DACS and pay a registration fee[7] before soliciting donations.[8] Registration includes a financial report,[9] a statement of the purpose of the charity, how donations will be used, names of individuals in charge of solicitation activities, and proof of federal tax exempt status. The charity must also identify any professional solicitors and fundraising consultants the charity will use, along with the terms of the arrangements for compensation to be paid to the consultant and solicitor. The registration must also include a statement related to the charity's activity in other states, including whether the charity is authorized to operate in another state; whether the charity's registration has been denied, suspended, or revoked in another state; and whether the charity or any person associated with the charity has been subject to any adverse administrative actions or criminal convictions in any state.[10]

Each affiliate of a parent charity required to register under s. 495.405, F.S., must either file a separate registration and financial report or provide the information to the parent organization to file a consolidated registration. The consolidated registration must include financial reports for the parent organization and each of its Florida affiliates. However, if all contributions received by the affiliates are remitted directly into a single account with the parent organization, the parent organization may submit one consolidated financial report.[11]

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[5] A "sponsor" is "a group or person which is or holds itself out to be soliciting contributions by the use of any name which implies that the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and which is not a charitable organization." Section 496.404(21), F.S. For a sponsor to solicit contributions in this state, it must be a membership organization that, among other things, has a membership that consists of at least 10 percent or 100 members, whichever is less, who are employed as law enforcement officers or emergency services employees. Section 496.426, F.S.

[6] As used in this analysis, the term "charity" or "charities" refers to both charitable organizations and sponsors, unless otherwise indicated.

[7] The registration fee varies from $10 to $400 based on the amount of contributions received by the charity. Section 496.405(4), F.S.

[8] *Id.* at (1)(a) and (c), F.S. Certain small charities (with less than $25,000 total annual revenue) are exempt from the registration and financial reporting requirements in ss. 496.405 and 496.407, F.S. *See id*.; s. 496.406, F.S.

[9] The information that must be included in the financial report is identified in s. 496.407, F.S. *See* "*Financial Statements*" section below.

[10] Section 496.405(2), F.S.

[11] *Id*.

A charity must renew its registration annually; if any information submitted on the original registration statement changes, the charity must update that information on its renewal registration. The DACS may extend the time for filing an annual renewal statement or financial report for up to 60 days, during which time the charity's previous registration remains in effect. However, a charity's registration may not continue in effect after the date the charity should have filed its financial report and the charity may not file its renewal statement until it has filed its financial report.[12] Failure to file a renewal statement by the date on which the statement and financial report were due may result in a late filing fee of $25 per month.[13]

After receiving a registration statement, the DACS has 15 business days to either approve, deny, or notify the charity that it must provide additional information. If, after 15 days, no additional information is requested, and the DACS has not approved or denied the registration, it is deemed approved. If additional information is requested, the DACS has 15 days after the information is received to either approve or deny the registration.[14]

Effect of Proposed Changes

Section 5 amends s. 496.405, F.S., to require that any changes to the information in a charity's registration statement related to the charity's activity in other states, including criminal, administrative, or other actions against the charity, must be reported to the DACS within 10 days of the change occurring. If the charity discloses any information related to criminal, administrative, or other actions against the charity in its initial registration statement or annual renewal statement, the bill allows the DACS additional time to process the applications under the processing time limits in ch. 120, F.S.[15] Additionally, if a charity fails to disclose any information related to criminal, administrative, or other actions against the charity, its registration will be automatically suspended until the charity submits the required information related to those actions to the DACS.

The bill also requires that the consolidated financial statements filed by charities with affiliates must reflect the activities of each affiliate, including all contributions received by each entity, all payments made to each entity, and all administrative fees assessed to each entity. A copy of Internal Revenue Service Form 990 or Form 990-EZ, and attached schedules for the preceding year for the parent organization and each Florida chapter, branch, or affiliate, must be attached to the consolidated financial statement.

The bill repeals the DACS' authority to extend the time for filing an annual renewal statement or financial statement. The bill also provides that a charity's registration will expire with no further action required by the DACS if the charity fails to timely file its renewal statement or it fails to provide a financial statement within the extension periods under s. 496.407, F.S.[16]. Additionally, the DACS will have the authority to deny or revoke a charity's registration if the charity or any

[12] *Id.* at (1).
[13] *Id.* at (4)(b).
[14] *Id.* at (7).
[15] The time limits for processing a registration under ch. 120, F.S., are longer than those in ch. 496, F.S. For example, under ch. 120, F.S., an agency has 30 days to request additional information from an application, and the agency has 90 days after receipt of a completed application to approve or deny a registration.
[16] *See* "*Financial Statements*" section below.

of its officers, directors, or trustees, has had the right to solicit contributions revoked in any state or has been ordered by any court or agency to cease soliciting contributions in any state.

Lastly, the bill requires a charity to immediately notify the DACS in writing when it ceases solicitation activities or participation in charitable sales promotions in Florida.

Present Situation - Fundraising Restrictions for Individuals with Criminal Records

Currently, under s. 496.405(8), F.S., a charity is prohibited from allowing any of its officers, directors, trustees, or employees to solicit contributions on behalf of the charity if he or she has, within the last 10 years, been convicted of or pled guilty to any felony or any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.

Effect of Proposed Changes

Section 5 of the bill also amends s. 496.405(8), F.S., to clarify that in addition to the charity, no officer, director, trustee, or employee of the charity may allow any of its officers, directors, trustees, or employees to solicit contributions on behalf of the charity if he or she has a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states and any misdemeanor in another state that constitutes a disqualifying felony in Florida.

Present Situation – Conflict of Interest Transactions

Currently, ch. 496, F.S., does not regulate conflict of interest transactions involving charities.

Effect of Proposed Changes

Section 6 creates s. 496.4055, F.S., to require the board of directors, or a board committee, of a charity required to register with the DACS pursuant to s. 496.405, F.S., to adopt a policy regarding conflict of interest transactions. A "conflict of interest" is defined as a transaction between a charity and another party in which a director, officer, or trustee of the charity has a direct or indirect financial interest. The term includes the sale, lease, or exchange of property to or from the charity; the lending to or borrowing of money from the charity; and the payment for services provided to or from the charity. The policy adopted by the board must require an annual certification of compliance with the policy, and the organization must provide a copy of the policy to the department with the annual registration statement.

Present Situation – Financial Statements

Currently, under s. 496.407, F.S., a charity that is required to register with the DACS must file an annual financial report for the preceding year with the DACS. The report must include the following: a balance sheet; a statement of support, revenue, and expenses; identification of any charities, professional fundraising consultants, professional solicitors, and commercial co-venturers used and the amounts received from each of them; and a statement of functional expenses that must include program expenses, management and general expenses, and

fundraising expenses.[17] A charity may choose to include a financial report that has been audited by an independent certified public accountant (CPA) or an audit with an opinion by an independent CPA. In lieu of the financial report a charity may submit a copy of its IRS Form 990 or Form 990-EZ.

Effect of Proposed Changes

Section 7 amends s. 496.407, F.S., to change the name of the financial reporting document required by the DACS from "financial report" to "financial statement."[18] The bill clarifies and adds new information that must be included in the required financial statement. Specifically, the financial statement must include a statement of functional expenses[19] that must include program service costs, management and general costs, and fundraising costs.[20] "Management and general costs" are defined in the bill as all costs of a charity that are not identifiable with a single program or fundraising activity but which are necessary to conducting the charity's programs and activities and necessary to the charity's existence. The term includes expenses for business management, salaries, and overhead. "Program service costs" are defined in the bill to means all expenses incurred primarily to accomplish the charity's purposes; however, the term does not include fundraising costs.

The bill also provides the option for a charity that receives less than $500,000 in annual contributions to submit a copy of its IRS Form 990 or Form 990-EZ in lieu of a financial statement. The bill also repeals the option for charities to include an audited financial report and replaces it with a requirement that financial statements be audited or reviewed. The type of audit or review required varies based on the amount of annual contributions received by the charity: for charities that receive less than $500,000 in annual contributions, an audit or review is optional; for charities that receive at least $500,000 but less than $1 million in annual contributions, the financial statement must be reviewed or audited by an independent CPA; and for charities that receive $1 million or more in annual contributions, the financial statement must be audited by an independent CPA. The bill also requires that audits must be performed by an independent CPA in accordance with generally accepted auditing standards and that reviews must be performed by an independent CPA in accordance with the Statements on Standards for Accounting and Review Services. Audited and reviewed financial statements must be accompanied by a report signed and prepared by the independent CPA that performed the audit or review. The bill provides that a charitable organization that receives at least $500,000 in annual revenue may submit a copy of its IRS Form 990 or Form 990-EZ in lieu of a financial

[17] "Fundraising costs" are defined in current law as "those costs incurred in inducing others to make contributions to a charitable organization or sponsor for which the contributors will receive no direct economic benefit. Fundraising costs include, but are not limited to, salaries, rent, acquiring and obtaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions." Section 496.404(11), F.S. However, ch. 496, F.S., currently does not define "program expenses" or "management and general expenses."

[18] Section 4 of the bill updates the phrase "financial report" to "financial statement" in s. 496.405, F.S., to reflect the changes made to s. 496.407, F.S., in section 6 of the bill.

[19] Section 406.707(1)(d), F.S. Internal Revenue Forms 990 and 990-EZ also require a Statement of Functional Expenses; instructions are found at http://www.irs.gov/pub/irs-pdf/i990.pdf.

[20] Definitions of "program service costs" and "management and general costs" are added to s. 496.404, F.S., in Section 3 of the bill.

statement if these forms are prepared by a certified public accountant or professional tax preparer.

Lastly, the bill authorizes the DACS, upon a showing of good cause by a charity, to extend the time for filing a financial statement up to 180 days. The DACS is also authorized to require that an audit or review be conducted for any financial statement submitted by a charity.

Present Situation – Supplemental Financial Disclosure

Currently, ch. 496, F.S., does not require a supplemental financial disclosure.

Effect of proposed changes:

Section 8 creates s. 496.4071, F.S., to require a charity with more than $1 million in total revenue that spent less than 25 percent of the charity's total annual functional expenses on program service costs in the preceding fiscal year to file a supplemental financial disclosure in addition to the financial statement required under s. 496.407, F.S. The supplemental financial disclosure must be filed within 30 days of receiving a request by the DACS to provide such information and must include:

- The dollar amount and the percentage of total revenue and charitable contributions allocated to administrative functions related to managing and administering the charity, including information about payments to and contributions received from professional solicitors.
- The name of and amount earned by or paid to all employees or consultants who earned or were paid more than $100,000.
- The name of and amount paid to all service providers who were paid $100,000 or more and a description of the services provided.
- The amount and percentage of total revenue and charitable contributions allocated to programs.
- The details of any transactions between the charity and an officer, trustee, or director of the charity or his or her immediate family; any entity controlled by an officer, trustee, or director of the charity or his or her the immediate family; and any entity that employed or engaged for consultation an officer, trustee, or director the charity or his or her immediate family.[21]

Present Situation – Specific Disaster Relief Solicitations

Currently, ch. 496, F.S., does not have special regulations for disaster relief solicitations.

Effect of Proposed Changes

Section 9 creates s. 497.4072, F.S., to require charities that solicit donations related to a specific disaster or crisis and receive at least $100,000 in donations in response to such solicitations to file quarterly disaster relief statements with the DACS. A "crisis" is defined in the bill as an event that garners widespread national or global media coverage due to an actual or perceived threat of harm to an individual, a group, or a community. Likewise, a "disaster" is defined in the bill as a natural, technological, or civil event, including an explosion, chemical spill, wildfire, tornado, hurricane, drought, or flood, which affects one or more countries and causes sufficient

[21] The term "immediate family" is defined in section 8 of the bill to mean a parent, spouse, child, sibling, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.

damage to result in an official declaration of a state of emergency or an official request for international assistance.[22] The bill requires the DACS to provide a list on its website of disasters and crises that are subject to the quarterly disaster relief statement within 10 days of the disaster or crisis occurring.

The quarterly statement must detail the donations received and how the funds were expended. A charity must file the first quarterly statement 3 months after it has received at least $100,000 in donations following commencement of solicitations for the specific disaster or crisis, and the charity must continue to file quarterly statements until the quarter after all donations raised in response to the solicitation are expended.

Present Situation – Notice Statements

Currently, s. 496.411(3), F.S., requires every charity that is required to register under s. 496.405, F.S., to conspicuously display the following statement in capital letters on every printed solicitation, written confirmation, receipt, or reminder of a contribution: "A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply endorsement, approval, or recommendation by the state." The statement must also include a toll-free number for the DACS.

Effect of Proposed Changes

Section 13 amends s. 496.411(3), F.S., to require charities that are exempt from registration under s. 496.406(1)(d), F.S.,[23] to provide a notice statement. Additionally, the notice statement must be included with all solicitations and confirmations, regardless of form. The notice statement must also include the DACS website address where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on any webpage that identifies a mailing address where contributions are to be sent, identifies a telephone number to call to process contributions, or provides for online processing of contributions.

Present Situation – Tax-Exempt Status and Disqualifying Events

Currently, organizations that are exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, such as charities, are exempt from Florida's sales and use tax.[24] To receive an exemption, the organization must submit to the Florida Department of Revenue (DOR) a copy of the Internal Revenue Service's (IRS) letter determining the organization's 501(c)(3) status.[25] After receiving the IRS determination letter and making a determination that the organization is actively engaged in an exempt endeavor, the DOR issues a certificate of exemption to the organization. Under current law, the DACS is not part of determining whether a charity operating in Florida should be exempt from sales tax. Specifically, the DACS does not

[22] Definitions of "disaster" and "crisis" are added to s. 496.404, F.S., in Section 4 of the bill.
[23] A charitable organization or sponsor that has less than $25,000 in total revenue during a fiscal year if the fundraising activities of such organization or sponsor are carried on by volunteers, members, or officers who are not compensated and no part of the assets or income of such organization or sponsor inures to the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or commercial co-venturer.
[24] Section 212.08(7)(p), F.S.
[25] Section 212.084, F.S.

have authority to disqualify a charity from receiving any sales tax exemption based on the charity's allocation of expenses to accomplish the charity's stated purpose.

Effect of Proposed Changes

Section 19 creates s. 496.430, F.S., to give the DACS authority to disqualify a charity from receiving a sales tax exemption certificate from the DOR. The DACS may issue the disqualification order if the charitable organization is found to be in violation of s. 496.419(4), F.S. A violation occurs if the organization violated the provisions of the "Solicitation of Contributions Act," (s. 496.401-496.424 or 496.426, F.S.), or the rules adopted or orders issued thereunder, made false statements in an application under the Act, refused or failed to produce any records or provide any information required under the Act, or made false statements in response to any request or investigation under the Act. A disqualification order remains in effect for 1 year

The DACS must submit a disqualification order to the DOR within 30 days after the order becomes final, and the DOR must revoke or refuse to grant a sales tax exemption certificate within 30 days after receiving the final order. A final disqualification order is conclusive as to the charity's entitlement to any sales tax exemption, and a charity may not appeal the revocation or denial of a sales tax exemption certificate by the DOR if the revocation or denial is based upon a final disqualification order from the DACS. A charity may appeal a disqualification order from the DACS by requesting a hearing within 21 days of being notified the order has been issued. The hearing will be conducted pursuant to ch. 120, F.S.

Sections 1 and 2 of the bill amend ss. 212.08 and 212.084, F.S., to disqualify any charity that is subject to a final disqualification order issued by the DACS from the sales and use tax exemption for 501(c)(3) organizations. The DOR's revocation or denial of a tax exempt certificate may be challenged under ch. 120, F.S., only as to whether a disqualification order is in effect. If a charitable organization wishes to challenge the validity of a disqualification order issued by the DACS, it must do so pursuant to the procedures under s. 496.430(2), F.S.

Professional Fundraising Consultants

Present Situation - Registration

Currently, professional fundraising consultants are required to register annually and pay a $300 fee to the DACS pursuant to s. 496.409, F.S., before operating in Florida.[26] In addition to name and address information, the registration must also indicate whether any of the owners, directors, officers, or employees of the consultant are related to any other directors, officers, owners, or employees, any charity under contract to the consultant, or any supplier or vendor providing goods or services to any charity under contract with the consultant. Additionally, the registration must indicate and explain whether the consultant or any of its officers, directors, trustees, or employees have been convicted or pled guilty within the past 10 years to any felony or a crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity. Finally, the registration must indicate and explain whether the consultant or any of its officers, directors,

[26] Section 496.409(1)(3), F.S.

trustees, or employees have been enjoined from violating any law relating to a charitable solicitation.[27]

After receiving the registration statement, the DACS has 15 business days to either approve the registration or notify the consultant that the registration requirements are not satisfied. If, after 15 days the DACS has not notified the consultant, the registration is deemed approved.[28]

In addition to the registration requirement, every agreement between a fundraising consultant and a charity must be in writing and signed by two authorized officials of the charity and must be filed with the DACS at least 5 days before the consultant begins providing services.[29]

Effect of Proposed Changes

Sections 10 amends s. 496.409, F.S., to provide that professional fundraising consultants who enter into agreements with charities may do so only if the charity has complied with ch. 496, F.S. If the consultant discloses in its initial registration or renewal application any information related to criminal, administrative, or other actions against the consultant, its officers, directors, trustees, or employees, the bill gives the DACS additional time to process the application under the processing time limits in ch. 120, F.S.[30] Additionally, if a consultant fails to disclose any information related to criminal, administrative, or other actions against the consultant, its officers, directors, trustees, or employees, its registration will be automatically suspended until the consultant submits required information to the DACS. The DACS will also have the authority to deny or revoke a consultant's registration if the consultant or any of its officers, directors, or trustees, has had the right to solicit contributions revoked in any state or has been ordered by any court or agency to cease soliciting contributions.

Present Situation – Restrictions on Individuals with Criminal Records

Currently, under s. 495.409(9), F.S., a person may not act as a professional fundraising consultant, and a professional fundraising consultant may not employ any person, if, within the last 10 years, the person has been convicted of or pled guilty to any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or has been enjoined from violating any law relating to a charitable solicitation.[31]

Effect of Proposed Changes

Section 10 also amends s. 495.409(9), F.S., to clarify that in addition to the consultant, no officer, director, trustee, or employee of the consultant may employ anyone with a criminal history as described above. The bill also clarifies that the applicable criminal history includes crimes or events that occurred in other states.

[27] *Id.* at (2).
[28] *Id.* at (6).
[29] *Id.* at (4).
[30] *Supra* note 15.
[31] Section 496.409(9), F.S.

Professional Solicitor

Summary

The bill:

- Creates a new, annual license for officers, directors, trustees, and owners of a professional solicitor and any employee of the solicitor conducting telephone solicitations.
- Updates the definition of "professional solicitor" to include solicitors located in Florida that solicit outside of Florida.
- Creates an annual license fee of $100 and a $10 fee, similar to telemarketers, for application updates for the professional solicitors license.
- Requires professional solicitation businesses to include additional application information, such as all of the telephone numbers the solicitor will use and a copy of any script, presentation, or sales literature used.
- Requires professional solicitors to include additional information in the notice required before beginning a solicitation campaign, such as a statement of the minimum percentage of gross receipts from contributions that will be remitted to the charity.
- Prohibits a professional solicitor from failing to remit to a charity the disclosed guaranteed minimum percentage of gross receipts from the solicitation campaign.

Present Situation - Registration

Currently, s. 496.410, F.S., requires a professional solicitor to register annually and pay a $300 fee to the DACS before operating in Florida.[32] Information that must be provided for registration includes the address of the business, the names and addresses of owners, officers, and directors, and the names of anyone in charge of any solicitation activity. The registration must also indicate whether any of the owners, directors, officers, or employees of the solicitor are related to any other directors, officers, owners, or employees of the solicitor, any charity under contract to the solicitor, or any supplier or vendor providing goods or services to any charity under contract with the solicitor. Additionally, the registration must indicate and explain whether the solicitor or any of its officers, directors, trustees, or employees or agents involved in solicitation have been convicted or pled guilty within the past 10 years to any felony or a crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charity. Finally, the registration must indicate and explain, if applicable, whether the solicitor or any of its officers, directors, trustees, or employees or agents involved in solicitation have been enjoined from violating any law relating to a charitable solicitation.[33]

After receiving the registration statement, the DACS has 15 business days to either approve the registration or notify the solicitor that the registration requirements are not satisfied. If, after 15 days the DACS has not notified the solicitor, the registration is deemed approved.[34]

[32] "A professional solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees." Section 496.410(3), F.S. Additionally, professional solicitors are required to maintain a $50,000 bond. *Id.* at (4).
[33] *Id.* at (2).
[34] *Id.* at (5).

In addition to being required to register, solicitors must also file a solicitation notice with the DACS at least 15 days before beginning a solicitation campaign or event.[35] Section 496.410(6), F.S., requires the notice to include a description of the solicitation campaign; each location and telephone number from which the solicitation will be conducted; the name and address of each person responsible for supervising the campaign; a statement as to whether the solicitor will have custody of donations; the account information for each account where receipts from the campaign are to be deposited; a description of the charity for which the campaign is being carried; the fundraising methods to be used; and copy of the contract between the solicitor and charity.

Effect of Proposed Changes

Section 4 of the bill amends s. 496.404, F.S., to update the definition of "professional solicitor" to include professional solicitors located in Florida that solicit outside of Florida.

Section 11 amends s. 495.410, F.S., to require professional solicitors to include the following additional information in its registration: a list of all telephone numbers the solicitor will use to solicit contributions and the address associated with each telephone number and any fictitious names associated with such address; a copy of any script, outline, or presentation used by the solicitor; and a copy of sales information or literature provided to a donor or potential donor.

The bill also repeals a provision in s. 496.410(3), F.S. that permits a professional solicitor that is a partnership or corporation to register as and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees. Instead being included under the solicitor's registration, these individuals will now be required to obtain a solicitor's license under s. 496.4101, F.S., which is created in section 12 of the bill.[36]

If a solicitor discloses in its initial registration or renewal application any information related to criminal, administrative, or other actions against the solicitor, its officers, directors, trustees, or employees or agents, the bill allows the DACS to have additional time to process the application under the processing time limits in ch. 120, F.S.[37] If a solicitor fails to disclose any information related to criminal, administrative, or other actions against the solicitor, its officers, directors, trustees, employees, or agents, the solicitor's registration will be automatically suspended until the solicitor submits the required information to the DACS. The DACS will also have the authority to deny or revoke a solicitor's registration if the solicitor or any of its officers, directors, trustees, or agents has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, or has been ordered by any court or agency to cease soliciting contributions.

The bill requires professional solicitors to include the following additional information in the solicitation notice required under s. 495.410(6), F.S., before beginning a solicitation campaign:

- A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charity, or, if the solicitation involves the sale of goods,

[35] *Id.* at (6).
[36] Conversation with Amy Topol, Assistant Director, Division of Consumer Services, the DACS, Jan. 5, 2014.
[37] *Supra* note 15.

services, or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charity.
- The percentage of a contribution that may be tax-deductible.
- A statement as to whether any owner, director, officer, trustee, or employee of the solicitor is related to another officer, director, owner, trustee, or employee of the solicitor, a charity under contract with the solicitor, or any supplier or vendor providing goods or services to a charity under contract with the solicitor.
- The beginning and ending dates of the campaign.
- A copy of any script, outline, or presentation used by the solicitor.
- A copy of sales information or literature provided to a donor or potential donor.

The bill provides that professional solicitors who enter into agreements with charities may do so only if the charity has complied with ch. 496, F.S.

Present Situation – Restrictions on Individuals with Criminal Records

Under s. 496.410(14), F.S, a person may not act as a professional solicitor, and a solicitor may not employ any person, who has been convicted or pled guilty within the last 10 years to a felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charity, or who has been enjoined from violating any law relating to a charitable solicitation.

Effect of Proposed Changes

Section 11 also amends s. 495.410(14), F.S., to clarify that in addition to the solicitor, no officer, director, trustee, or employee of the solicitor may employ anyone with a criminal history as described above. The bill clarifies that the applicable criminal history includes crimes or events that occurred in other states and any misdemeanor in another state that constitutes a disqualifying felony in Florida.

Present Situation – Licensure of Professional Solicitors

Beyond the registration and notice provisions for professional solicitors in s. 496.410, F.S., current law does not require solicitors or their employees to be licensed to operate in Florida.

Effect of Proposed Changes

Section 11 creates s. 496.4101, F.S., to establish a licensing requirement for professional solicitors. The bill requires each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations during which a donor's personal financial information is collected to obtain a solicitor license from the DACS. "Personal financial information" includes, but is not limited to, social security numbers, credit card numbers, banking information, and credit reports. (Employees engaged in telephonic solicitation that do not collect personal financial information must submit their names and valid government identifiers to allow the DACS to perform background checks.)

A license can be obtained by paying a $50 application fee and completing an application that includes the following information:

- The name, address, date of birth, and identification number of a government-issued ID of the applicant.
- Whether the applicant has been convicted of or pled guilty in any state to any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined from violating any law relating to a charitable solicitation.
- Whether the applicant is involved in pending litigation in any state or has had entered against her or him an injunction, a temporary restraining order, a final judgment or order, or any similar document, in any civil or administrative action involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property.

The DACS must adopt rules that allow applicants to engage temporarily in solicitation activities while the solicitor license is being processed.

Applicants must submit a complete set of fingerprints to an agency, entity, or vendor authorized by s. 943.053(13), F.S., and the fingerprints must be forwarded to Florida Department of Law Enforcement (FDLE) for processing. Fees for state and national fingerprint processing and retention must be borne by the applicant. The FDLE must retain the fingerprints and enroll them in the Federal Bureau of Investigation's (FBI) national retained print arrest notification program once the FDLE begins participating in the program. The DACS is required to screen background results to determine if an applicant meets licensure requirements. When a person is no longer licensed, the DACS must notify the FDLE.

Any material change to the information submitted in the licensing application must be reported to the DACS within 10 days of the change along with payment of a $10 fee.[38] A license must be renewed annually; an un-renewed license automatically expires. The annual renewal fee is $50. All fees, less administrative costs, will be deposited into the General Inspection Trust Fund of the DACS.

The bill also makes it a violation of ch. 496, F.S., to provide inaccurate or incomplete information in an initial or renewal application for a solicitor license; for any person to fail to maintain a license; and for a solicitor to allow, require, permit, or authorize an employee without an active license to conduct telephonic solicitations.

Additionally, the DACS may deny or revoke a solicitor's license if the solicitor has had the right to solicit contributions revoked in any state or is subject to any disqualification specified in s. 496.410(14), F.S., relating to the solicitor's criminal history.

Present Situation – Notice Statements and Requested Information

Currently, s. 496.412(1), F.S., requires that in the course of requesting a donation, a solicitor must clearly disclose the name of the solicitor, the name and state of the principal place of

[38] The $10 change fee is also charged to telemarketers under s. 501.609(2), F.S.

business of the charity, and a description of how the contributions raised by the solicitation will be used. Like charities, solicitors are also required to conspicuously state the following in capital letters on every written solicitation, written confirmation, receipt, or reminder of a contribution: "A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state. Registration does not imply endorsement, approval, or recommendation by the state." The statement must include a toll-free number for the DACS.[39]

Additionally, if a person being solicited requests the percentage of the gross revenue that the charity will receive from the solicitation campaign or requests the percentage of the contribution which may be tax-deductible, the solicitor must provide the requested information in writing within 14 days of the request.[40]

Effect of Proposed Changes

Section 14 amends s. 496.412(1), F.S., to expand the use of notice statements by solicitors to all solicitations rather than only on written solicitations and confirmations. The notice statement must also include the DACS website where registration information can be obtained. If the solicitation is done through a website, the notice statement must be conspicuously displayed on any webpage that identifies a mailing address where contributions are to be sent, identifies a telephone number to call to process contributions, or provides for online processing of contributions.

The bill also provides an alternate to the written response required when a person being solicited requests the percentage of the gross revenue that the charity will receive from the solicitation campaign or requests the percentage of the contribution which may be tax-deductible as a charitable contribution. The solicitor may immediately notify the person that the information is available on the DACS' website or by calling the Division of Consumer Services' toll-free number.

Present Situation – Collection Receptacles Used for Donations

Some charities utilize collection receptacles located in parking lots or along roads as a place for people to donate clothing and other goods. Recent reports indicate that for-profit businesses have begun using collection receptacles that look similar to those used by charities. The business uses the receptacles to collect clothes and sell them at a profit. [41] Current law does not regulate the use of collection receptacles either by charities or by for-profit businesses.[42]

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[39] Section 496.412(1)(c), F.S.

[40] *Id.* at (d)-(e).

[41] *See* Evan Williams, *Recycling companies co-opt the look of charity for profit*, FORT MYERS FLORIDA WEEKLY, Jan. 23, 2013, *available at* http://fortmyers.floridaweekly.com/news/2013-01-23/Top_News/Recycling_companies_coopt_the_look_of_ charity_for_.html (last visited Jan 30, 2014).

[42] In response to the rapid increase in the number of collection receptacles used by for-profit businesses, some Florida cities have enacted restrictions on their use. *See* Ariel Barkhurst, *Deerfield Beach passed a law allowing nonprofit clothing bins*, SUN SENTINEL, Feb. 22, 2013, *available at* http://articles.sun-sentinel.com/2013-02-22/news/fl-deerfield-donation-bins-20130218_1_donation-bins-salvation-army-commissioner-bill-ganz (last visited Jan. 30, 2014); Heather Carney, *Miramar cracks down on clothing donations bins*, SUN SENTINEL, Nov. 11, 2013, *available at* http://articles.sun-sentinel.com/2013-11-11/news/fl-miramar-regulates-clothing-donations-bins-20131110_1_for-profit-bins-reuse-clothes-donations (last visited Jan. 30, 2014).

Effect of Proposed Changes

Section 15 creates s. 496.4121, F.S., to regulate the use of collection receptacles. The bill defines a "collection receptacle" as a receptacle used to collect donated clothing, household items, or other goods for resale. The bill requires all collection receptacles to display a permanent sign on each side of the receptacle. The information on the sign must be printed in letters that are at least 3 inches in height and no less than one-half inch in width, in a color that contrasts with the color of the receptacle. For receptacles used by a charity required to register under ch. 496, F.S., the sign must provide the name, address, telephone number, and registration number of the charity. For receptacles placed by an organization not required to register under ch. 496, F.S., or not claiming an exemption pursuant to s. 496.406, F.S., the sign must include the name, telephone number, and address of the business and the statement: "This is not a charity. Donations made here support a for-profit business and are not tax deductible." The bill also requires a charity using a collection receptacle to provide a donor with documentation of its tax-exempt status and registration, if requested.

Present Situation – Prohibited Acts and Penalties

Currently, s. 496.415, F.S., contains a list of seventeen acts that are prohibited for any person when done in connection with any solicitation or charity sales promotion. Examples of prohibited acts include: violating any of the requirements in ch. 496, F.S.; knowingly submitting false, misleading, or inaccurate information in a document that is filed with the DACS, provided to the public, or offered in response to a request or investigation by the DACS, the Department of Legal Affairs, or the state attorney; and representing that a charity will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the DACS, or that a charity will receive an actual or estimated dollar amount or percentage of goods or services purchased or used in the charity sales promotion that is greater than that agreed to with a vendor.

Any violation of ch. 496, F.S., including engaging in any of the prohibited acts identified in s. 496.415, F.S., is a violation of the Florida Deceptive and Unfair Practices Act[43] and may also result in a civil action filed by the DACS.[44] Additionally, any willful and knowing violation of ch. 496, F.S., is a third-degree felony punishable by up to 5 years in prison and a fine of up to $5,000, and any subsequent conviction is a second-degree felony punishable by up to 15 years in prison and a fine of up to $10,000.[45]

Currently, under s. 496.419, F.S., after the DACS has investigated and found that a person or entity has violated ch. 496, F.S., it can enter an order imposing a range of administrative penalties, including imposing an administrative fine up to $1,000 for each act or omission. However, for 501(c)(3) organizations, the maximum penalty is limited to $500 per violation.

[43] Chapter 501, part II, F.S.; Section 496.416, F.S.
[44] Section 496.420, F.S.
[45] Section 496.417, F.S.

Effect of Proposed Changes

Section 16 amends s. 496.415, F.S., to prohibit a person from submitting false, misleading, or inaccurate information in a document that is filed with the DACS, provided to the public, or offered in response to a request or investigation by the DACS, the Department of Legal Affairs, or the state attorney regardless of whether the person knows he or she is submitting false, misleading, or inaccurate information. The bill also prohibits a person from failing to remit to a charity the disclosed guaranteed minimum percentage of gross receipts from contributions as indicated with its agreement with a charity, or, if the solicitation involved the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price as agreed to in the agreement.

Section 17 amends s. 496.419, F.S., to increase the fine the DACS may levy to $5,000 for each act or omission and makes this fine applicable to 501(c)(3) organizations. The bill limits the fine for 501(c)(3) organizations that fail to register under s. 496.405, F.S., or file an exemption under s. 496.406(2), F.S., to $500 per violation. The DACS may also levy a fine up to $10,000 for any violation of ch. 496, F.S., which involves fraud or deception.

Section 18 creates. s. 496.4191, F.S., to require the DACS to suspend immediately the registration or the processing of a registration of any organization if the DACS receives written notification and verification by law enforcement, a court, a state attorney, or the FDLE, that the registrant, applicant, or any officer or director of the registrant or applicant is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor. The suspension will remain in effect until final disposition of the case or removal or resignation of the officer or director.

Other Provisions

Section 3 of the bill amends s. 496.403, F.S., to remove blood establishments from the list of regulated charitable institutions.

Section 20 creates s. 496.431, F.S., to provide a severability clause for ch. 496, F.S.

Section 21 amends s. 741.0305, F.S., to correct a cross-reference due to the amendments to s. 496.404, F.S., in section 3 of the bill.

Section 22 appropriates $235,352 in recurring funds and $239,357 in nonrecurring funds from the DACS General Inspection Trust Fund, and four full-time equivalent positions with associated salary rate of 143,264, to the DACS to implement this act.

Section 23 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/SB 638 creates a $50 application fee for a professional solicitor license and a $10 fee to report material changes associated with changes to information submitted with the license application. The Department of Agriculture and Consumer Services (DACS) estimates that the $50 application and renewal fee for a professional solicitor license will result in an estimated recurring revenue increase of $125,000 annually.[46] The DACS did not estimate the revenue impact from the $10 fee.

The cost for a state and national criminal history record check is $40.50, which goes into the FDLE Operating Trust Fund. From that amount, $16.50 is transferred from the FDLE Operating Trust Fund to the FBI; the remaining $24 stays in the FDLE Operating Trust Fund for state processing. Based on the DACS estimate of 2,500 applications for professional solicitor licenses, the FDLE Operating Trust Fund will receive an additional $60,000 (net of payments to the FBI) in the first year of the program, and an indeterminate amount in subsequent years as new license applications are submitted. Additionally, the bill requires that all fingerprints be retained by the FDLE. The fee for state retention of fingerprints is $6 annually after the year of the original fingerprint processing.

The impact of losing sales tax exempt status by a charity is unknown at this time.

The bill, as amended by the Appropriations Committee, has not been evaluated by the Revenue Estimating Conference.

B. Private Sector Impact:

Charities may incur increased administrative and record keeping costs to comply with the provisions of the bill requiring the updated requirements for reporting, notice, registration, financial statement, auditing and review, and establishment a conflict of interest policy. Similarly, some charities that raise funds in response to a specific disaster or crisis will incur additional administrative costs associated with filing quarterly relief statements. Additionally, charities and for-profit entities may incur increased costs to comply with the signage requirement for collection receptacles.

[46] The DACS Analysis, proposed amendment to CS/SB 638, April 21, 2014, on file with the Appropriations Committee. The DACS estimates 2,500 licenses at $50 per license, but did not provide a breakdown of renewal applicants versus new applicants in outlying years.

Professional fundraising consultants may incur minimal administrative and record keeping costs to comply with the updated registration and reporting requirements.

Officers, directors, trustees, or owners of a professional solicitor and any employee of a solicitor conducting telephonic solicitations during which a donor's personal financial information is collected will have to annually apply and pay a $50 fee for a solicitor license. Additionally, solicitors are likely to incur increased administrative and record keeping costs to comply with the updated reporting and disclosure requirements, updated financial statement requirements, and updated notice statement requirements.

The fingerprinting cost for a new applicant for a professional solicitor license is $53.50 in total: $40.50 for the state and federal background check and $13 for lifetime federal fingerprint retention, after FDLE begins to participate in the Federal Bureau of Investigation's national retained print arrest notification program.[47]For annual renewal of a license, an applicant will pay the $6 state fingerprint retention fee.

Charities, consultants, and solicitors may also incur greater costs due to any fines levied by the DACS and any violations prosecuted by the Attorney General or the State Attorney.

C. Government Sector Impact:

Expenditures

The DACS anticipates the additional rules and licensing required by the bill will necessitate the hiring of one Regulatory Consultant and the development of new software for the Division of Consumer Services.[48] Similarly, the DACS anticipates the bill will result in an additional 500 cases that will be referred to the department's Office of Agriculture Law Enforcement (OALE) for regulatory investigation.[49] To meet the increased workload, OALE estimates it will require two additional Senior Financial Investigators as well as a vehicle for each investigator.[50] The DACS projects it will need $438,891 in additional funding in Fiscal Year 2014-2015 and $203,307 each year thereafter.

The Criminal Justice Impact Conference has not yet determined the impact of this bill on prison beds.

Revenues

The DACS expects annual revenues of an additional $112,000 due to the increase in the maximum administrative fine for violations of the Florida Deceptive and Unfair Practices

[47] The bill also requires fingerprints submitted by applicants for professional solicitor licenses to be enrolled in the Federal Bureau of Investigation's national retained print arrest notification program when FDLE begins participation in the program. The annual fee for fingerprint retention in this program will be $13. (Information provided by FDLE fiscal analyst Cynthia Barr, March 13, 2014.)
[48] *Id.*
[49] *Id.*
[50] *Id*.

Act from $1,000 to $5,000.[51] The DACS did not provide information related to revenue impacts for the $10,000 fine or for fines from increased criminal prosecutions of willful and knowing violations of the Florida Deceptive and Unfair Trade Practices Act. See Tax/Fee Issues.

According to the FDLE, it expects annual revenues in year 1 of $60,000 from the collection of the $24 fee for state criminal history record checks. The amount does not include the $6 state fingerprint retention fee because it is paid only by those seeking annual license renewals.

The impact of this bill on the Attorney General or state attorneys has not been determined; however, it may increase caseloads for these agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.08, 212.084, 496.403, 496.404, 496.405, 496.407, 496.409, 496.410, 496.411, 496.412, 496.415, 496.419, and 741.0305.

This bill creates the following sections of the Florida Statutes: 496.4055, 496.4071, 496.4072, 496.4101, 496.4121, 496.4191, 496.430, and 496.431.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The committee substitute:

- Provides that a professional solicitor conducting telephonic solicitations during which a donor's or potential donor's personal financial information is requested or provided must obtain a solicitor license.
- Describes "personal financial information" as including, but not limited to, social security numbers, credit card numbers, banking information, and credit reports.
- Reduces the annual fee for a solicitor license from $100 to $50.
- Clarifies the process by which fingerprints are submitted to FDLE for processing.

[51] *Id*. This amount was calculated by multiplying the number of administrative fines (28) levied in FY 2012-2013 by the $4,000 increase fines.

- Provides that solicitation disclosure must be provided on any webpage that identifies a mailing address where contributions are to be sent, identifies a telephone number to call to process contributions, or provides for online processing of contributions.
- Provides that a charity may lose its sales tax exemption if it violates s. 496.419(4), F.S., instead of on the basis of how much of its functional expenses were used for program costs.
- Reduces the nonrecurring and recurring appropriations to the DACS for the purpose of implementing the bill.

CS by Commerce and Tourism on February 10, 2014:
The committee substitute:

- Updates the definition of a professional solicitor regulated by ch. 496, F.S., to include professional solicitors located in Florida that solicit outside of Florida.
- Provides that only those charities that are required to register under s. 496.405, F.S., must enact a conflict of interest policy.
- Requires that audits and reviews of a charity's financial statement be prepared by an independent CPA.
- Clarifies that a charity must show good cause before DACS can grant an extension of time to file a financial statement.
- Authorizes DACS to require a charity to have its financial statement audited or reviewed.
- Replaces the words "ancestor" and "descendant" with "grandparent" and "grandchild."
- Requires DACS to provide a list of disasters and crises that are subject to the additional financial reporting requirement.
- Updates the fingerprinting requirements for professional solicitor licenses to:
  - Specify that the state cost for fingerprinting paid by the applicant is the statutory cost of $24.
  - Require FDLE to retain the fingerprints and enroll them in the FBI's national arrest notification program once FDLE begins participating in the program.
  - Require DACS to notify FDLE when a person loses his or her license.
  - Require DACS to screen background results to determine if an applicant meets licensure requirements.
- Clarifies that the signage requirement for collection receptacles operated by for-profit businesses does not apply to charities.
- Clarifies that a sales tax exemption certificate is issued by DOR.
- Adds a severability clause.
- Updates the amount appropriated to DACS to implement the bill.
- Makes technical corrections.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Brandes

577-01736A-14 2014638c1

A bill to be entitled

An act relating to charities; amending s. 212.08, F.S.; excluding charitable organizations or sponsors disqualified by the Department of Agriculture and Consumer Services from receiving certain tax exemptions; amending s. 212.084, F.S.; requiring the Department of Revenue to revoke or deny a sales tax exemption to charitable organizations or sponsors disqualified by the department; providing for a limited appeal of the denial or revocation of the sales tax exemption; amending s. 496.404, F.S.; defining terms; redefining the term "religious institution"; amending s. 496.405, F.S.; revising the timeframe within which a charitable organization or sponsor must report changes to certain information provided to the department on an initial or renewal registration statement; providing for the automatic expiration of a registration for failure to file a renewal or financial statement by a certain date; repealing a requirement that the renewal statement be filed subsequent to the financial statement; repealing authorization to extend the time to file a renewal statement; specifying the information that must be submitted by a parent organization on a consolidated financial statement; extending the time allowed for the department to review certain initial or renewal registration statements; providing that failure of a charitable organization or sponsor to make certain disclosures in a registration statement results in the

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Florida Senate - 2014 **CS for SB 638**

577-01736A-14 2014638c1

automatic suspension of an active registration for a specified period; prohibiting the officers, directors, trustees, or employees of a charitable organization or sponsor from allowing certain persons to solicit contributions on behalf of the charitable organization or sponsor; specifying that the prohibition against certain persons soliciting contributions on behalf of a charitable organization or sponsor due to the commission of certain felonies includes those felonies committed in any state as well as any misdemeanor in another state which constitutes a disqualifying felony in this state; authorizing the department to deny or revoke the registration of a charitable organization or sponsor under certain circumstances; requiring a charitable organization or sponsor that has ended solicitation activities in this state to notify the department in writing; making technical changes; creating s. 496.4055, F.S.; defining the term "conflict of interest transaction"; requiring the board of directors of a charitable organization or sponsor, or an authorized committee thereof, to adopt a policy regarding conflict of interest transactions; amending s. 496.407, F.S.; requiring that the financial statements of certain charitable organizations or sponsors be audited or reviewed; specifying requirements and standards for the audit or review of a financial statement; restricting the use of an existing alternative to the required annual financial statement to certain charities; authorizing

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the department to require an audit or review of any financial statement and to extend the time to file a financial statement under certain circumstances; providing that the registration of a charitable organization or sponsor be suspended upon its failure to file a financial statement within an extension period; making technical changes; creating s. 496.4071, F.S.; requiring certain charitable organizations or sponsors to report specified supplemental financial information to the department by a certain date; creating s. 496.4072, F.S.; requiring certain charitable organizations or sponsors who solicit contributions for a specific disaster relief effort to submit quarterly financial statements to the department; specifying information to be included in the quarterly financial statement and the length of the required reporting period; amending ss. 496.409 and 496.410, F.S.; prohibiting a professional fundraising consultant or professional solicitor from entering into a contract or agreement with a charitable organization or sponsor that has not complied with certain requirements; extending the time that the department may review initial or renewal registration statements of professional fundraising consultants or professional solicitors which contain certain disclosures; providing that the failure of a professional fundraising consultant or professional solicitor to make certain disclosures in an initial or renewal registration statement results in automatic

suspension of an active registration; prohibiting the officers, trustees, directors, or employees of a professional fundraising consultant or a professional solicitor from allowing certain persons to solicit contributions on behalf of the professional fundraising consultant or professional solicitor; specifying that the prohibition against acting as a professional solicitor or the employment of certain persons by a professional solicitor due to the commission of certain felonies includes those felonies committed in any state as well as any misdemeanor in another state which constitutes a disqualifying felony in this state; authorizing the department to deny or revoke the registration of a professional fundraising consultant or professional solicitor under certain circumstances; revising required information in the initial or renewal application of a professional solicitor; repealing a provision authorizing the payment of a single registration fee for certain professional solicitors; requiring a professional solicitor to provide additional specified information to the department in a solicitation notice; creating s. 496.4101, F.S.; requiring each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor that conducts telephone solicitations to obtain a solicitor license from the department; specifying application information and the application procedure for a solicitor license; requiring each applicant for a

solicitor license to submit a complete set of his or her fingerprints and a fee for fingerprint processing and retention to the department; requiring the department to submit the applicant's fingerprints to the Department of Law Enforcement for a criminal history background check; providing for retention of the fingerprints; requiring the department to notify the Department of Law Enforcement of individuals who are no longer licensed; requiring that a solicitor license be renewed annually or expire automatically upon nonrenewal; requiring that an applicant for a solicitor license pay certain licensing fees; providing that licensing fees be deposited into the General Inspection Trust Fund; requiring that an applicant for a solicitor license report changes in information submitted to the department in a specified manner along with a processing fee; specifying violations; requiring the department to adopt rules allowing certain persons to engage in solicitation activities without a solicitor license for a specified period; authorizing the department to deny or revoke a solicitor license under specified circumstances; amending ss. 496.411 and 496.412, F.S.; expanding and revising required solicitation disclosures of charitable organizations, sponsors, and professional solicitors; requiring that certain exempt charitable organizations or sponsors also provide such solicitation disclosures; requiring that such solicitation disclosures be placed online under

certain circumstances; creating s. 496.4121, F.S.; defining the term "collection receptacle"; requiring that collection receptacles display permanent signs or labels; specifying requirements for the physical appearance of such labels or signs and information displayed thereon; requiring that a charitable organization or sponsor using a collection receptacle provide certain information to a donor upon request; amending s. 496.415, F.S.; providing that the submission of false, misleading, or inaccurate information in a document connected with a solicitation or sales promotion is unlawful; providing that the failure to remit specified funds to a charitable organization or sponsor is unlawful; amending s. 496.419, F.S.; increasing administrative fines for violations of the Solicitation of Contributions Act; creating s. 496.4191, F.S.; requiring the department to immediately suspend a registration or processing of an application for registration for a specified period if the registrant, applicant, or any officer or director thereof is criminally charged with certain offenses; creating s. 496.430, F.S.; authorizing the department to disqualify a charitable organization or sponsor from receiving a sales tax exemption under specified circumstances; providing that a charitable organization or sponsor may appeal a disqualification order; specifying appeal procedure; providing exceptions; providing that a disqualification order

remains effective for a specified period; specifying the procedure to lift a disqualification order; requiring the department to provide a final disqualification order to the Department of Revenue within a specified period; providing that a final disqualification order is conclusive as to a charitable organization or sponsor's right to a sales tax exemption; requiring the Department of Revenue to revoke or deny a sales tax exemption to a charitable organization or sponsor subject to a final disqualification order within a specified period; providing for a limited appeal of the revocation or denial of the sales tax exemption; providing applicability; amending s. 741.0305, F.S.; conforming a cross-reference; creating s. 496.431, F.s.; providing for severability; making an appropriation; providing an effective date.

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

Section 1. Paragraph (p) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any

entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(p) *Section 501(c)(3) organizations.*—Also exempt from the tax imposed by this chapter are sales or leases to organizations determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, if ~~when~~ such leases or purchases are used in carrying on their customary nonprofit activities, unless such organizations are subject to a final disqualification order issued by the Department of Agriculture and Consumer Services pursuant to s. 496.430.

Section 2. Subsection (3) of section 212.084, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

212.084 Review of exemption certificates; reissuance; specified expiration date; temporary exemption certificates.—

(3) After review is completed and it has been determined that an institution, organization, or individual is actively engaged in a bona fide exempt endeavor and is not subject to a final disqualification order issued by the Department of Agriculture and Consumer Services pursuant to s. 496.430, the department shall reissue an exemption certificate to the entity. However, each certificate so reissued is valid for 5 consecutive years, at which time the review and reissuance procedure provided by this section apply again. If the department determines that an entity no longer qualifies for an exemption, it shall revoke the tax exemption certificate of the entity.

(7) The department shall revoke or refuse to grant a sales tax exemption certificate to an institution, organization, or individual that is the subject of a final disqualification order issued by the Department of Agriculture and Consumer Services pursuant to s. 496.430. A revocation or denial under this subsection is subject to challenge under chapter 120 only as to whether a disqualification order is in effect. The institution, organization, or individual must appeal or challenge the validity of the disqualification order pursuant to s. 496.430(2).

Section 3. Section 496.404, Florida Statutes, is amended to read:

496.404 Definitions.—As used in ss. 496.401-496.424, the term:

(1) "Charitable organization" means a ~~any~~ person who is or holds herself or himself out to be established for any

benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or a ~~any~~ person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation. The term ~~It~~ includes a chapter, branch, area office, or similar affiliate soliciting contributions within the state for a charitable organization that ~~which~~ has its principal place of business outside the state.

(2) "Charitable purpose" means any benevolent, philanthropic, patriotic, educational, humane, scientific, artistic, public health, social welfare or advocacy, environmental conservation, civic, or other eleemosynary objective.

(3) "Charitable sales promotion" means an advertising or sales campaign conducted by a commercial co-venturer which represents that the purchase or use of goods or services offered by the commercial co-venturer ~~are to~~ benefit a charitable organization. The provision of advertising services to a charitable organization does not, in itself, constitute a charitable sales promotion.

(4) "Commercial co-venturer" means a ~~any~~ person who, for profit, regularly and primarily is engaged in trade or commerce other than in connection with solicitation of contributions and who conducts a charitable sales promotion or a sponsor sales promotion.

(5) "Contribution" means the promise, pledge, or grant of any money or property, financial assistance, or any other thing

of value in response to a solicitation. The term ~~"Contribution"~~ includes, in the case of a charitable organization or sponsor offering goods and services to the public, the difference between the direct cost of the goods and services to the charitable organization or sponsor and the price at which the charitable organization or sponsor or any person acting on behalf of the charitable organization or sponsor resells those goods or services to the public. The term ~~"Contribution"~~ does not include bona fide fees, dues, or assessments paid by members, if ~~provided that~~ membership is not conferred solely as consideration for making a contribution in response to a solicitation; ~~.~~ ~~"Contribution" also does not include~~ funds obtained by a charitable organization or sponsor pursuant to government grants or contracts; funds~~, or~~ obtained as an allocation from a United Way organization that is duly registered with the department; or funds received from an organization that is exempt from federal income taxation under s. 501(a) of the Internal Revenue Code and described in s. 501(c) of the Internal Revenue Code which ~~that~~ is duly registered with the department.

(6) "Crisis" means an event that garners widespread national or global media coverage due to an actual or perceived threat of harm to an individual, a group, or a community.

(7)~~(6)~~ "Department" means the Department of Agriculture and Consumer Services.

(8) "Disaster" means a natural, technological, or civil event, including, but not limited to, an explosion, chemical spill, earthquake, tsunami, landslide, volcanic activity, avalanche, wildfire, tornado, hurricane, drought, or flood,

which affects one or more countries and causes damage of sufficient severity and magnitude to result in:

(a) An official declaration of a state of emergency; or

(b) An official request for international assistance.

(9)~~(7)~~ "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

(10)~~(8)~~ "Educational institutions" means those institutions and organizations described in s. 212.08(7)(cc)8.a. The term includes private nonprofit organizations, the purpose of which is to raise funds for schools teaching grades kindergarten through grade 12, colleges, and universities, including any nonprofit newspaper of free or paid circulation primarily on university or college campuses which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, any educational television network or system established pursuant to s. 1001.25 or s. 1001.26, and any nonprofit television or radio station that is a part of such network or system and that holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. The term also includes a nonprofit educational cable consortium that holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, whose primary purpose is the delivery of educational and instructional cable television programming and whose members are composed exclusively of educational organizations that hold a valid consumer certificate of exemption and that are either an educational institution as defined in this subsection or qualified as a nonprofit organization pursuant to s. 501(c)(3) of the Internal Revenue Code.

(11)~~(9)~~ "Emergency service employee" means an ~~any~~ employee who is a firefighter, as defined in s. 633.102, or ambulance driver, emergency medical technician, or paramedic, as defined in s. 401.23.

(12)~~(10)~~ "Federated fundraising organization" means a federation of independent charitable organizations that ~~which~~ have voluntarily joined together, including, but not limited to, a united way or community chest, for purposes of raising and distributing contributions for and among themselves and where membership does not confer operating authority and control of the individual organization upon the federated group organization.

(13)~~(11)~~ "Fundraising costs" means those costs incurred in inducing others to make contributions to a charitable organization or sponsor for which the contributors will receive no direct economic benefit. Fundraising costs include, but are not limited to, salaries, rent, acquiring and obtaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions.

(14)~~(12)~~ "Law enforcement officer" means a ~~any~~ person who is elected, appointed, or employed by any municipality or the state or any political subdivision thereof and:

(a) Who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the criminal, traffic, or highway laws of the state; or

(b) Whose responsibility includes supervision, protection, care, custody, or control of inmates within a correctional

institution.

(15) "Management and general costs" means all such costs of a charitable organization or sponsor which are not identifiable with a single program or fundraising activity but which are indispensable to the conduct of such programs and activities and the charitable organization's or sponsor's existence. The term includes, but is not limited to, expenses for:

(a) The overall direction of the organization.

(b) Business management.

(c) General recordkeeping.

(d) Budgeting.

(e) Financial reporting and related expenses.

(f) Salaries.

(g) Rent.

(h) Supplies.

(i) Equipment.

(j) General overhead.

(16)~~(13)~~ "Membership" means the relationship of a person to an organization which ~~that~~ entitles her or him to the privileges, professional standing, honors, or other direct benefit of the organization in addition to the right to vote, elect officers, and hold office in the organization.

(17)~~(14)~~ "Owner" means a ~~any~~ person who has a direct or indirect interest in any professional fundraising consultant or professional solicitor.

(18)~~(15)~~ "Parent organization" means that part of a charitable organization or sponsor which coordinates, supervises, or exercises control over policy, fundraising, and expenditures or assists or advises one or more of the

organization's chapters, branches, or affiliates in this state.

(19)~~(16)~~ "Person" means an ~~any~~ individual, organization, trust, foundation, group, association, entity, partnership, corporation, society, or any combination thereof ~~of them~~.

(20)~~(17)~~ "Professional fundraising consultant" means a ~~any~~ person who is retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, carry on, advise, consult, or prepare material for a solicitation of contributions in this state, but who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions and who does not at any time have custody or control of contributions. A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor maintaining a permanent establishment in this state is not a professional fundraising consultant. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a professional fundraising consultant as the result of such advice.

(21)~~(18)~~ "Professional solicitor" means a ~~any~~ person who, for compensation, performs for a charitable organization or sponsor any service in connection with which contributions are or will be solicited in, or from a location in, this state by the compensated person or by any person it employs, procures, or otherwise engages, directly or indirectly, to solicit contributions, or a person who plans, conducts, manages, carries on, advises, consults, ~~whether~~ directly or indirectly, in connection with the solicitation of contributions for or on behalf of a charitable organization or sponsor, but who does not

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qualify as a professional fundraising consultant. A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor maintaining a permanent establishment in this state is not a professional solicitor. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a professional solicitor as the result of such advice.

(22) "Program service costs" means all expenses incurred primarily to accomplish the charitable organization or sponsor's stated purposes. The term does not include fundraising costs.

(23)~~(19)~~ "Religious institution" means any church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and includes those bona fide religious groups which do not maintain specific places of worship. The term ~~"Religious institution"~~ also includes any separate group or corporation that ~~which~~ forms an integral part of a religious institution that ~~which~~ is exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, that is or qualifies as being exempt from filing an annual tax return under the provisions of 26 U.S.C. s. 6033, and that ~~which~~ is not primarily supported by funds solicited outside its own membership or congregation.

(24)~~(20)~~ "Solicitation" means a request, directly or indirectly, for money, property, financial assistance, or any other thing of value on the plea or representation that such money, property, financial assistance, or other thing of value

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or a portion of it will be used for a charitable or sponsor purpose or will benefit a charitable organization or sponsor. The term ~~"Solicitation"~~ includes, but is not limited to, the following methods of requesting or securing the promise, pledge, or grant of money, property, financial assistance, or any other thing of value:

(a) Making any oral or written request;

(b) Making any announcement to the press, on radio or television, by telephone or telegraph, or by any other communication device concerning an appeal or campaign by or for any charitable organization or sponsor or for any charitable or sponsor purpose;

(c) Distributing, circulating, posting, or publishing any handbill, written advertisement, or other publication that directly or by implication seeks to obtain any contribution; or

(d) Selling or offering or attempting to sell any advertisement, advertising space, book, card, coupon, chance, device, magazine, membership, merchandise, subscription, sponsorship, flower, admission, ticket, food, or other service or tangible good, item, or thing of value, or any right of any description in connection with which any appeal is made for any charitable organization or sponsor or charitable or sponsor purpose, or when the name of any charitable organization or sponsor is used or referred to in any such appeal as an inducement or reason for making the sale or when, in connection with the sale or offer or attempt to sell, any statement is made that all or part of the proceeds from the sale will be used for any charitable or sponsor purpose or will benefit any charitable organization or sponsor.

A solicitation is considered as having taken place whether or not the person making the solicitation receives any contribution. A solicitation does not occur when a person applies for a grant or an award to the government or to an organization that is exempt from federal income taxation under s. 501(a) of the Internal Revenue Code and described in s. 501(c) of the Internal Revenue Code and is duly registered with the department.

(25)~~(21)~~ "Sponsor" means a group or person that ~~which~~ is or holds itself out to be soliciting contributions by the use of any name that ~~which~~ implies that the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and the group or person ~~which~~ is not a charitable organization. The term includes a chapter, branch, or affiliate that ~~which~~ has its principal place of business outside the state, if such chapter, branch, or affiliate solicits or holds itself out to be soliciting contributions in this state.

(26)~~(22)~~ "Sponsor purpose" means any program or endeavor performed to benefit emergency service employees or law enforcement officers.

(27)~~(23)~~ "Sponsor sales promotion" means an advertising or sales campaign conducted by a commercial co-venturer who represents that the purchase or use of goods or services offered by the commercial co-venturer will be used for a sponsor purpose or donated to a sponsor. The provision of advertising services to a sponsor does not, in itself, constitute a sponsor sales promotion.

Section 4. Subsection (1), paragraphs (a) and (g) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsections (7) and (8) of section 496.405, Florida Statutes, are amended, and subsections (9) and (10) are added to that section, to read:

496.405 Registration statements by charitable organizations and sponsors.—

(1) ~~(a)~~ A charitable organization or sponsor, unless exempted pursuant to s. 496.406, which intends to solicit contributions in this state by any means or have funds solicited on its behalf by any other person, charitable organization, sponsor, commercial co-venturer, or professional solicitor, or that participates in a charitable sales promotion or sponsor sales promotion, must, before ~~prior to~~ engaging in any of these activities, file an initial registration statement, and a renewal statement annually thereafter, with the department.

(a) ~~(b)~~ Except as provided in paragraph (b), any changes in the information submitted on the initial registration statement or the last renewal statement must be updated annually on a renewal statement provided by the department on or before the date that marks 1 year after the date the department approved the initial registration statement as provided in this section. The department shall annually provide a renewal statement to each registrant by mail or by electronic mail at least 30 days before the renewal date.

(b) Any changes to the information submitted to the department pursuant to paragraph (2)(d) on the initial registration statement or the last renewal statement must be reported to the department on a form prescribed by the

department within 10 days after the change occurs.

(c) A charitable organization or sponsor that is required to file an initial registration statement or annual renewal statement may not, before ~~prior to~~ approval of its statement by the department in accordance with subsection (7), solicit contributions or have contributions solicited on its behalf by any other person, charitable organization, sponsor, commercial co-venturer, or professional solicitor, or participate in a charitable sales promotion or sponsor sales promotion.

~~(d) For good cause shown, the department may extend the time for the filing of an annual renewal statement or financial report for a period not to exceed 60 days, during which time the previous registration remains in effect.~~

(d) ~~(c)~~ ~~In no event shall~~ The registration of a charitable organization or sponsor may not continue in effect and shall expire without further action of the department:

1. After the date the charitable organization or sponsor should have filed, but failed to file, its renewal statement ~~financial report~~ in accordance with this section.

2. For failure to provide a financial statement within any extension period provided under ~~and~~ s. 496.407. ~~The organization may not file a renewal statement until it has filed the required financial report with the department.~~

(2) The initial registration statement must be submitted on a form prescribed by the department, signed by an authorized official of the charitable organization or sponsor who shall certify that the registration statement is true and correct, and include the following information or material:

(a) A copy of the financial statement ~~report~~ or Internal

Revenue Service Form 990 and all attached schedules or Internal Revenue Service Form 990-EZ and Schedule O required under s. 496.407 for the immediately preceding fiscal year. A newly organized charitable organization or sponsor with no financial history must file a budget for the current fiscal year.

(g) The following information must be filed with the initial registration statement and must be updated when any change occurs in the information that was previously filed with the initial registration statement:

1. The principal street address and telephone number of the charitable organization or sponsor and the street address and telephone numbers of any offices in this state or, if the charitable organization or sponsor does not maintain an office in this state, the name, street address, and telephone number of the person who ~~that~~ has custody of its financial records. The parent organization that files a consolidated registration statement on behalf of its chapters, branches, or affiliates must additionally provide the street addresses and telephone numbers of all such locations in this state.

2. The names and street addresses of the officers, directors, trustees, and the principal salaried executive personnel.

3. The date when the charitable organization's or sponsor's fiscal year ends.

4. A list or description of the major program activities.

5. The names, street addresses, and telephone numbers of the individuals or officers who have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions.

(3) Each chapter, branch, or affiliate of a parent organization that is required to register under this section must ~~either~~ file a separate registration statement and financial statement ~~report~~ or ~~must~~ report the required information to its parent organization, which shall then file, on a form prescribed by the department, a consolidated registration statement for the parent organization and its Florida chapters, branches, and affiliates. A consolidated registration statement filed by a parent organization must include or be accompanied by financial statements ~~reports~~ as specified in s. 496.407 for the parent organization and each of its Florida chapters, branches, and affiliates that solicited or received contributions during the preceding fiscal year. However, if all contributions received by chapters, branches, or affiliates are remitted directly into a depository account that ~~which~~ feeds directly into the parent organization's centralized accounting system from which all disbursements are made, the parent organization may submit one consolidated financial statement ~~report~~ on a form prescribed by the department. The consolidated financial statement must reflect the activities of each chapter, branch, or affiliate of the parent organization, including all contributions received in the name of each chapter, branch, or affiliate; all payments made to each chapter, branch, or affiliate; and all administrative fees assessed to each chapter, branch, or affiliate.

(4)

(b) A charitable organization or sponsor that ~~which~~ fails to file a registration statement by the due date may be assessed an additional fee for such late filing. The late filing fee is

~~shall be~~ $25 for each month or part of a month after the date on which the annual renewal statement was ~~and financial report were~~ due to be filed with the department.

(7)(a) The department must examine each initial registration statement or annual renewal statement and the supporting documents filed by a charitable organization or sponsor and shall determine whether the registration requirements are satisfied. Within 15 business ~~working~~ days after its receipt of a statement, the department must examine the statement, notify the applicant of any apparent errors or omissions, and request any additional information the department is allowed by law to require. Failure to correct an error or omission or to supply additional information is not grounds for denial of the initial registration or annual renewal statement unless the department has notified the applicant within such period of 15 business days ~~the 15-working-day period~~. The department must approve or deny each statement, or must notify the applicant that the activity for which she or he seeks registration is exempt from the registration requirement, within 15 business ~~working~~ days after receipt of the initial registration or annual renewal statement or the requested additional information or correction of errors or omissions. Any statement that is not approved or denied within 15 business ~~working~~ days after receipt of the requested additional information or correction of errors or omissions is approved. Within 7 business ~~working~~ days after receipt of a notification that the registration requirements are not satisfied, the charitable organization or sponsor may request a hearing. The hearing must be held within 7 business ~~working~~ days after

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receipt of the request, and any recommended order, if one is issued, must be rendered within 3 business ~~working~~ days of the hearing. The final order must then be issued within 2 business ~~working~~ days after the recommended order. If a recommended order is not issued, the final order must be issued within 5 business ~~working~~ days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions set forth in this subsection prevail to the extent of any conflict.

(b) If a charitable organization or sponsor discloses information specified in subparagraphs (2)(d)2.-7. in the initial registration statement or annual renewal statement, the time limits of this subsection are waived, and the department shall process such initial registration statement or annual renewal statement in accordance with the time limits in chapter 120. The registration of a charitable organization or sponsor shall be automatically suspended for failure to disclose any information specified in subparagraphs (2)(d)2.-7. until such time as the required information is submitted to the department.

(8) A ~~No~~ charitable organization or sponsor, or any officer, director, trustee, or employee thereof, may not ~~shall~~ knowingly allow any officer, director, trustee, or employee of the charitable organization or sponsor ~~of its officers, directors, trustees, or employees~~ to solicit contributions on behalf of such charitable organization or sponsor if such officer, director, trustee, or employee has, in any state, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having

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previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony within the last 10 years or any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined, in any state, from violating any law relating to a charitable solicitation. The prohibitions in this subsection also apply to any misdemeanor in another state which constitutes a disqualifying felony in this state.

(9) The department may deny or revoke the registration of a charitable organization or sponsor if the charitable organization or sponsor, or any officer, director, or trustee thereof, has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, or has been ordered by any court or governmental agency to cease soliciting contributions within any state.

(10) A charitable organization or sponsor registered under this section which ends solicitation activities or participation in charitable sales promotions in this state shall immediately notify the department in writing of the date such activities ceased.

Section 5. Section 496.4055, Florida Statutes, is created to read:

496.4055 Charitable organization or sponsor board duties.—

(1) As used in this section, the term "conflict of interest transaction" means a transaction between a charitable organization or sponsor and another party in which a director,

officer, or trustee of the charitable organization or sponsor has a direct or indirect interest. The term includes, but is not limited to, the sale, lease, or exchange of property to or from the charitable organization or sponsor; the lending of moneys to or borrowing of moneys from the charitable organization or sponsor; and the payment of compensation for services provided to or from the charitable organization or sponsor.

(2) The board of directors, or an authorized committee thereof, of a charitable organization or sponsor required to register with the department under s. 496.405 shall adopt a policy regarding conflict of interest transactions.

Section 6. Section 496.407, Florida Statutes, is amended to read:

496.407 Financial statement ~~report~~.—

(1) A charitable organization or sponsor that is required to initially register or annually renew registration must file an annual financial statement ~~report~~ for the immediately preceding fiscal year on ~~upon~~ a form prescribed by the department.

(a) The statement ~~report~~ must include the following:

1.~~(a)~~ A balance sheet.

2.~~(b)~~ A statement of support, revenue and expenses, and any change in the fund balance.

3.~~(c)~~ The names and addresses of the charitable organizations or sponsors, professional fundraising consultant, professional solicitors, and commercial co-venturers used, if any, and the amounts received from each of them, if any.

4.~~(d)~~ A statement of functional expenses that must include, but not be limited to, expenses in the following categories:

a.~~1.~~ Program service costs.

b.~~2.~~ Management and general costs.

c.~~3.~~ Fundraising costs.

(b) The financial statement must be audited or reviewed as follows:

1. For a charitable organization or sponsor that receives less than $500,000 in annual contributions, a compilation, audit, or review of the financial statement is optional.

2. For a charitable organization or sponsor that receives at least $500,000 but less than $1 million in annual contributions, the financial statement shall be reviewed or audited by an independent certified public accountant.

3. For a charitable organization or sponsor that receives $1 million or more in annual contributions, the financial statement shall be audited by an independent certified public accountant.

(c) Audits and reviews shall be prepared in accordance with the following standards:

1. Audits shall be prepared by an independent certified public account in accordance with generally accepted auditing standards, including the Statements on Auditing Standards.

2. Reviews shall be prepared by an independent certified public accountant in accordance with the Statements on Standards for Accounting and Review Services.

(d) Audited and reviewed financial statements must be accompanied by a report signed and prepared by the independent certified public accountant performing such audit or review.

(2) In lieu of the financial statement ~~report~~ described in subsection (1), a charitable organization or sponsor that

receives less than $500,000 in annual contributions may submit a copy of its Internal Revenue Service Form 990 and all attached schedules filed for the preceding fiscal year, or a copy of its Internal Revenue Service Form 990-EZ and Schedule O filed for the preceding fiscal year.

(3) Upon a showing of good cause by a charitable organization or sponsor, the department may extend the time for the filing of a financial statement required under this section by up to 180 days, during which time the previous registration shall remain active. The registration shall be automatically suspended for failure to file the financial statement within the extension period.

(4) The department may require that an audit or review be conducted for any financial statement submitted by any charitable organization or sponsor. ~~A charitable organization or sponsor may elect to also include a financial report that has been audited by an independent certified public accountant or an audit with opinion by an independent certified public accountant. In the event that a charitable organization or sponsor elects to file an audited financial report, this optional filing must be noted in the department's annual report submitted pursuant to s. 496.423.~~

Section 7. Section 496.4071, Florida Statutes, is created to read:

496.4071 Supplemental financial disclosure.—

(1) If, for the immediately preceding fiscal year, a charitable organization or sponsor had more than $1 million in total revenue and spent less than 25 percent of the organization's total annual functional expenses on program

service costs, in addition to any financial statement required under s. 496.407, the charitable organization or sponsor shall file the following supplemental financial information on a form prescribed by the department:

(a) The dollar amount and the percentage of total revenue and charitable contributions allocated to funding each of the following administrative functions:

1. Total salaries of all persons employed by the charitable organization or sponsor.

2. Fundraising.

3. Travel expenses.

4. Overhead and other expenses related to managing and administering the charitable organization or sponsor.

(b) The name of and specific sum earned by or paid to all employees or consultants who earned or were paid more than $100,000 during the immediately preceding fiscal year.

(c) The name of and specific sum paid to all service providers who were paid $100,000 or more during the immediately preceding fiscal year and a brief description of the services provided.

(d) The dollar amount and percentage of total revenue and charitable contributions allocated to programs.

(e) The details of any economic or business transactions between the charitable organization or sponsor and an officer, trustee, or director of the charitable organization or sponsor; the immediate family of an officer, trustee, or director of the charitable organization or sponsor; any entity controlled by an officer, trustee, or director of the charitable organization or sponsor; any entity controlled by the immediate family of an

officer, trustee, or director of the charitable organization or sponsor; any entity that employed or engaged for consultation an officer, trustee, or director of the charitable organization or sponsor; and any entity that employed or engaged for consultation the immediate family of an officer, trustee, or director of the charitable organization or sponsor. As used in this paragraph, the term "immediate family" means a parent, spouse, child, sibling, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.

(2) The supplemental financial information required under subsection (1) must be filed with the department by the charitable organization or sponsor within 30 days after receiving a request for such information from the department.

Section 8. Section 496.4072, Florida Statutes, is created to read:

496.4072 Financial statements for specific disaster relief solicitations.—

(1) A charitable organization or sponsor that solicits contributions in this state for a charitable purpose related to a specific disaster or crisis and receives at least $100,000 in contributions in response to such solicitation shall file quarterly disaster relief financial statements with the department on a form prescribed by the department. The quarterly statements must detail the contributions secured as a result of the solicitation and the manner in which such contributions were expended. The department shall post notice on its website of the disasters and crises subject to the additional reporting requirements in this section within ten days of the disaster or

crisis.

(2) The first quarterly statement shall be filed on the last day of the third month following the accrual of at least $100,000 in contributions after the commencement of solicitations for the specific disaster or crisis. The charitable organization or sponsor shall continue to file quarterly statements with the department until the quarter after all contributions raised in response to the solicitation are expended.

Section 9. Subsections (4), (6), and (9) of section 496.409, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

496.409 Registration and duties of professional fundraising consultant.—

(4) A professional fundraising consultant may enter into a contract or agreement with a charitable organization or sponsor only if the charitable organization or sponsor has complied with all applicable provisions of this chapter. A ~~Every~~ contract or agreement between a professional fundraising consultant and a charitable organization or sponsor must be in writing, signed by two authorized officials of the charitable organization or sponsor, and filed by the professional fundraising consultant with the department at least 5 days before ~~prior to~~ the performance of any material service by the professional fundraising consultant. Solicitation under the contract or agreement may not begin before the filing of the contract or agreement.

(6)(a) The department shall examine each registration statement and all supporting documents filed by a professional

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fundraising consultant and determine whether the registration requirements are satisfied. If the department determines that the registration requirements are not satisfied, the department must notify the professional fundraising consultant within 15 business ~~working~~ days after its receipt of the registration statement; otherwise the registration statement is approved. Within 7 business ~~working~~ days after receipt of a notification that the registration requirements are not satisfied, the applicant may request a hearing. The hearing must be held within 7 business ~~working~~ days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 business ~~working~~ days after the hearing. The final order must then be issued within 2 business ~~working~~ days after the recommended order. If there is no recommended order, the final order must be issued within 5 business ~~working~~ days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions ~~set forth~~ in this subsection prevail to the extent of any conflict.

(b) If a professional fundraising consultant discloses information specified in paragraphs (2)(e)-(g) in the initial application for registration or renewal application, the processing time limits of this subsection are waived and the department shall process the initial application for registration or the renewal application in accordance with the time limits in chapter 120. The registration of a professional consultant shall be automatically suspended for failure to disclose any information specified in paragraphs (2)(e)-(g) until such time as the required information is submitted to the department.

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(9) A ~~No~~ person may not act as a professional fundraising consultant, and a ~~no~~ professional fundraising consultant, or any officer, director, trustee, or employee thereof, may not ~~shall~~ knowingly employ any officer, trustee, director, or employee, if such person has, in any state, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined in any state from violating any law relating to a charitable solicitation.

(10) The department may deny or revoke the registration of a professional fundraising consultant if the professional fundraising consultant, or any of its officers, directors, or trustees, has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, or has been ordered by any court or governmental agency to cease soliciting contributions within any state.

Section 10. Present subsections (3), (5), (7), (14), and (15) of section 496.410, Florida Statutes, are amended, paragraphs (j), (k), and (l) are added to subsection (2) of that section, paragraphs (i) through (n) are added to subsection (6) of that section, and a new subsection (15) is added to that section, to read:

496.410 Registration and duties of professional solicitors.—

(2) Applications for registration or renewal of registration must be submitted on a form prescribed by rule of the department, signed by an authorized official of the professional solicitor who shall certify that the report is true and correct, and must include the following information:

(j) A list of all telephone numbers the applicant will use to solicit contributions as well as the actual physical address associated with each telephone number and any fictitious names associated with such address.

(k) A copy of any script, outline, or presentation used by the applicant to solicit contributions or, if such solicitation aids are not used, written confirmation thereof.

(l) A copy of sales information or literature provided to a donor or potential donor by the applicant in connection with a solicitation.

(3) The application for registration must be accompanied by a fee of $300. ~~A professional solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents, and employees. In that case,~~ The names and street addresses of all the officers, employees, and agents of the professional solicitor and all other persons with whom the professional solicitor has contracted to work under its direction, including solicitors, must be listed in the application or furnished to the department within 5 days after the date of employment or contractual arrangement. Each registration is valid for 1 year and~~. The registration~~ may be renewed for an additional 1-year

period upon application to the department and payment of the registration fee.

(5)(a) The department must examine each registration statement and supporting documents filed by a professional solicitor. If the department determines that the registration requirements are not satisfied, the department must notify the professional solicitor within 15 business ~~working~~ days after its receipt of the registration statement; otherwise the registration statement is approved. Within 7 business ~~working~~ days after receipt of a notification that the registration requirements are not satisfied, the applicant may request a hearing. The hearing must be held within 7 business ~~working~~ days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 business ~~working~~ days after the hearing. The final order must then be issued within 2 business ~~working~~ days after the recommended order. If there is no recommended order, the final order must be issued within 5 business ~~working~~ days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions ~~set forth~~ in this subsection prevail to the extent of any conflict.

(b) If a professional solicitor makes a disclosure specified in paragraphs (2)(f)-(h) in the initial application for registration or the renewal application, the processing time limits of this subsection are waived and the department shall process the initial application for registration or renewal application in accordance with the time limits in chapter 120. The registration of a professional solicitor shall be automatically suspended for failure to disclose any information

specified in paragraphs (2)(f)-(h) until such time as the required information is submitted to the department.

(6) No less than 15 days before commencing any solicitation campaign or event, the professional solicitor must file with the department a solicitation notice on a form prescribed by the department. The notice must be signed and sworn to by the contracting officer of the professional solicitor and must include:

(i) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization or sponsor, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charitable organization or sponsor, if any.

(j) The percentage of a contribution which may be deducted as a charitable contribution under federal income tax laws.

(k) A statement as to whether any owner, director, officer, trustee, or employee of the professional solicitor is related as a parent, spouse, child, sibling, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law to:

1. Another officer, director, owner, trustee, or employee of the professional solicitor.

2. Any officer, director, owner, trustee, or employee of a charitable organization or sponsor under contract to the professional solicitor.

3. Any supplier or vendor providing goods or services to a charitable organization or sponsor under contract to the

professional solicitor.

(l) The beginning and ending dates of the solicitation campaign.

(m) A copy of any script, outline, or presentation used by the professional solicitor to solicit contributions for the solicitation campaign. If such aids are not used, written confirmation thereof.

(n) A copy of sales information or literature provided to a donor or potential donor by the professional solicitor in connection with the solicitation campaign.

(7) A professional solicitor may enter into a contract or agreement with a charitable organization or sponsor only if the charitable organization or sponsor has complied with all applicable provisions of this chapter. A ~~Each~~ contract or agreement between a professional solicitor and a charitable organization or sponsor for each solicitation campaign must be in writing, signed by two authorized officials of the charitable organization or sponsor, one of whom must be a member of the organization's governing body and one of whom must be the authorized contracting officer for the professional solicitor, and contain all of the following provisions:

(a) A statement of the charitable or sponsor purpose and program for which the solicitation campaign is being conducted.

(b) A statement of the respective obligations of the professional solicitor and the charitable organization or sponsor.

(c) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization or sponsor, if any, or, if the

solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charitable organization or sponsor, if any. Any stated percentage shall exclude any amount which the charitable organization or sponsor is to pay as fundraising costs.

(d) A statement of the percentage of the gross revenue which the professional solicitor will be compensated. If the compensation of the professional solicitor is not contingent upon the number of contributions or the amount of revenue received, his or her compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract must clearly disclose the assumptions upon which the estimate is based. The stated assumptions must be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor.

(e) The effective and termination dates of the contract.

(14) A ~~No~~ person may not act as a professional solicitor, and a ~~no~~ professional solicitor, or any officer, director, trustee, or employee thereof, may not ~~shall~~, to solicit for compensation, knowingly employ any officer, trustee, director, employee, or any person with a controlling interest therein, who has, in any state, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a felony within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent

conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined in any state from violating any law relating to a charitable solicitation. The prohibitions in this subsection also apply to any misdemeanor in another state which constitutes a disqualifying felony in this state.

(15) The department may deny or revoke the registration of a professional solicitor if the professional solicitor, or any of its officers, directors, trustees, or agents, has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, or has been ordered by any court or governmental agency to cease soliciting contributions within any state.

(16)~~(15)~~ All registration fees must be paid to the department and deposited into the General Inspection Trust Fund.

Section 11. Section 496.4101, Florida Statutes, is created to read:

496.4101 Licensure of professional solicitors and certain employees thereof.—

(1) Each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations must, before engaging in solicitation activities, obtain a solicitor license from the department.

(2) Persons required to obtain a solicitor license under subsection (1) shall submit to the department, in such form as the department prescribes, an application for a solicitor

license. The application must include the following information:

(a) The true name, date of birth, unique identification number of a driver license or other valid form of identification, and home address of the applicant.

(b) If the applicant, in any state, regardless of adjudication, has previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined, in any state, from violating any law relating to a charitable solicitation.

(c) If the applicant, in any state, is involved in pending litigation or has had entered against her or him an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, cease and desist, or any similar document, in any civil or administrative action involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or has been enjoined from violating any law relating to a charitable solicitation.

(3)(a) Each applicant shall submit a complete set of his or her fingerprints with the initial application for a solicitor license and a fee equal to the federal and state costs for fingerprint processing and fingerprint retention. The state cost for fingerprint processing is that authorized in s.

943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

(b) The department shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward them to the Federal Bureau of Investigation for national processing.

(c) All fingerprints submitted to the Department of Law Enforcement as required under this subsection shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. Fingerprints shall not be enrolled in the national retained print arrest notification program until the Department of Law Enforcement begins participation with the Federal Bureau of Investigation. Arrest fingerprints will be searched against the retained prints by the Department of Law Enforcement and the Federal Bureau of Investigation.

(d) For any renewal of the applicant's license, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the applicant is enrolled in the national retained print arrest notification program described in paragraph (c). The fee for the national criminal history check will be paid as part of the renewal fee to the department and forwarded by the department to Department of Law Enforcement. If the applicant's fingerprints are retained in the national retained print arrest notification program, the applicant shall pay the state and national retention fee to the department which will forward the fee to the Department of Law

Enforcement.

(e) The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed under this chapter.

(f) The department shall screen background results to determine if an applicant meets licensure requirements.

(4) A solicitor license must be renewed annually by the submission of a renewal application. A solicitor license that is not renewed expires without further action by the department.

(5) Each applicant for a solicitor license shall remit a license fee of $100 to the department at the time the initial application is filed with the department and an annual renewal fee of $100 thereafter. All fees collected, less the cost of administration, shall be deposited into the General Inspection Trust Fund.

(6) Any material change to the information submitted to the department in the initial application or renewal application for a solicitor license shall be reported to the department by the applicant or licensee within 10 days after the change occurs. The applicant or licensee shall also remit a fee in the amount of $10 for processing the change to the initial or renewal application.

(7) It is a violation of this chapter:

(a) For an applicant to provide inaccurate or incomplete information to the department in the initial or renewal application for a solicitor license.

(b) For any person specified in subsection (1) to fail to maintain a solicitor license as required by this section.

(c) For a professional solicitor to allow, require, permit,

or authorize an employee without an active solicitor license issued under this section to conduct telephonic solicitations.

(8) The department shall adopt rules that allow certain applicants to engage in solicitation activities on an interim basis until such time as a solicitor license is granted or denied.

(9) The department may deny or revoke any solicitor license if the applicant or licensee has had the right to solicit contributions revoked in any state, has entered into an agreement with any state to cease soliciting contributions within that state, has been ordered by any court or governmental agency to cease soliciting contributions within any state, or is subject to any disqualification specified in s. 496.410(14).

Section 12. Subsections (2) and (3) of section 496.411, Florida Statutes, are amended to read:

496.411 Disclosure requirements and duties of charitable organizations and sponsors.—

(2) A charitable organization or sponsor soliciting in this state must include all of the following disclosures at the point of solicitation:

(a) The name of the charitable organization or sponsor and state of the principal place of business of the charitable organization or sponsor;

(b) A description of the purpose or purposes for which the solicitation is being made;

(c) Upon request, the name and either the address or telephone number of a representative to whom inquiries could be addressed;

(d) Upon request, the amount of the contribution which may

be deducted as a charitable contribution under federal income tax laws;

(e) Upon request, the source from which a written financial statement may be obtained. Such financial statement must be for the immediate preceding ~~past~~ fiscal year and must be consistent with the annual financial statement ~~report~~ filed under s. 496.407. The written financial statement must be provided within 14 days after the request and must state the purpose for which funds are raised, the total amount of all contributions raised, the total costs and expenses incurred in raising contributions, the total amount of contributions dedicated to the stated purpose or disbursed for the stated purpose, and whether the services of another person or organization have been contracted to conduct solicitation activities.

(3) Every charitable organization or sponsor that ~~which~~ is required to register under s. 496.405 or is exempt under s. 496.406(1)(d) shall ~~must~~ conspicuously display ~~in capital letters~~ the following statement on every ~~printed~~ solicitation, ~~written~~ confirmation, receipt, or reminder of a contribution:

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

The statement must include a toll-free number and website for the division which ~~that~~ can be used to obtain the registration information. If ~~When~~ the solicitation consists of more than one

piece, the statement must be displayed prominently in the solicitation materials. If the solicitation occurs through a website, the statement must be conspicuously displayed on the webpage where donations are requested.

Section 13. Subsection (1) of section 496.412, Florida Statutes, is amended to read:

496.412 Disclosure requirements and duties of professional solicitors.—

(1) A professional solicitor must comply with and be responsible for complying or causing compliance with the following disclosures:

(a) Before ~~Prior to~~ orally requesting a contribution, or contemporaneously with a written request for a contribution, a professional solicitor must clearly disclose:

1. The name of the professional solicitor as on file with the department.

2. If the individual acting on behalf of the professional solicitor identifies himself or herself by name, the individual's legal name.

3. The name and state of the principal place of business of the charitable organization or sponsor and a description of how the contributions raised by the solicitation will be used for a charitable or sponsor purpose; or, if there is no charitable organization or sponsor, a description as to how the contributions raised by the solicitation will be used for a charitable or sponsor purpose.

(b) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, any written confirmation, receipt, or reminder sent to any person who has

contributed or has pledged to contribute, shall include a clear disclosure of the information required by paragraph (a).

(c) In addition to the information required by paragraph (a), any written confirmation, receipt, or reminder of contribution made pursuant to an oral solicitation and any ~~written~~ solicitation shall conspicuously state ~~in capital letters~~:

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

The statement must include a toll-free number and website for the division which ~~that~~ can be used to obtain the registration information. If ~~When~~ the solicitation consists of more than one piece, the statement must be displayed prominently in the solicitation materials. If the solicitation occurs on a website, the statement must be conspicuously displayed on the webpage where donations are requested.

(d) If requested by the person being solicited, the professional solicitor shall inform that person in writing, within 14 days after ~~of~~ the request, of the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue that the charitable organization or sponsor will receive as a benefit from the solicitation campaign or shall immediately notify the person being solicited that the information is available on the department's website or by

calling the division's toll-free number.

(e) If requested by the person being solicited, the professional solicitor shall inform that person in writing, within 14 days after ~~of~~ the request, of the percentage of the contribution which may be deducted as a charitable contribution under federal income tax laws or shall immediately notify the person being solicited that the information is available on the department's website or by calling the division's toll-free number.

Section 14. Section 496.4121, Florida Statutes, is created to read:

496.4121 Collection receptacles used for donations.—

(1) As used in this section, the term "collection receptacle" means a receptacle used to collect donated clothing, household items, or other goods for resale.

(2) A collection receptacle must display a permanent sign or label on each side which contains the following information printed in letters that are at least 3 inches in height and no less than one-half inch in width, in a color that contrasts with the color of the collection receptacle:

(a) For collection receptacles used by a person required to register under this chapter, the name, business address, telephone number, and registration number of the charitable organization or sponsor for whom the solicitation is made.

(b) For collection receptacles placed or maintained in public view by a person not required to register under this chapter or by a person not claiming an exemption pursuant to 496.406, the name, telephone number, and physical address of the business conducting the solicitation and the statement: "This is

not a charity. Donations made here support a for-profit business and are not tax deductible."

(3) Upon request, a charitable organization or sponsor using a collection receptacle must provide the donor with documentation of its tax-exempt status and the registration issued under this chapter.

Section 15. Subsection (2) of section 496.415, Florida Statutes, is amended, and subsection (18) is added to that section, to read:

496.415 Prohibited acts.—It is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(2) ~~Knowingly~~ Submit false, misleading, or inaccurate information in a document that is filed with the department, provided to the public, or offered in response to a request or investigation by the department, the Department of Legal Affairs, or the state attorney.

(18) Fail to remit to a charitable organization or sponsor the disclosed guaranteed minimum percentage of gross receipts from contributions as required under s. 496.410(7)(c) or, if the solicitation involved the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price as agreed in the contract or agreement as required under this chapter.

Section 16. Subsection (5) of section 496.419, Florida Statutes, is amended to read:

496.419 Powers of the department.—

(5) Upon a finding as set forth in subsection (4), the department may enter an order doing one or more of the

following:

(a) Issuing a notice of noncompliance pursuant to s. 120.695;

(b) Issuing a cease and desist order that directs that the person cease and desist specified fundraising activities;

(c) Refusing to register or canceling or suspending a registration;

(d) Placing the registrant on probation for a period of time, subject to such conditions as the department may specify;

(e) Canceling an exemption granted under s. 496.406; ~~and~~

(f) Except as provided in paragraph (g), imposing an administrative fine not to exceed $5,000 ~~$1,000~~ for each act or omission that ~~which~~ constitutes a violation of ss. 496.401-496.424 or s. 496.426 or a rule or order. With respect to a s. 501(c)(3) organization, the penalty imposed pursuant to this subsection may ~~shall~~ not exceed $500 per violation for failure to register under s. 496.405 or file for an exemption under s. 496.406(2). The penalty shall be the entire amount per violation and is not ~~to be interpreted as~~ a daily penalty; and

(g) Imposing an administrative fine not to exceed $10,000 for a violation of this chapter that involves fraud or deception.

Section 17. Section 496.4191, Florida Statutes, is created to read:

496.4191 Additional penalty; immediate suspension.—Upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Florida Department of Law Enforcement, the department shall immediately suspend a registration or the processing of an application for a

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registration if the registrant, applicant, or any officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor until final disposition of the case or removal or resignation of that officer or director.

Section 18. Section 496.430, Florida Statutes, is created to read:

496.430 Disqualification for certain tax exemptions.—

(1) The department may issue an order to disqualify a charitable organization or sponsor from receiving any sales tax exemption certificate issued by the Department of Revenue if the department finds, based up on the average of functional expenses and program service costs provided to the department pursuant to s. 496.407 for the 3 most recent fiscal years, that the charitable organization or sponsor has failed to expend at least 25 percent of its total annual functional expenses on program service costs.

(2) A charitable organization or sponsor may appeal a disqualification order by requesting a hearing within 21 days after notification from the department that it has issued a disqualification order under this section. The hearing must be conducted in accordance with chapter 120.

(3) Notwithstanding a finding under subsection (1) that a charitable organization or sponsor has failed to expend at least 25 percent of its total annual functional expenses on program service costs, the department may decline to issue a disqualification order if the charitable organization or sponsor

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establishes:

(a) That payments were made to affiliates which should be considered in calculating the program service costs;

(b) That revenue was accumulated for a specific program purpose consistent with representations in solicitations; or

(c) Such other mitigating circumstances as are defined by rule of the department.

(4) A disqualification order issued by the department pursuant to this section is effective for at least 1 year after such order becomes final and shall remain effective until such time as the department receives sufficient evidence from the disqualified charitable organization or sponsor which demonstrates it expends at least 25 percent of its total annual functional expenses on program service costs.

(a) The charitable organization or sponsor may not submit such evidence to the department sooner than 1 year after the disqualification order becomes final and may not submit such information more than once each year for consideration by the department.

(b) The department shall also consider any financial statement that was submitted by the charitable organization or sponsor to the department pursuant to s. 496.407 after the disqualification order became final.

(5) The department shall provide a disqualification order to the Department of Revenue within 30 days after such order becomes final. A final disqualification order is conclusive as to the charitable organization's or sponsor's entitlement to any sales tax exemption. The Department of Revenue shall revoke or refuse to grant a sales tax exemption certificate to a

charitable organization or sponsor subject to a final disqualification order within 30 days after receiving such disqualification order. A charitable organization or sponsor may not appeal or challenge the revocation or denial of a sales tax exemption certificate by the Department of Revenue if such revocation or denial is based upon a final disqualification order issued pursuant to this section.

(6) This section does not apply to a charitable organization or sponsor that:

(a) Is not required to register under this chapter with the department; or

(b) Has been in existence for less than 4 years.

Section 19. Paragraph (a) of subsection (3) of section 741.0305, Florida Statutes, is amended to read:

741.0305 Marriage fee reduction for completion of premarital preparation course.—

(3)(a) All individuals electing to participate in a premarital preparation course shall choose from the following list of qualified instructors:

1. A psychologist licensed under chapter 490.

2. A clinical social worker licensed under chapter 491.

3. A marriage and family therapist licensed under chapter 491.

4. A mental health counselor licensed under chapter 491.

5. An official representative of a religious institution which is recognized under s. 496.404(23) ~~496.404(19)~~, if the representative has relevant training.

6. Any other provider designated by a judicial circuit, including, but not limited to, school counselors who are

certified to offer such courses. Each judicial circuit may establish a roster of area course providers, including those who offer the course on a sliding fee scale or for free.

Section 20. Section 496.431, Florida Statutes, is created to read:

496.431 Severability.—If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 21. For the 2014-2015 fiscal year, there is appropriated to the Department of Agriculture and Consumer Services, the sums of $235,352 in recurring and $239,357 in nonrecurring funds from the General Inspection Trust Fund, and 4 full-time equivalent positions with associated salary rate of $143,264 are authorized for the purpose of implementing this act.

Section 22. This act shall take effect July 1, 2014.

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 20, 2014

I respectfully request that **Senate Bill # 638**, relating to Charities, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

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S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Charities

Bill Number SB 638 *(if applicable)*

Name Grace Lovett

Amendment Barcode _____ *(if applicable)*

Job Title Director of Legislative Affairs

Address 400 S. Monroe St.
Street

Phone (850) 617-7700

Tallahassee FL 32399
City *State* *Zip*

E-mail Jonathon.Rees@freshfromflorida.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/21/14
Meeting Date

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

Topic Charities - Hayes Amendment Bill Number 638 *(if applicable)*

Name Carey Baker Amendment Barcode 590334 *(if applicable)*

Job Title Lake County Property Appraiser

Address 320 W. Mainstreet Phone 352/253-2153
Street

Tavares FL 32778 E-mail cbaker@lcpafl.org
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Association of Property Appraisers

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/22/2014
Meeting Date

Topic _____ Bill Number 638 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 640
INTRODUCER:	Senator Braynon
SUBJECT:	Public Health Trusts
DATE:	April 23, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Favorable**
2.	White	Yeatman	CA	**Favorable**
3.	Brown	Pigott	AHS	**Favorable**
4.	Brown	Kynoch	AP	**Favorable**

I. Summary:

SB 640 authorizes the board of trustees of a public health trust to lease out office space without first advertising and soliciting bids for the office space.

The bill has an insignificant fiscal impact, if any.

II. Present Situation:

Limitations on Public Health Trusts' Authority to Lease Office Space

Chapter 73-102, Laws of Florida, authorized the governing body of each county to create a public health trust in and for the county. A public health trust's board of trustees, appointed by the governing body of the county, is responsible for the operation, governance, and management of a publicly funded health care facility designated by the county's governing body.[1]

Specifically, the board of trustees is empowered to:[2]

- Lease – either as lessee or lessor – or rent for any number of years and upon any terms and conditions, real property, except that the board shall not lease or rent, as lessor, any real property except in accordance with the requirements of s. 125.35 [F. S. 1973];
- Sue and be sued;
- Have a seal;
- Adopt bylaws, rules, and regulations for the board's responsibilities;
- Execute contracts;

[1] *See* Part II of Chapter 154, Florida Statutes.

[2] Section 154.11(1), F.S. However, note that a public health trust may not impose any tax, issue bonds, or require the imposition of a tax or the issuance of any bond by the governing body of the county. Section 154.11(2), F.S.

- Acquire and hold title to real or personal property;
- Appoint and remove a chief executive officer of the trust;
- Establish and collect fees for using or receiving services from the facility;
- Accept gifts of money, services, or real or personal property;
- Appoint, remove, or suspend employees or agents of the board, fix their compensation, and adopt personnel and management policies;
- Provide for employee benefits;
- Cooperate with and contract with any governmental agency or instrumentality, federal, state, municipal, or county;
- Adopt rules and regulations for the management and use of any properties under its control;
- Appoint originally the staff of physicians to practice in a designated facility and approve bylaws and rules to be adopted by the medical staff addressing the method of appointing or removing additional staff members; and
- Employ certified public accountants and legal counsel.

Section 125.35, F. S., authorizes a board of county commissioners to sell and convey any real or personal property, and to lease real property belonging to the county, whenever the county believes it is in its best interest to do so. However, the sale or lease must be awarded to the highest and best bidder for the highest and best use. Each sale or lease must be noticed by publishing once a week, for at least two weeks, in a newspaper of general circulation published in the county. The highest bid must be accepted, unless all are rejected because all are too low. A surety bond may be required of each bid submitted.

Jackson Health System

A Public Health Trust was created in 1973 by the Miami-Dade[3] Board of County Commissioners as an independent governing body for Jackson Memorial Hospital. In 2003, the Board of County Commissioners amended the Miami-Dade County Code to expand the responsibilities of the Public Health Trust countywide to health care facilities within the Jackson Health System. The Trust is composed of volunteer citizens who set policies that assure that the Jackson Health System is responsive to community needs. This "citizen body" provides leadership for joint planning between Jackson Health System, the University of Miami's Miller School of Medicine, Miami-Dade County, and other private and community organizations.[4]

Representatives of Jackson Health System have indicated that the requirements under s. 125.35, F.S., (1973) prove cumbersome, time-consuming, and wasteful when trying to recruit physicians and other health care practitioners who desire to lease office space in the hospital. The only bid typically received is from one practitioner.

III. Effect of Proposed Changes:

Section 1 amends s. 154.11, F.S., to authorize the board of trustees of a public health trust (Jackson Health System) to lease out its office space without first advertising and soliciting bids for the office space.

[3] In 1973, the county was named Dade County.
[4] *See* Jackson Health System, *Public Health Trust*, http://www.jacksonhealth.org/trust.asp, (Last visited March 18, 2014).

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No significant fiscal impact is expected. Under SB 640, Jackson Health System, as well as any other public health trust, will be able to provide available office space to physicians and other health care professionals without the expense and delay of advertising and proceeding through a bid process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 154.11 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Braynon

36-00368A-14 2014640__

A bill to be entitled

An act relating to public health trusts; amending s. 154.11, F.S.; authorizing public health trusts to lease certain real property; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 154.11, Florida Statutes, is amended to read:

154.11 Powers of board of trustees.—

(1) The board of trustees of each public health trust shall be deemed to exercise a public and essential governmental function of both the state and the county and in furtherance thereof it shall, subject to limitation by the governing body of the county in which such board is located, have all of the powers necessary or convenient to carry out the operation and governance of designated health care facilities, including, but without limiting the generality of, the foregoing:

(f) To lease, ~~either~~ as lessee or lessor, or rent for any number of years and upon any terms and conditions real property, except that the board shall not lease or rent, as lessor, any real property other than office space controlled by a public health trust, except in accordance with the requirements of s. 125.35, Florida Statutes ~~[F. S.~~ 1973~~]~~.

Section 2. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act, *Vice Chair*

SENATOR ELEANOR SOBEL
33rd District

April 30, 2014

Dear Ms. Weiss,

On Tuesday, April 22nd 2014 the Senate Appropriations Committee Discussed and passed SB 640 relating to Public Health Trusts. I would like to be recorded as voting affirmatively on the measure.

With Best Regards,

Eleanor Sobel

Senator Sobel
Senate District 33

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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 662
INTRODUCER:	Appropriations Committee; Regulated Industries Committee; and Health Policy Committee
SUBJECT:	Nonresident Sterile Compounding Permits
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stovall	Stovall		**HP SPB 7008 as introduced**
1.	Niles	Imhof	RI	**Fav/CS**
2.	Brown/Loe	Pigott	AHS	**Favorable**
3.	Brown/Loe	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 662 requires a pharmacy located in another state (nonresident pharmacy) or an outsourcing facility in another state to obtain a nonresident sterile compounding permit prior to shipping, mailing, delivering, or dispensing a compounded sterile product into Florida. The term "compounded sterile product" is defined. Any compounded sterile product that is sent into Florida must have been compounded in a manner that meets or exceeds Florida's standards for sterile compounding.

The bill authorizes the Department of Health (DOH) or its agents to inspect any nonresident pharmacy that is DOH-registered or nonresident sterile compounding permittee. The nonresident facility is responsible for the cost of this inspection. The DOH is also authorized to take regulatory action against a nonresident pharmacy immediately, without waiting 180 days for the pharmacy's home state to act on alleged conduct that causes or could cause serious injury to a human or animal in this state.

The bill has an insignificant fiscal impact.

II. Present Situation:

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (the Act) found in ch. 465, F.S.[1] The Board of Pharmacy (the board) is created within the DOH to adopt rules to implement provisions of the Act and take other actions based upon duties conferred on it by the Act.[2]

Several pharmacy types are specified in law and are required to be permitted or registered under the Act:

- Community pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.
- Institutional pharmacy – a location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medical drugs are compounded, dispensed, stored, or sold. The Act further classifies institutional pharmacies according to the type of facility or activities with respect to the handling of drugs within the facility.
- Nuclear pharmacy – a location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, excluding hospitals or the nuclear medicine facilities of such hospitals.
- Internet pharmacy – a location not otherwise permitted under the Act, whether within or outside the state, which uses the Internet to communicate with or obtain information from consumers in this state in order to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state.
- Nonresident pharmacy – a location outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state.
- Special pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold if such location is not otherwise defined which provides miscellaneous specialized pharmacy service functions. Seven special pharmacy permits are established in rule.[3]

Nonresident pharmacy

Any pharmacy located outside of Florida which ships, mails, or delivers, in any manner, a dispensed drug into this state is required to be registered with the board as a nonresident pharmacy.[4] In order to register in this state, a nonresident pharmacy must submit an application fee of $255 and a certified application[5] that documents:

- The pharmacy's maintenance of a valid, unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state in which the dispensing facility is located and from which the drugs are dispensed;

[1]Other pharmacy paraprofessionals, including pharmacy interns and pharmacy technicians, are also regulated under the Act.
[2]Section 465.005, F.S.
[3] Rule 64B16-28.800, F.A.C., establishes the following special permits: Special-Parenteral and Enteral, Special-Closed System Pharmacy, Special-Non Resident (Mail Service), Special-End Stage Renal Disease, Special-Parenteral/Enteral Extended Scope, Special-ALF, and Special Sterile Compounding.
[4] Section 465.0156, F.S. However, the board may grant an exemption from the registration requirements to any nonresident pharmacy which confines its dispensing activity to isolated transactions. See s. 465.0156(2), F.S.
[5] *See* Board of Pharmacy, *Non-Resident Pharmacy Application and Information,* (Nov. 2012), *available at* http://www.floridaspharmacy.gov/Applications/app-non-resident-parmacy.pdf (last visited Dec. 16, 2013).

- The identity of the principal corporate officers and the pharmacist who serves as the prescription department manager as well as the criminal and disciplinary history of each;
- The pharmacy's compliance with lawful directions and requests for information from applicable regulatory bodies;
- The pharmacy department manager's licensure status;
- The most recent pharmacy inspection report; and
- The availability of the pharmacist and patient records for a minimum of 40 hours per week, 6 days a week.

The board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy for:

- Failure to comply with Florida's drug substitution provisions in s. 465.025, F.S.;
- Failure to comply with the registration requirements;
- Advertising the services of a nonresident pharmacy which has not registered, knowing the advertisement will likely induce members of the public in this state to use the pharmacy to fill prescriptions; or
- Conduct that causes serious bodily injury or serious psychological injury to a resident of Florida if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to act within 180 days of the referral.

Pharmaceutical Compounding

Compounding is the professional act by a pharmacist or other practitioner authorized by law, while employing the science or art of any branch of the profession of pharmacy and while incorporating prescription or non-prescription ingredients, to create a finished product for dispensing to a patient or for administration by a practitioner or the practitioner's agent.[6]

Historically and continuing today, a practitioner might prescribe a compounded preparation when a patient requires a different dosage form, such as:

- Transformation of a pill into a liquid for a patient who cannot swallow pills or into a lollipop or flavored medication for children;
- Changes in dosage strength, such as for an infant; or
- Elimination of allergens.

Compounding and dispensing in this manner is typically patient-specific. More recently, the practice of compounding medications has evolved and expanded to include compounding for office use. "Office use" means the provision and administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy.[7] Typically, a drug compounded for office use is not prepared, labeled, and dispensed for a specific patient.

Under the board's rules, compounding includes the preparation of:

[6] *See* Rule 64B16-27.700, F.A.C.
[7] *Id.*

- Drugs or devices in anticipation of prescriptions based on routine, regularly-observed prescribing patterns;
- Drugs or devices, pursuant to a prescription, that are not commercially available; or
- Commercially available products[8] from bulk when the prescribing practitioner has prescribed the compounded product on a per prescription basis and the patient has been made aware that the compounded product will be prepared by the pharmacist. The reconstitution of commercially available products pursuant to the manufacturer's guidelines is permissible without notice to the practitioner.

Compounded Products

Compounded products may be either sterile or non-sterile. A sterile preparation is defined in the board's rule[9] as any dosage form devoid of viable microorganisms, but does not include commercially manufactured products that do not require compounding prior to dispensing. Compounded sterile preparations include, but are not limited to:

- Injectables;
- Parenterals, including Total Parenteral Nutrition (TPN) solutions, parenteral analgesic drugs, parenteral antibiotics, parenteral antineoplastic agents, parenteral electrolytes, and parenteral vitamins;
- Irrigating fluids;
- Ophthalmic preparations; and
- Aqueous inhalant solutions for respiratory treatments.

The United States Pharmacopeia and the National Formulary (USP–NF) is a book containing standards for chemical and biological drug substances, dosage forms, and compounded preparations, excipients, medical devices, and dietary supplements. The Federal Food, Drug and Cosmetic Act (FDCA) designates the USP–NF as the official compendium for drugs marketed in the United States. A drug product in the U.S. market must conform to the USP–NF standards for strength, quality, purity, packaging, and labeling of medications to avoid possible charges of adulteration and misbranding.[10] The USP–NF has five chapters specifically related to pharmaceutical compounding, two of which are USP Chapter 795, which addresses compounding for non-sterile preparations, and USP Chapter 797, which addresses compounding for sterile preparations. In addition, USP Chapter 797 requires the use of other general chapters as well.

Safety Concerns Regarding Compounded Drugs

Compounded drugs can pose both direct and indirect health risks. Direct health risks may result from poor compounding practices. The compounded drugs may be sub- or super-potent, contaminated, or otherwise adulterated. Indirect health risks include the possibility that patients will use ineffective compounded drugs instead of FDA-approved drugs that have been shown to be safe and effective. Not all pharmacists have the same level of skills and equipment to safely

[8] The term "commercially available product" means any medicinal product that is legally distributed in Florida by a drug manufacturer or wholesaler. *See* Rule 64B16-27.700, F.A.C.
[9] Rule 64B16-27.797, F.A.C.
[10] For additional information on the USP-NP see http://www.usp.org/usp-nf (last visited Dec. 17, 2013).

compound certain medications, and some drugs may be inappropriate for compounding. In some cases, compounders may lack sufficient controls (e.g., equipment, training, testing, or facilities) to ensure product quality or to compound complex drugs like sterile or extended-release drugs.

In 2012, the Federal Centers for Disease Control and Prevention (CDC), in collaboration with state and local health departments and the Food and Drug Administration (FDA), began investigating a multi-state outbreak of fungal meningitis and other infections among patients who received contaminated preservative-free methylprednisolone acetate (MPA) steroid injections from the New England Compounding Center (NECC).[11] As of October 23, 2013, 751 cases were reported nationwide, with 64 deaths attributed to contaminated injectables that had been compounded in the Massachusetts pharmacy.[12] Florida reported 25 cases, with seven deaths related to persons receiving the medications from the contaminated lots.

The FDA continues to inform the public about recalls, inspections, and regulatory enforcement action related to compounded medications.[13]

State and Federal Oversight of Compounded Medications

Until recently, the regulation of compounded medications was without clear guidelines or oversight responsibility by the FDA or state agencies.[14] The FDA traditionally regulated the manufacture of prescription drugs, which typically includes making drugs (preparation, deriving, compounding, propagation, processing, producing, or fabrication) on a large scale for marketing and distribution of the product for unidentified patients. State boards of pharmacy historically have regulated the compounding of medications by a pharmacy under the practice of pharmacy.[15] However, compounding standards, inspector competency, inspection frequency, and resources for inspections vary considerably.[16]

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[11] The Centers for Disease Control and Prevention Multistate Fungal Meningitis Outbreak Investigation, *available at*: http://www.cdc.gov/hai/outbreaks/meningitis.html (last visited Dec. 27, 2013).

[12] The Centers for Disease Control and Prevention, Multistate Fungal Meningitis Outbreak Investigation, *available at* http://www.cdc.gov/hai/outbreaks/meningitis-map-large.html#casecount_table (last visited Dec. 27, 2013).

[13] Federal Drug Administration, *Compounding: Inspections, Recalls, and other Actions,* (updated March 5, 2014) *available at* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339771.htm (last visited March 11, 2014).

[14]The U.S. Supreme Court had found certain provisions relating to the advertising and promotion of certain human compounded drugs in section 503A of the FDCA to be unconstitutional in 2002 and struck the entire section of law dealing with the remaining provisions related to compliance with current good manufacturing practices, labeling, and FDA approval prior to marketing. In subsequent opinions, lower courts split on whether the remaining provisions remained intact and enforceable. In some instances, the FDA was refused admittance to conduct an inspection of compounders, which necessitated obtaining an administrative warrant to gain access to the firm and make copies of the firm's records. *See* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm347722.htm (last visited Dec. 27, 2013).

[15] *See generally* U.S. Food and Drug Administration, Regulatory Guidance for Compounded Drugs, *available at* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm (last visited Dec. 27, 2013).

[16]House Democrats Release Report on Flawed Compounding Pharmacy Oversight, April 15, 2013, *available at* http://dingell.house.gov/press-release/house-democrats-release-report-flawed-compounding-pharmacy-oversight (last visited Dec. 27, 2013).

On November 27, 2013, President Barack Obama signed the Drug Quality and Security Act (DQSA)[17] to enhance oversight of the compounding of human drugs. This law creates a new section 503B in the FDCA. Under section 503B, a compounder can become an "outsourcing facility." An outsourcing facility is not required to also be a state-licensed pharmacy. An outsourcing facility will be able to qualify for exemptions from the FDA approval requirements for new drugs and the requirement to label products with adequate directions for use. Outsourcing facilities:

- Must comply with current good manufacturing practices (CGMP) requirements;
- Will be inspected by the FDA according to a risk-based schedule; and
- Must meet certain other conditions, such as reporting adverse events and providing the FDA with certain information about the products they compound.

This law provides that hospitals and other health care providers can lawfully provide their patients with drugs that were compounded in FDA-registered outsourcing facilities that are subject to CGMP requirements and federal oversight.

A compounder that chooses not to register as an outsourcing facility and qualify for the exemptions under section 503B, may qualify for the exemptions under section 503A of the FDCA relating to traditional compounding for patient-specific medications. Otherwise, the compounder is subject to all of the requirements in the FDCA applicable to conventional manufacturers.

The FDA anticipates that state boards of pharmacy will continue their oversight and regulation of the practice of pharmacy, including traditional pharmacy compounding. The FDA has also indicated it intends to continue to cooperate with state authorities to address pharmacy compounding activities that may be in violation of the FDCA.[18]

In response to the 2012 nationwide fungal meningitis outbreak caused by contaminated compounded products, the Florida Board of Pharmacy adopted Emergency Rule 64B16ER12-1, Florida Administrative Code. This Emergency Rule required all Florida licensed pharmacy permit holders, including non-residents, to complete a mandatory survey to inform the board of their compounding activities. The goal of this mandatory survey was to determine the scope of sterile and non-sterile compounding within Florida licensed pharmacies, whether physically located in or out-of-state. Of the 8,981 permitted pharmacies, 8,294 (92 percent) responded. The board published the compounding survey results noted below in January 2013.[19]

Results relating to non-sterile compounding facilities:

- 55 percent (4,494) compound non-sterile products; 9 percent (382) of these are nonresident pharmacies.
- 54 percent (4,380) compound non-sterile products pursuant to a patient-specific prescription; 9 percent (373) of these are nonresident pharmacies.

[17] H.R. 3204, 113th Congress.
[18] *Supra*, 16.
[19] Florida Board of Pharmacy Compounding Survey Report, (January 23, 2013) *available at* http://www.floridaspharmacy.gov/Forms/info-compounding-survey-report.pdf , (last visited March 11, 2014).

- 6 percent (459) compound non-sterile products in bulk; 81 percent (373) of these are nonresident pharmacies.
- 1 percent (119) compound non-sterile products in bulk for office use; 50 percent (59) of these are nonresident pharmacies.
- 5 percent (382) ship compounded non-sterile products to other states; 80 percent (307) of these are nonresident pharmacies.

Key results relating to sterile compounding facilities:

- 12 percent (946) compound sterile products; 32 percent (301) of these are nonresident pharmacies. Some of these in-state pharmacies may hold other permit types as well, such as an institutional permit or a special permit that authorizes compounding.
- 11 percent (913) compound sterile products pursuant to a patient-specific prescription; 32 percent (289) of these are nonresident pharmacies.
- 4 percent (348) compound sterile products in bulk and/or in bulk for office use; 45 percent (155) of these are nonresident pharmacies. Eighty-three of these 348 pharmacies (22 in-state and 61 nonresident) compound greater than 100 doses from a single batch.
- 4 percent (307) ship compounded sterile products to other states; 177 of these are nonresident pharmacies that ship sterile compounded products to Florida.

Effective September 23, 2013, the board adopted a rule requiring most pharmacies that engage or intend to engage in the preparation of sterile compounded products within the state to obtain a Special Sterile Compounding permit.[20] Pharmacies required to obtain this permit may compound sterile products only in strict compliance with the standards set forth in board rules.[21] These rules address, among other things, compounding products for office use, including the quantity of the product that may be safely compounded for office use, execution of an agreement between the pharmacist and practitioner outlining responsibilities of the practitioner, and labeling. Compliance with additional standards based on the risk level for contamination is also required. The rule addressing standards of practice for compounding sterile preparations was first adopted in 2008 and amended in January of 2010. These standards apply to all sterile pharmaceuticals, regardless of the location of the patient, e.g., home, hospital, nursing home, hospice, or doctor's office.[22]

There is no statutory authority to require nonresident pharmacies to register or obtain a separate sterile compounding permit in Florida.

Compounding Pharmacy Accreditation

The Pharmacy Compounding Accreditation Board (PCAB) is a nationally recognized organization that issues a voluntary quality accreditation designation for the compounding industry. Founders of the organization include the American College of Apothecaries, National Community Pharmacists Association, American Pharmacists Association, National Alliance of State Pharmacy Associations, International Academy of Compounding Pharmacists, National

[20] Rule 64B16-28.100(8), F.A.C.
[21] Rules 64B16-27.797 and 64B16-27.700, F.A.C.
[22] Rule 64B16-27.700, F.A.C.

Association of Boards of Pharmacy, National Home Infusion Association, and United States Pharmacopeia.

The PCAB accreditation means a pharmacy has independent, outside validation that it meets nationally accepted quality assurance, quality control, and quality improvement standards. In order to demonstrate compliance with PCAB standards and earn PCAB accreditation, pharmacies participate in an off-site and on-site evaluation process that includes: verification by PCAB that the pharmacy is not on probation for issues related to compounding quality, public safety or controlled substances; verification that the pharmacy is properly licensed in each state in which it does business; and an extensive on-site evaluation by a PCAB surveyor, all of whom are compounding pharmacists trained in evaluating compliance with PCAB's quality standards. For example, this evaluation includes:

- An assessment of the pharmacy's system for assuring and maintaining staff competency;
- A review of facilities and equipment;
- A review of records and procedures required to prepare quality compounded medications;
- A verification that the pharmacy uses ingredients from FDA registered or licensed sources.
- A review of the pharmacy's program for testing compounded preparations.[23]

Currently, 187 pharmacies hold PCAB accreditation, 15 of which are located in Florida.[24]

III. Effect of Proposed Changes:

Section 1 amends s. 465.003, F.S., to include the definitions of "compounding," "outsourcing facility," and "compounded sterile product." Under the bill, outsourcing facility means a single physical location registered as an outsourcing facility under federal law at which sterile compounding of a drug or product is conducted. Compounding means combining, mixing, or altering the ingredients of one or more drugs or products to create another drug or product. A compounded sterile product is a drug intended for parenteral administration,[25] an ophthalmic or oral inhalation drug in aqueous format, or a drug or product required to be sterile under federal or state law or rule, which is produced through compounding but is not approved by the federal Food and Drug Administration.

Section 2 amends s. 465.0156, F.S., to authorize the Department of Health (DOH) to take regulatory action against a nonresident pharmacy immediately, without waiting 180 days for the pharmacy's home state to act, for:

- Failure to comply with record maintenance and disposal provisions under s. 465.017(2), F.S.;
- Failure to comply with permit requirements created under s. 465.0158, F.S.; or
- Alleged conduct that causes or could cause serious injury to a human or animal in this state. Authorized regulatory action is expanded to include conduct that could cause serious injury to a human or animal, without demonstrating that the conduct actually injured a person. Regulatory enforcement action may also occur for conduct that causes or could cause serious

[23] Pharmacy Compounding Accreditation Board, http://www.pcab.org/prescribers, (last visited March 11, 2014).
[24] Pharmacy Compounding Accreditation Board, *All Pharmacies, available at* http://www.pcab.org/pharmacy (last visited March 11, 2014).
[25] Parenteral administration is a method other than swallowing or thru the gastrointestinal tract and generally includes administration via injection.

bodily injury to an animal in this state or for noncompliance with the requirements of the newly established nonresident pharmacy compounded sterile products permit.

The bill also provides that a nonresident pharmacy is subject to s. 456.0635, F.S., which sets out the conditions required to dispense medicinal drugs via a facsimile of a prescription.

Section 3 creates s. 465.0158, F.S., to establish the nonresident sterile compounding permit. A pharmacy located in another state or an outsourcing facility is required to obtain a nonresident sterile compounding permit prior to shipping, mailing, delivering, or dispensing a compounded sterile product into this state. This permit is a supplemental permit to registration as a nonresident pharmacy.

The board is directed to establish a permit application form and set a permit and renewal fee not to exceed $250.

An applicant for a permit must submit an application form for the initial permit and renewal, proof of registration as an outsourcing facility with the secretary of the U.S. Department of Health and Human Services, if eligible under federal law, and proof of registration as a nonresident pharmacy under s. 465.0156, F.S., unless the applicant is an outsourcing facility and not a pharmacy. If the applicant is an outsourcing facility, then the application must include proof of an active and unencumbered license, permit, or registration issued by the state where the facility is located that allows the facility to engage in compounding and to dispense or transport a compounded sterile product into Florida, if so required by the resident state, territory, or district.

The applicant must also submit written attestations of owners, officers, and a prescription department manager or pharmacist in charge that the attestor understands:

- Florida's laws and rules governing sterile compounding;
- That any compounded sterile products sent into this state will comply with those standards; and
- That the compounded sterile products are in compliance with the laws of the state in which the applicant is located.

The applicant must submit its existing policies and procedures that comply with pharmaceutical standards in ch. 797 of the United States Pharmacopoeia and any standards for sterile compounding required by board rule or good manufacturing practices for an outsourcing facility. The applicant must also submit a current inspection report by the licensing agency where the facility is located reflecting compliance with this section. An inspection report is current if it was completed within 6 months before the initial application and within 1 year before a renewal.

If the applicant is unable to submit a current inspection report due to acceptable circumstances established by rule, the DOH is required to conduct or contract to have an inspection done at the cost of the applicant, accept an alternative satisfactory report from a board-approved entity, or accept an inspection report from the Food and Drug Administration.

Any compounded sterile product that is sent into this state must have been compounded in a manner that meets or exceeds the standards for sterile compounding in Florida and comply with the laws of the state in which the permittee is located.

The board may deny, revoke, or suspend a permit, or issue a fine or reprimand, for:
- Failure to comply with this section;
- A violation of ss. 456.0635, 456.065, or 456.072, F.S., except s. 456.072(1)(s) or (u), F.S.;
- A violation of s. 465.0156(5), F.S.; or
- A violation listed under s. 465.016, F.S.

A nonresident pharmacy registered under s. 465.0156, F.S., may continue to ship, mail, deliver, or dispense a compounded sterile product into this state if the product meets or exceeds the standards for sterile compounding in this state, the product conforms with the law or rules of the state where the pharmacy is located, and the pharmacy applies for and is issued a permit under this section on or before February 28, 2015.

If an applicant is not registered as a nonresident pharmacy by October 1, 2014, it must seek registration and obtain the nonresident sterile compounding permit prior to sending compounded sterile products to Florida.

The board is required to adopt rules to administer this section, including for:
- Submitting an application for a permit;
- Determining inspections of a nonresident sterile compounding permitted facility; and
- Evaluating what is a satisfactory inspection report in lieu of an on-site inspection by the DOH or another state.

Section 4 amends s. 465.017, F.S., to authorize the DOH or its agents to inspect any nonresident pharmacy that is registered with the DOH or nonresident sterile compounding permittee. The nonresident facility is responsible for the actual costs incurred by the DOH for this inspection.

Section 5 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

A biennial permit fee for the nonresident pharmacy permit is created in an amount not to exceed $250.

B. Private Sector Impact:

CS/CS/SB 662 enhances the regulation of pharmacies and outsourcing facilities that are located in other states and provide medication to persons in this state. These entities that compound sterile products for patients in Florida may experience increased costs related to additional permit fees and compliance with greater compounding practice standards, if the pharmacy is located in a state with lesser practice standards. All registered or permitted facilities may experience on-site inspections and regulatory enforcement for non-compliance with Florida-specific practice requirements and standards.

Patients receiving compounded sterile products from other states might experience increased medication costs to offset costs of compliance with safer compounding standards.

C. Government Sector Impact:

The DOH anticipates approximately 350 biennial applications for nonresident pharmacy permits that will incur the $250 permit fee plus a $5 unlicensed activity fee. The anticipated biennial state revenue is $89,250.[26]

The DOH will incur non-recurring costs for rulemaking and to mail notifications to nonresident pharmacies, which current budget authority is adequate to absorb. The DOH will update its licensure system to accommodate the new nonresident sterile compounding permit, which current resources are adequate to absorb. Costs incurred for inspections of nonresident pharmacies and permitted outsourcing facilities that are not pharmacies will be covered by these entities. The DOH will experience a recurring increase in workload associated with inspecting these facilities and with enforcing various provisions of the bill. These latter impacts are indeterminate at this time, but the DOH anticipates that current resources and budget authority are adequate to absorb these costs.[27]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[26] The Department of Health, *2014 Agency Legislative Bill Analysis for SB 662,* March 11, 2014, on file with the Senate Health and Human Services Appropriations Subcommittee.
[27] *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 465.003, 465.0156, and 465.017.

This bill creates section 465.0158 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The CS/CS changes the definition of "compounding" and adds a definition for "compounded sterile product." Technical changes include:

- Changing the term applicant to attestor for who must provide an attestation;
- Removing a reference to board approval for entities the Department of Health may contract with to perform an inspection;
- Adding references to territory or district when mentioning the non-resident state in several places in the bill; and
- Removing an unnecessary phrase regarding applying for a permit since the critical point is when the permit is issued.

CS by Regulated Industries on March 13, 2014:
The CS adds definitions under s. 465.003, F.S., for "compounding" and "outsourcing facility." It provides that the board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy in accordance with ch. 465, F.S., for conduct in noncompliance with record-keeping provisions or which causes or could cause serious bodily injury or psychological injury to a human, or could cause serious bodily injury to a non-human animal.

The CS provides that a nonresident pharmacy is subject to s. 456.0635, F.S.
Section 465.0158, F.S., is created providing for a nonresident sterile compounding permit, not a nonresident pharmacy compounded sterile products permit. The CS includes nonresident sterile outsourcing facilities in the requirement for a permit. The nonresident sterile compounding permit applicant must additionally attest that compounded products conform to the laws and rules of the state in which the applicant is located. The nonresident licensure requirement to lawfully send sterile compounded drugs into the state is expanded to include outsourcing facilities.

The CS specifies the permit application requirements which include licensure documentation for the location of the nonresident pharmacy or outsourcing facility and current inspection reports. It also provides rulemaking for alternate inspecting entities if the applicant cannot produce a current inspection report from the resident state's regulatory entity. Violations for which the board may take disciplinary action against a nonresident sterile compounding permittee are expanded. An applicant registering on or after October 1, 2014, under s. 465.0156, F.S., may not ship, mail, deliver, or dispense a

compounded sterile product into this state until the applicant is registered as a nonresident pharmacy and is issued a permit under this section.

The CS does not provide a sunset provision under s. 465.0158, F.S.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 28 - 151
and insert:
Section 1. Subsections (18), (19) and (20) are added to section 465.003, Florida Statutes, to read:
465.003 Definitions.—As used in this chapter, the term:
(18) "Compounding" means combining, mixing, or altering the ingredients of one or more drugs or products to create another drug or product.

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(19) "Outsourcing facility" means a single physical location registered as an outsourcing facility under the federal Drug Quality and Security Act, Pub. L. No. 113-54, at which sterile compounding of a drug or product is conducted.

(20) "Compounded sterile product" means a drug that is intended for parenteral administration, an ophthalmic or oral inhalation drug in aqueous format, or a drug or product that is required to be sterile under federal or state law or rule, which is produced through compounding but is not approved by the federal Food and Drug Administration.

Section 2. Subsections (4) and (5) of section 465.0156, Florida Statutes, are amended, present subsections (6) through (8) of that section are redesignated as subsections (7) through (9), respectively, and a new subsection (6) is added to that section, to read:

465.0156 Registration of nonresident pharmacies.—

(4) The board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy for failure to comply with s. 465.0158, s. 465.017(2), or s. 465.025, or with any requirement of this section in accordance with ~~the provisions of~~ this chapter.

(5) In addition to the prohibitions of subsection (4) the board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy in accordance with ~~the provisions of~~ this chapter for conduct which causes or could cause serious bodily ~~injury~~ or ~~serious~~ psychological injury to a human or serious bodily injury to a nonhuman animal in ~~resident of~~ this state ~~if the board has referred the matter to the regulatory or licensing agency in the state in which the~~

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~~pharmacy is located and the regulatory or licensing agency fails to investigate within 180 days of the referral~~.

(6) A nonresident pharmacy is subject to s. 456.0635.

Section 3. Section 465.0158, Florida Statutes, is created to read:

465.0158 Nonresident sterile compounding permit.—

(1) In order to ship, mail, deliver, or dispense, in any manner, a compounded sterile product into this state, a nonresident pharmacy registered under s. 465.0156, or an outsourcing facility, must hold a nonresident sterile compounding permit.

(2) An application for a nonresident sterile compounding permit shall be submitted on a form furnished by the board. The board may require such information as it deems reasonably necessary to carry out the purposes of this section. The fee for an initial permit and biennial renewal of the permit shall be set by the board pursuant to s. 465.022(14).

(3) An applicant must submit the following to the board to obtain an initial permit, or to the department to renew a permit:

(a) Proof of registration as an outsourcing facility with the Secretary of the United States Department of Health and Human Services if the applicant is eligible for such registration pursuant to the federal Drug Quality and Security Act, Pub. L. No. 113-54.

(b) Proof of registration as a nonresident pharmacy, pursuant to s. 465.0156, unless the applicant is an outsourcing facility and not a pharmacy, in which case the application must include proof of an active and unencumbered license, permit, or

registration issued by the state, territory, or district in which the outsourcing facility is physically located which allows the outsourcing facility to engage in compounding and to ship, mail, deliver, or dispense a compounded sterile product into this state if required by the state, territory, or district in which the outsourcing facility is physically located.

(c) Written attestation by an owner or officer of the applicant, and by the applicant's prescription department manager or pharmacist in charge, that:

1. The attestor has read and understands the laws and rules governing sterile compounding in this state.

2. A compounded sterile product shipped, mailed, delivered, or dispensed into this state meets or exceeds this state's standards for sterile compounding.

3. A compounded sterile product shipped, mailed, delivered, or dispensed into this state must not have been, and may not be, compounded in violation of the laws and rules of the state, territory or district in which the applicant is located.

(d) The applicant's existing policies and procedures for sterile compounding, which must comply with pharmaceutical standards in chapter 797 of the United States Pharmacopoeia and any standards for sterile compounding required by board rule or current good manufacturing practices for an outsourcing facility.

(e) A current inspection report from an inspection conducted by the regulatory or licensing agency of the state, territory, or district in which the applicant is located. The inspection report must reflect compliance with this section. An inspection report is current if the inspection was conducted

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within 6 months before the date of submitting the application for the initial permit or within 1 year before the date of submitting an application for permit renewal. If the applicant is unable to submit a current inspection report conducted by the regulatory or licensing agency of the state, territory, or district in which the applicant is located due to acceptable circumstances, as established by rule, or if an inspection has not been performed, the department shall:

1. Conduct, or contract with an entity to conduct, an onsite inspection for which all costs shall be borne by the applicant;

2. Accept a current and satisfactory inspection report, as determined by rule, from an entity approved by the board; or

3. Accept a current inspection report from the United States Food and Drug Administration conducted pursuant to the federal Drug Quality and Security Act, Pub. L. No. 113-54.

(4) A permittee may not ship, mail, deliver, or dispense a compounded sterile product into this state if the product was compounded in violation of the laws or rules of the state, territory, or district, in which the permittee is located or does not meet or exceed this state’s sterile compounding standards.

(5) In accordance with this chapter, the board may deny, revoke, or suspend the permit of, fine, or reprimand a permittee for:

(a) Failure to comply with this section;

(b) A violation listed under s. 456.0635, s. 456.065, or s. 456.072, except s. 456.072(1)(s) or (1)(u);

(c) A violation under s. 465.0156(5); or

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(d) A violation listed under s. 465.016.

(6) A nonresident pharmacy registered under s. 465.0156 which ships, mails, delivers, or dispenses a compounded sterile product into this state may continue to do so if the product meets or exceeds the standards for sterile compounding in this state, the product is not compounded in violation of any law or rule of the state, territory, or district, where the pharmacy is located, and the pharmacy is issued a permit under this section

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

And the title is amended as follows:

Delete lines 4 - 15

and insert:

"compounding", "outsourcing facility", and "compounded sterile product"; amending s. 465.0156, F.S.; conforming provisions to changes made by the act; expanding penalties to apply to injury to a nonhuman animal; deleting a requirement that the Board of Pharmacy refer regulatory issues affecting a nonresident pharmacy to the state where the pharmacy is located; providing that a nonresident pharmacy is subject to certain health care fraud provisions; creating s. 465.0158, F.S.; requiring registered nonresident pharmacies and outsourcing facilities to obtain a permit in order to ship, mail, deliver, or dispense compounded sterile products into this state; requiring submission of an application and a nonrefundable fee; providing application requirements;

By the Committees on Regulated Industries; and Health Policy

580-02555-14 2014662c1

A bill to be entitled

An act relating to nonresident sterile compounding permits; amending s. 465.003, F.S.; defining the terms "compounding" and "outsourcing facility"; amending s. 465.0156, F.S.; conforming provisions to changes made by the act; expanding penalties to apply to injury to a nonhuman animal; deleting a requirement that the Board of Pharmacy refer regulatory issues affecting a nonresident pharmacy to the state where the pharmacy is located; creating s. 465.0158, F.S.; requiring registered nonresident pharmacies and outsourcing facilities to obtain a permit in order to ship, mail, deliver, or dispense compounded sterile products into this state; requiring submission of an application and a nonrefundable fee; specifying requirements; authorizing the board to deny, revoke, or suspend a permit, or impose a fine or reprimand for certain actions; providing dates by which certain nonresident pharmacies must obtain a permit; authorizing the board to adopt rules; amending s. 465.017, F.S.; authorizing the department to inspect nonresident pharmacies and nonresident sterile compounding permittees; requiring such pharmacies and permittees to pay for the costs of such inspections; providing an effective date.

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

Section 1. Subsections (18) and (19) are added to section 465.003, Florida Statutes, to read:

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

580-02555-14 2014662c1

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

(18) "Compounding" means a practice in which a licensed pharmacist or, in the case of an outsourcing facility, a person acting under the supervision of a licensed pharmacist, combines, mixes, or alters ingredients of a drug or product to create another drug or product.

(19) "Outsourcing facility" means a single physical location registered as an outsourcing facility under the federal Drug Quality and Security Act, Pub. L. No. 113-54, at which sterile compounding of a product is conducted.

Section 2. Subsections (4) and (5) of section 465.0156, Florida Statutes, are amended, present subsections (6) through (8) of that section are redesignated as subsections (7) through (9), respectively, and a new subsection (6) is added to that section, to read:

465.0156 Registration of nonresident pharmacies.—

(4) The board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy for failure to comply with s. 465.0158, s. 465.017(2), or s. 465.025, or with any requirement of this section in accordance with ~~the provisions of~~ this chapter.

(5) In addition to the prohibitions of subsection (4) the board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy in accordance with ~~the provisions of~~ this chapter for conduct which causes or could cause serious bodily ~~injury~~ or ~~serious~~ psychological injury to a human or serious bodily injury to a nonhuman animal in ~~resident of~~ this state ~~if the board has referred the matter to the regulatory or licensing agency in the state in which the~~

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

~~pharmacy is located and the regulatory or licensing agency fails to investigate within 180 days of the referral~~.

(6) A nonresident pharmacy is subject to s. 456.0635.

Section 3. Section 465.0158, Florida Statutes, is created to read:

465.0158 Nonresident sterile compounding permit.—

(1) In order to ship, mail, deliver, or dispense, in any manner, a compounded sterile product into this state, a nonresident pharmacy registered under s. 465.0156, or an outsourcing facility, must hold a nonresident sterile compounding permit.

(2) An application for a nonresident sterile compounding permit shall be submitted on a form furnished by the board. The board may require such information as it deems reasonably necessary to carry out the purposes of this section. The fee for an initial permit and biennial renewal of the permit shall be set by the board pursuant to s. 465.022(14).

(3) An applicant must submit the following to the board to obtain an initial permit, or to the department to renew a permit:

(a) Proof of registration as an outsourcing facility with the Secretary of the United States Department of Health and Human Services if the applicant is eligible for such registration pursuant to the federal Drug Quality and Security Act, Pub. L. No. 113-54.

(b) Proof of registration as a nonresident pharmacy, pursuant to s. 465.0156, unless the applicant is an outsourcing facility and not a pharmacy, in which case the application must include proof of an active and unencumbered license, permit, or

registration issued by the state, territory, or district in which the outsourcing facility is physically located which allows the outsourcing facility to engage in compounding and to ship, mail, deliver, or dispense a compounded sterile product into this state if required by the state, territory, or district in which the outsourcing facility is physically located.

(c) Written attestation by an owner or officer of the applicant, and by the applicant's prescription department manager or pharmacist in charge, that:

1. The applicant has read and understands the laws and rules governing sterile compounding in this state.

2. A compounded sterile product shipped, mailed, delivered, or dispensed into this state meets or exceeds this state's standards for sterile compounding.

3. A compounded sterile product shipped, mailed, delivered, or dispensed into this state must not have been, and may not be, compounded in violation of the laws and rules of the state in which the applicant is located.

(d) The applicant's existing policies and procedures for sterile compounding, which must comply with pharmaceutical standards in chapter 797 of the United States Pharmacopoeia and any standards for sterile compounding required by board rule or current good manufacturing practices for an outsourcing facility.

(e) A current inspection report from an inspection conducted by the regulatory or licensing agency of the state, territory, or district in which the applicant is located. The inspection report must reflect compliance with this section. An inspection report is current if the inspection was conducted

within 6 months before the date of submitting the application for the initial permit or within 1 year before the date of submitting an application for permit renewal. If the applicant is unable to submit a current inspection report conducted by the regulatory or licensing agency of the state, territory, or district in which the applicant is located due to acceptable circumstances, as established by rule, the department shall:

1. Conduct, or contract with an entity approved by the board to conduct, an onsite inspection for which all costs shall be borne by the applicant;

2. Accept a current and satisfactory inspection report, as determined by rule, from an entity approved by the board; or

3. Accept a current inspection report from the United States Food and Drug Administration conducted pursuant to the federal Drug Quality and Security Act, Pub. L. No. 113-54.

(4) A permittee may not ship, mail, deliver, or dispense a compounded sterile product into this state if the product was compounded in violation of the laws or rules of the state in which the permittee is located or does not meet or exceed this state's sterile compounding standards.

(5) In accordance with this chapter, the board may deny, revoke, or suspend the permit of, fine, or reprimand a permittee for:

(a) Failure to comply with this section;

(b) A violation listed under s. 456.0635, s. 456.065, or s. 456.072, except s. 456.072(1)(s) or (1)(u);

(c) A violation under s. 465.0156(5); or

(d) A violation listed under s. 465.016.

(6) A nonresident pharmacy registered under s. 465.0156

which ships, mails, delivers, or dispenses a compounded sterile product into this state may continue to do so if the product meets or exceeds the standards for sterile compounding in this state, the product is not compounded in violation of any law or rule of the state where the pharmacy is located, and the pharmacy applies for and is issued a permit under this section on or before February 28, 2015.

(7) An applicant registering on or after October 1, 2014, as a nonresident pharmacy under s. 465.0156 may not ship, mail, deliver, or dispense a compounded sterile product into this state until the applicant is registered as a nonresident pharmacy and is issued a permit under this section.

(8) The board shall adopt rules as necessary to administer this section, including rules for:

(a) Submitting an application for the permit required by this section.

(b) Determining how, when, and under what circumstances an inspection of a nonresident sterile compounding permittee must be conducted.

(c) Evaluating and approving entities from which a satisfactory inspection report will be accepted in lieu of an onsite inspection by the department or an inspection by the licensing or regulatory agency of the state, territory, or district where the applicant is located.

Section 4. Section 465.017, Florida Statutes, is amended to read:

465.017 Authority to inspect; disposal.—

(1) Duly authorized agents and employees of the department may ~~shall have the power to~~ inspect in a lawful manner at all

reasonable hours any pharmacy, hospital, clinic, wholesale establishment, manufacturer, physician's office, or any other place in the state in which drugs and medical supplies are compounded, manufactured, packed, packaged, made, stored, sold, offered for sale, exposed for sale, or kept for sale for the purpose of:

(a) Determining if any provision ~~of the provisions~~ of this chapter or any rule adopted ~~promulgated~~ under its authority is being violated;

(b) Securing samples or specimens of any drug or medical supply after paying or offering to pay for such sample or specimen; or

(c) Securing such other evidence as may be needed for prosecution under this chapter.

(2) Duly authorized agents and employees of the department may inspect a nonresident pharmacy registered under s. 465.0156 or a nonresident sterile compounding permittee under s. 465.0158 pursuant to this section. The costs of such inspections shall be borne by such pharmacy or permittee.

(3)~~(2)(a)~~ Except as permitted by this chapter, and chapters 406, 409, 456, 499, and 893, records maintained in a pharmacy relating to the filling of prescriptions and the dispensing of medicinal drugs may ~~shall not~~ be furnished only to ~~any person other than to~~ the patient for whom the drugs were dispensed, or her or his legal representative, or to the department pursuant to existing law, or, if ~~in the event that~~ the patient is incapacitated or unable to request such ~~said~~ records, her or his spouse except upon the written authorization of such patient.

(a) Such records may be furnished in any civil or criminal

proceeding, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or her or his legal representative by the party seeking such records.

(b) The board shall adopt rules establishing ~~to establish~~ practice guidelines for pharmacies to dispose of records maintained in a pharmacy relating to the filling of prescriptions and the dispensing of medicinal drugs. Such rules must ~~shall~~ be consistent with the duty to preserve the confidentiality of such records in accordance with applicable state and federal law.

Section 5. This act shall take effect October 1, 2014.

THE FLORIDA SENATE

COMMITTEE ON HEALTH POLICY

Location
530 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5824

Senator Aaron Bean, *Chair*
Senator Eleanor Sobel, *Vice Chair*

Professional Staff: Sandra R. Stovall, *Staff Director*

Senate's Website: *www.flsenate.gov*

April 3, 2014

Senator Joe Negron
Chairman
Appropriations Committee
412 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Negron:

I am requesting that SB 662 (Nonresident Sterile Compounding and Permits), a Health Policy committee bill, be placed on the agenda of the committee's next scheduled meeting. Your consideration would be greatly appreciated.

If you have questions, please call 487-5824.

Respectively,

Aaron Bean

Aaron Bean
State Senator, District 4

SENATE APPROPRIATIONS
RECEIVED
14 APR -3 PM 5:
CHAIRMAN
STAFF DIR.
STAFF

cc: Cindy Kynoch, Staff Director
Appropriations Committee

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 662 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 698
INTRODUCER:	Criminal Justice Committee and Senator Stargel
SUBJECT:	Sexual Misconduct with Students by Authority Figures
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Clodfelter	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 698 reclassifies the felony degree of a specified sexual offense committed by an "authority figure" of a school against a student at that school. An "authority figure" is an adult employed by, volunteering at, or under contract with a school.

The Criminal Justice Impact Conference found the original bill would have an insignificant prison bed impact. It does not appear the amendment made to the original bill will change that estimate.

II. Present Situation:

Currently, Florida laws punishing sexual acts committed against children do not provide for any specific offense or felony enhancement when, for example, the perpetrator is a teacher or school administrator and the victim is a student.[1] The bill reclassifies the felony degree of a specified sexual offense committed by an "authority figure" of a school against a student at that school.

[1] An exception is s. 810.145(8)(a)2., F.S., a form of video voyeurism which is described in footnote three. Also, in some cases educational personnel are charged with the offense of sexual battery upon a minor by a person having "custodial authority" over the minor (s. 794.011(8), F.S.). *See, e.g., Crews v. State*, 130 So.3d 698 (Fla. 1st DCA 2013). However, depending upon the factual circumstances, a teacher, for example, may or may not have "custodial authority" over a student for purpose of this offense. "In *Hallberg v. State*, 649 So.2d 1355 (Fla.1994), the Florida Supreme Court held that 'a teacher, without any teaching responsibility or extracurricular activity supervisory authority over a child during a summer recess, is not in a position of custodial authority' for the purposes of the statute which forbids sexual activity with a child by a person in familial or custodial authority. Thus, 'teachers are not, by reason of their chosen profession, custodians of their students at all times, particularly when school is recessed for the summer.' *Id.* at 1357." *Crews v. State*, 130 So.3d at 701.

The relevant sexual offenses are those listed in s. 775.21(4)(a)1., F.S. (offenses relevant to registration of sexual predators) or s. 943.0435(1)(a)1.a., F.S. (offenses relevant to registration of sexual offenders), but excluding s. 794.011(4)(g), F.S.,[2] and s. 810.145(8)(a)2., F.S.[3] The bill reclassifies third degree felonies, second degree felonies, and first degree felonies.

Excluding s. 794.011(4)(g), F.S., and s. 810.145(8)(a)2., F.S. (offenses excluded by the bill), and offenses in which the offender is a minor (the bill requires the "authority figure" be an adult), the sexual offenses listed in the registry statutes that are third degree felonies, second degree felonies, or first degree felonies are:

- *Kidnapping (minor victim, offender not a parent)*: First degree felony (Level nine or ten). Section 787.01(2), F.S.
- *False imprisonment (minor victim, offender not a parent)*: Third degree felony (Level six). Section 787.02(2), F.S.
- *False imprisonment (child under 13 with sexual offense, offender not a parent)*: First degree felony (Level nine). Section 787.02(3), F.S.
- *Luring or enticing a child (offender 18+ with previous sexual offense and not a parent, victim under 12)*: Third degree felony (Not ranked: defaults to Level one). Section 787.025(2)(c), F.S.
- *Human trafficking (using coercion for commercial sexual activity)*: First degree felony (Level 8). Section 787.06(3)(b), F.S.
- *Human trafficking (using coercion for commercial sexual activity of any individual who is an unauthorized alien)*: First degree felony (Level nine). Section 787.06(3)(d), F.S.
- *Human trafficking (using coercion for commercial sexual activity, transfer or transport of any individual from outside this state to within this state)*: First degree felony (Level eight). Section 787.06(3)(f), F.S.
- *Human trafficking (for commercial sexual activity in which any child under 18 is involved)*: First degree felony (Level nine). Section 787.06(3)(g), F.S.
- *Sexual battery (victim 12+, no consent, special circumstance)*: First degree felony (Level nine). Section 794.011(4), F.S.
- *Sexual battery (victim 12+, no consent, no deadly force)*: Second degree felony (Level eight). Section 794.011(5), F.S.
- *Sexual battery (victim under 18, offender in a position of familial or custodial authority and solicits victim to engage in sexual battery)*: Third degree felony (Level six). Section 794.011(8)(a), F.S.
- *Sexual battery (victim 12+ but under 18, offender in a position of familial or custodial authority and engages in sexual battery)*: First degree felony (Level nine). Section 794.011(8)(b), F.S.
- *Sexual activity with certain minors (offender 24+ engages in sexual activity with victim 16 or 17)*: Second degree felony (Level six). Section 794.05, F.S.
- *Procuring person under 18 for prostitution*: Second degree felony (Level seven). Section 796.03, F.S.

[2] Section 794.011(4)(g), F.S., provides that it is a first degree felony for a law enforcement officer, correctional officer, or other specified officer or official to commit sexual battery upon a victim 12 years of age or older.
[3] Section 810.145(8)(a)2., F.S., provides that it is a second degree felony for an adult employed by a school to commit an act of video voyeurism against a student of the school.

- *Selling or buying of minors into sex trafficking or prostitution (by parent, guardian, etc.)*: First degree felony (Level nine). Section 796.035, F.S.
- *Lewd or lascivious battery*: Second degree felony (Level eight). Section 800.04(4), F.S.
- *Lewd or lascivious molestation (offender 18+ and victim age 12-15)*: Second degree felony (Level seven). Section 800.04(5)(c), F.S.
- *Lewd or lascivious conduct (offender 18+)*: Second degree felony (Level six). Section 800.04(6)(b), F.S.
- *Lewd or lascivious exhibition (offender 18+)*: Second degree felony (Level five). Section 800.04(6)(c), F.S.
- *Video voyeurism (offender 18+ responsible for welfare of child under 16 or offender 24+ and victim under 16)*: Second degree felony (Not ranked: defaults to Level one). Section 810.145(8)(a), F.S.
- *Video voyeurism (with previous voyeurism conviction)*: Second degree felony (Level six). Section 810.145(8)(b), F.S.
- *Lewd or lascivious battery upon elderly/disabled*: Second degree felony (Level eight). Section 825.1025(2), F.S.
- *Lewd or lascivious molestation upon elderly/disabled*: Third degree felony (Level six). Section 825.1025(3), F.S.
- *Lewd or lascivious exhibition in presence of elderly/disabled*: Third degree felony (Level five). Section 825.1025(4), F.S.
- *Using a child in a sexual performance, or being a parent, guardian, or custodian of child and consenting to the participation of child in a sexual performance*: Second degree felony (Level six). Section 827.071(2), F.S.
- *Promoting a sexual performance by a child*: Second degree felony (Level six). Section 827.071(3), F.S.
- *Possession with intent to promote any picture, etc., which includes any sexual conduct by a child*: Second degree felony (Level five). Section 827.071(4), F.S.
- *Possession of any picture, etc., which includes any sexual conduct by a child*: Third degree felony (Level five). Section 827.071(5), F.S.
- *Selling, renting, loaning, giving away, distributing, transmitting, or showing any obscene material to a minor*: Third degree felony (Not ranked: defaults to Level one). Section 847.0133, F.S.
- *Computer pornography*: Third degree felony (Level six). Section 847.0135(2), F.S.
- *Using a computer to solicit, lure, entice, etc., a child to commit a sexual act or a parent to consent to a child's participation in a sexual act*: Third degree felony (Level seven). Section 847.0135(3), F.S.
- *Using a computer to solicit, lure, entice, etc., a child to commit a sexual act or a parent to consent to a child's participation in a sexual act (while misrepresenting one's age)*: Second degree felony (Level seven). Section 847.0135(3), F.S.
- *Traveling to meet a minor to engage in sexual conduct with the minor*: Second degree felony (Level seven). Section 847.0135(4), F.S.
- *Committing certain lewd acts live over computer knowing the transmission is viewed by a victim under 16 (offender 18+)*: Second degree felony (Level five). Section 847.0135(5), F.S.
- *Transmitting child pornography*: Third degree felony (Level five). Section 847.0137, F.S.
- *Transmitting material harmful to minors*: Third degree felony (Level five). Section 847.0138, F.S.

- *Selling or buying of minors*: First degree felony (Level nine). Section 847.0145, F.S.
- *Sexual misconduct with a juvenile offender*: Second degree felony (Not ranked: defaults to Level four). Section 985.701(1), F.S.

III. Effect of Proposed Changes:

The bill creates s. 775.0862, F.S., which provides the felony degree of a violation of an offense listed in s. 775.21(4)(a)1., F.S. (offenses relevant to registration of sexual predators), or s. 943.0435(1)(a)1.a., F.S. (offenses relevant to registration of sexual offenders), but excluding s. 794.011(4)(g), F.S. and s. 810.145(8)(a)2., F.S., shall be reclassified if the offense is committed by an "authority figure" of a "school" against a "student" of that school.

The bill provides the following definitions of relevant terms:

- "Authority figure" means a person over the age of 18 employed by, volunteering at, or under contract with a school.
- "School" has the same meaning as provided in s. 1003.01, F.S.,[4] and includes a private school as defined in s. 1002.01, F.S.,[5] a voluntary prekindergarten education program as described in s. 1002.53(3), F.S.,[6] early learning programs, a public school as described in s. 402.3025(1), F.S.,[7] the Florida School for the Deaf and the Blind, the Florida Virtual

[4] Section 1003.01(2), F.S., defines "school" as an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

[5] Section 1002.01(2), F.S., defines "private school" as a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(13), F.S., or that gives preemployment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005, F.S. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41, F.S.

[6] Section 1002.53(3), F.S., provides that the parent of each child eligible for the Voluntary Prekindergarten Education Program under subsection (2) of the statute may enroll the child in one of the following programs:

- A school-year prekindergarten program delivered by a private prekindergarten provider under s. 1002.55, F.S.;
- A summer prekindergarten program delivered by a public school or private prekindergarten provider under s. 1002.61, F.S.;
- A school-year prekindergarten program delivered by a public school; or
- A specialized instructional services program for children who have disabilities, if the child has been evaluated and determined as eligible, has a current individual educational plan developed by the local school board, and is eligible for the program under s. 1002.66, F.S.

[7] Section 402.3025(1)(a), F.S., provides (under the subtitle "public schools") that the following programs for children shall not be deemed to be child care and shall not be subject to the provisions of ss. 402.301-402.319, F.S. (child care facilities):

- Programs for children in five-year-old kindergarten and grades one or above;
- Programs for children who are at least three years of age, but who are under five years of age, provided the programs are operated and staffed directly by the schools and provided the programs meet age-appropriate standards as adopted by the State Board of Education; and
- Programs for children under three years of age who are eligible for participation in the programs under the existing or successor provisions of Pub. L. No. 94-142 or Pub. L. No. 99-457, provided the programs are operated and staffed directly by the schools and provided the programs meet age-appropriate standards as adopted by the State Board of Education.

School as established under s. 1002.37, F.S., and a K-8 Virtual School as established under s. 1002.415, F.S., but does not include facilities dedicated exclusively to the education of adults.

- "Student" means a person under the age of 18 who is enrolled at a school.

Based on these definitions, it appears the only required nexus between the authority figure and the student is that they are at the same school (the student is enrolled at the school and the authority figure is employed by, volunteering at, or under contract with that school). There is no requirement the offense occur on the premises of the school or during the school year or the authority figure have any responsibility for or authority over the student by reason of the authority figure's position.

The bill reclassifies the offense as follows:

- In the case of a third degree felony,[8] the offense is reclassified to a second degree felony.[9]
- In the case of a second degree felony, the offense is reclassified to a first degree felony.[10]
- In the case of a first degree felony, the offense is reclassified to a life felony.[11]

The bill also provides, for purposes of sentencing under ch. 921, F.S. (the Criminal Punishment Code), and determining incentive gain-time eligibility under ch. 944, F.S., a felony offense reclassified, as provided in the bill, is ranked one level above the ranking under s. 921.0022, F.S., or s. 921.0023, F.S., of the offense committed.

An example of this reclassification is lewd or lascivious battery (s. 800.04(4), F.S.). This offense is a second degree felony (punishable by up to 15 years in state prison) and is ranked in Level eight. As reclassified, this offense would be a first degree felony (punishable by up to 30 years in state prison) and ranked in Level nine.

The bill also amends s. 921.0022, F.S. (the offense severity ranking chart of the Criminal Punishment Code). Currently, this statute, in part, provides reclassification of the degree of the felony through the application of a statute specified in s. 921.0022, F.S., or any other law which provides an enhanced penalty for a felony offense, to any offense listed in the offense severity

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Section 402.3025(1)(b), F.S., provides (under the subtitle "public schools") that the following programs for children shall be deemed to be child care and shall be subject to the provisions of ss. 402.301-402.319, F.S.:

- Programs for children who are under five years of age when the programs are not operated and staffed directly by the schools; and
- Programs for children under three years of age who are not eligible for participation in the programs under existing or successor provisions of Pub. L. No. 94-142 or Pub. L. No. 99-457.

[8] A third degree felony is punishable by up to five years in state prison, a fine of up to $5,000, or prison and a fine. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082, F.S.

[9] A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

[10] A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to $10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

[11] A life felony is generally punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment, a fine of up to $15,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

ranking chart, shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023, F.S.[12] The bill adds reference to s. 775.0862, F.S.

The effective date of the bill is October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimated the original bill would have an insignificant prison bed impact. It does not appear the changes made to CS/SB 698 will impact that estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 775.0862 of the Florida Statutes.

[12] This statute ranks noncapital felonies not included in the chart based on a ranking assigned to their felony degree.

This bill substantially amends section 921.0022 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 31, 2014:

- Rewords the definition of "authority figure" (adult employed by, volunteering at, or under contract with a school);
- Substitutes the term "school" for "educational institutional" and defines the term (linking the definition to a definition in current law);
- Rewords the definition of "student" (a minor enrolled at school); and
- Excludes from the felony reclassification provisions of the bill video voyeurism committed by an adult employed by a school against a student of the school.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Stargel

591-03479-14 2014698c1

A bill to be entitled

An act relating to sexual misconduct with students by authority figures; providing a short title; creating s. 775.0862, F.S.; providing definitions; providing for reclassification of specified sexual offenses committed against a student by an authority figure; providing for severity ranking of offenses; amending s. 921.0022, F.S.; providing for application of the severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. This act may be cited as the "Sexual Misconduct with Students by Authority Figures Act."

Section 2. Section 775.0862, Florida Statutes, is created to read:

775.0862 Sexual offenses against students by authority figures; reclassification.—

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

(a) "Authority figure" means a person over the age of 18 employed by, volunteering at, or under contract with a school.

(b) "School" has the same meaning as provided in s. 1003.01 and includes a private school as defined in s. 1002.01, a voluntary prekindergarten education program as described in s. 1002.53(3), early learning programs, a public school as described in s. 402.3025(1), the Florida School for the Deaf and the Blind, the Florida Virtual School as established under s. 1002.37, and a K-8 Virtual School as established under s. 1002.415, but does not include facilities dedicated exclusively to the education of adults.

(c) "Student" means a person under the age of 18 who is enrolled at a school.

(2) The felony degree of a violation of an offense listed in s. 943.0435(1)(a)1.a. shall be, unless the offense is a violation of s. 794.011(4)(g) or s. 810.145(8)(a)2., reclassified as provided in this section if the offense is committed by an authority figure of a school against a student of the school.

(3)(a) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

(c) In the case of a felony of the first degree, the offense is reclassified to a life felony.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 3. Subsection (2) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(2) The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony

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

offense is assigned to a level according to the severity of the offense. For purposes of determining which felony offenses are specifically listed in the offense severity ranking chart and which severity level has been assigned to each of these offenses, the numerical statutory references in the left column of the chart and the felony degree designations in the middle column of the chart are controlling; the language in the right column of the chart is provided solely for descriptive purposes. Reclassification of the degree of the felony through the application of s. 775.0845, s. 775.0861, s. 775.0862, s. 775.087, s. 775.0875, s. 794.023, or any other law that provides an enhanced penalty for a felony offense, to any offense listed in the offense severity ranking chart in this section shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023.

Section 4. This act shall take effect October 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 15, 2014

The Honorable Joe Negron
Senate Appropriations Committee, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I am respectfully requesting that SB 698, related to *Sexual Misconduct with Students by Authority Figures*, SB 950, related to *Teacher Certification*, and SB 1512, related to *Students with Disabilities*, and SB 1632, related to *Special Districts*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Alicia Weiss/ AA

REPLY TO:
❒ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 698 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
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SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☒ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 700 (582052)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senators Bradley and Detert
SUBJECT:	Department of Juvenile Justice
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Favorable**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Clodfelter	Sadberry	ACJ	**Fav/CS**
4.	Clodfelter	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 700 amends chapter 985, Florida Statutes, which provides a framework for the juvenile justice system in Florida and delineates duties and responsibilities of the Department of Juvenile Justice (DJJ or department). Specifically, the bill enhances the state's focus on serious juvenile offenders, adopts measures to reduce recidivism, and increases care of juvenile offenders in the department's custody.

To provide an increased focus on serious cases and public safety, the bill:

- Requires the DJJ to notify a law enforcement agency and the victim of a juvenile offender who has escaped or absconded while in custody during commitment;
- Grants the court jurisdiction over a juvenile sex offender under THE DJJ supervision until he or she is 21 years old;
- Encourages the DJJ to develop evening-reporting centers to better support children in nonsecure detention;
- Authorizes the court to order juvenile offenders who commit technical violations of probation into a diversion program; and
- Waives fingerprinting requirements for children committing offenses that may only result in a civil citation.

To reduce recidivism through recognizing the special needs of children and the need for transitional services, the bill:

- Authorizes intake personnel to incorporate mental health, substance abuse, and psychosexual evaluations as part of the intake process;
- Establishes trauma-informed care as part of the DJJ model;
- Encourages placement of children in their home communities to facilitate family and community support;
- Enhances the transition-to-adult services offered and lifts the age restriction of youth clients eligible for service; and
- Requires the DJJ to focus on prevention services through providing academic and community support for at-risk youth.

To improve care to juveniles in the residential custody of the DJJ, the bill:

- Combines the commitment levels of low-risk and moderate-risk residential commitments into the newly-designated nonsecure residential commitment level and caps the number of beds authorized per facility at 90 beds, rather than the current cap of 165 beds;
- Creates a criminal offense of willful and malicious neglect, punishable as a third degree felony if the employee's lack of care does not result in harm to the juvenile offender in DJJ custody and as a second degree felony if great bodily harm results; and
- Allows for prosecution under the new criminal offense for any victim in commitment care, not just children under the age of 18.

To increase performance accountability, the bill requires the DJJ to adopt a system to measure performance based on recidivism rates of providers and programs, and to annually report findings to the Legislature.

The bill codifies a provision found in the 2013-2014 Implementing Bill for the General Appropriations Act which caps the allowable rate for hospital health services provided to juveniles at 110 percent of the Medicare allowable rate, with a cap of 125 percent in limited cases.

This bill grants the DJJ greater flexibility in the assessment process by allowing a DJJ employee other than a juvenile probation officer to participate in intake, screenings, and assessments.

The DJJ indicates that the bill will result in a small increase in costs which can be absorbed within existing resources. The Office of State Courts Administrator also indicates it expects that it will not need additional resources for any increased workload in the court system. The new detention criteria may result in some children being held in secure detention who would not be held under current law, and some others being held for a longer period of time. This may have an indeterminate fiscal impact on local government expenditures for a share of detention costs.

II. Present Situation:

Department of Juvenile Justice/Department of Health and Human Services

In years past, the Department of Health and Rehabilitative Services (HRS) participated in all court proceedings relating to children, including dependency and delinquency cases.[1] In 1994, the Legislature created the Department of Juvenile Justice (DJJ), and assigned the DJJ responsibility for juvenile delinquency cases and children in need of services and families in need of services (CINS/FINS) cases. The HRS retained jurisdiction of dependency cases. Despite this bifurcation, laws governing delinquency and dependency remained together in ch. 39, F.S.[2]

In 1997, the Legislature transferred provisions relating to juvenile delinquency proceedings in ch. 39, F.S., into ch. 984, F.S., (relating to CINS/FINS) and ch. 985, F.S., (relating to juvenile delinquency cases).[3] However, the legislation inadvertently included a handful of provisions relating to dependency in the transfer. Dependency duties are now the responsibility of the Department of Children and Families (DCF).[4]

Jurisdiction

Section 985.0301(1), F.S., provides that Florida's circuit courts have exclusive original jurisdiction in criminal proceedings in which a child is alleged to have committed a violation. Currently, the circuit court where the alleged violation occurred may transfer a case to the circuit court in which the child resides or will reside at the time of detention or placement.[5] A child detainee must be transferred to the appropriate detention center or facility or other placement directed by the court receiving the case.[6]

The court retains jurisdiction over a child until the child:

- Is 19 years old, if the child's case has not been resolved;
- Is 19 years old, if the child is ordered to participate in a probation program, including participation in transition-to-adulthood services;
- Is 21 years old, if the child is committed to the DJJ;
- Is 22 years old, if the child is committed to the DJJ for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program;[7]
- Is 21 years old, if the child is committed to the DJJ for placement in an intensive residential treatment program for 10-13 year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program;
- Is 21 years old, if the child is committed to a juvenile correctional facility or a juvenile prison, specifically for the purpose of allowing the child to complete the program;

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[1] Florida Department of Juvenile Justice, *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/about-us/history (last visited on February 21, 2014).
[2] *Id.*
[3] *Id.*
[4] Section 39.01(21), F.S.
[5] Section 985.0301(4)(a), F.S.
[6] *Id.*
[7] This is solely for the child to complete a conditional release program. Section 985.0301(5)(d), F.S.

- Is 21 years old, if the child is a juvenile sexual offender who has been placed in a program or facility for juvenile sexual offenders, specifically to complete the program; or
- Completes payment of court-ordered restitution.[8]

Contempt of Court

Section 985.037, F.S., authorizes the court to punish a child for contempt for interfering with the court or court administration, or for violating a court order or ch. 985, F.S. Direct contempt results from conduct committed by the juvenile in the presence of the judge, while indirect contempt concerns conduct committed outside the judge's presence.[9]

A child charged with direct contempt may be sanctioned immediately.[10] If a child is charged with indirect contempt, the court must hold a hearing within 24 hours to determine if the child committed indirect contempt.[11] In indirect contempt proceedings, the child is given specified due process rights.[12]

If a court finds that a child committed contempt of court, the court may order the child to serve an alternative sanction[13] or order the placement of the child into a secure facility[14] for a specified time.[15] If a child is placed into a secure facility, the court must review the placement every 72 hours.[16]

Fingerprinting and Photographing

Section 985.11(1)(a), F.S., requires a child who is charged with or found to have committed specified offenses to be fingerprinted by the appropriate law enforcement agency, and requires the law enforcement agency to submit the fingerprints to the Florida Department of Law Enforcement (FDLE).

Intake Process

Every child under the age of 18 charged with a crime in Florida is referred to the DJJ.[17] Intake and screening services for youth referred to the DJJ are performed at a Juvenile Assessment Center[18] by a DJJ employee.[19] Once brought into intake, the DJJ assigns the child a juvenile

[8] Section 985.0301(5), F.S.
[9] *Kelley v. Rice*, 800 So.2d 247, 251 (Fla. 2d DCA 2001); *E.T. v. State*, 587 So.2d 615, 616 (Fla. 1st DCA 1991).
[10] Section 985.037(4)(a), F.S.
[11] Section 985.037(4)(b), F.S.
[12] *Id*.
[13] Section 985.037(3), F.S. Each judicial circuit is required to have an alternative sanctions coordinator to coordinate and maintain a spectrum of contempt sanction alternatives. The alternative sanctions coordinator serves under the chief judge of the circuit. The court may immediately request that the alternative sanctions coordinator recommend the most appropriate sanctions placement.
[14] A child may only be placed into a secure facility if alternative sanctions are unavailable or inappropriate. Section 985.037(1), F.S.
[15] Five days for a first offense and 15 days for a second or subsequent offense of contempt. Section 985.037(2), F.S.
[16] Section 985.037(4), F.S.
[17] A referral is similar to an arrest in the adult criminal justice system.
[18] Section 985.135(4), F.S.
[19] Section 985.14(2), F.S.

probation officer, conducts an assessment, and recommends appropriate sanctions and services to the state attorney and the court.[20] The probation officer serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.[21]

Detention Care System

Detention care is the temporary care of children pursuant to an adjudication or order of the court.[22] Children may be detained in one of three types of detention care: secure,[23] nonsecure,[24] and home detention[25] when specific statutory criteria are met.

Section 985.24, F.S., provides guidelines for the court to use in ordering detention care, including that the child:

- Presents a substantial risk of not appearing at a hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court; or
- Requests protection from imminent bodily harm.

If a law enforcement agency takes a child into custody, the DJJ must accept custody of the child and review the facts in the arrest report to determine what, if any, detention care is necessary.[26] The probation officer makes an initial decision regarding detention care placement using the "Detention Risk Assessment Instrument."[27] In certain instances, the probation officer does not have discretion and must place a child in secure detention (e.g., when a child is charged with possessing or discharging a firearm on school property).[28]

A child may not be held in secure, nonsecure, or home detention for more than 24 hours without a detention hearing.[29] A detention hearing is conducted by a circuit judge who reviews the

[20] Section 985.14(1) and (2), F.S.
[21] Section 985.145(1), F.S.
[22] Section 985.03(18), F.S.
[23] Section 985.03(18)(a), F.S., defines "secure detention" as temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.
[24] Section 985.03(18)(b), F.S., defines "nonsecure detention" as temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement. However, the DJJ reports that its current practice for detention is to only utilize secure or home detention; nonsecure detention has not been used for several years. Department of Juvenile Justice, *2014 Bill Analysis for SB 700* (2014) (on file with the Senate Judiciary Committee).
[25] Section 985.03(18)(c), F.S., defines "home detention" as temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication, disposition, or placement.
[26] Section 985.25(1), F.S.
[27] Sections 985.25(1)(b) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.
[28] Section 985.25(1)(b), F.S.
[29] Section 985.26(1), F.S. The child has the right to be represented at this hearing or can waive the right. Section 985.033, F.S.

assessment instrument to determine whether probable cause exists that the child committed the offense and the need for continued detention.[30] A court's detention order must include specific instructions for release of the child from detention (generally, a 21-day limit applies to secure, nonsecure, or home detention[31]).[32]

If the child is a juvenile sex offender, detention staff must notify the appropriate law enforcement agency and school personnel of the child's release from secure detention or transfer to nonsecure detention.[33]

Disposition

The state attorney formally charges a child with a criminal offense by filing a petition for delinquency.[34] Because a child may be detained if adjudicated delinquent, federal constitutional law requires many of the same due process safeguards afforded to adult criminal defendants[35] and that the case proceed to adjudicatory hearing (trial)[36] as quickly as possible. If the court finds that the child committed the violation of law, the court may either withhold adjudication of delinquency or adjudicate the child delinquent.[37]

If the court finds that a child has committed an offense, the court must hold a disposition hearing to determine appropriate punishment. Before making a final disposition, the court reviews a pre-disposition report[38] prepared by the DJJ.[39] The pre-disposition report identifies appropriate educational and vocational goals, which include successful completion of vocational courses, and successful attendance and completion of the child's current grade. The court must then determine whether it is appropriate to commit the child to the DJJ or probation and community-based sanctions.[40]

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[30] Section 985.255(3), F.S.
[31] Section 985.26(2), F.S. A child may be held up to 30 days if the child is charged with what would be, if committed by an adult, a capital felony, a life felony, a first degree felony, or a second degree felony offense.
[32] Section 985.255(3)(c), F.S.
[33] Similarly, once a juvenile sex offender is released from a commitment program, the DJJ must notify the FDLE under ss. 985.481 and 985.4815, F.S. The DJJ has been required to provide this notification electronically since November 1, 2007.
[34] Section 985.318, F.S.
[35] Section 985.35(2)(a), (b), and (c), F.S., provides that the child is entitled to present evidence, cross examine witnesses, protect himself or herself from self-incrimination, and to not have evidence that was illegally seized or obtained presented to the court in the case against them. Facts must be established beyond a reasonable doubt and rules of evidence apply to the proceedings. Additionally, s. 985.033(1), F.S., provides that a child is entitled to legal counsel at all stages of any delinquency court proceeding.
[36] Section 985.03(2), F.S., defines an "adjudicatory hearing" as a hearing for the court to determine whether the facts support the allegations stated in the petition, as provided under s. 985.35, F.S. In an adjudicatory hearing, the judge decides both questions of fact and law. Section 985.35(2), F.S.
[37] Section 985.35, F.S. An adjudication of delinquency by a court is not considered a conviction.
[38] Section 985.433(6), F.S., requires the pre-disposition report to include a summary of the juvenile's present offense, a statement by the youth, background information regarding the familial and community environment, a narrative explaining the juvenile's employment or school history, psychological data, restitution information, criminal history, risk assessment, and the recommendations of DJJ concerning disposition of the case.
[39] Section 985.43, F.S.
[40] Section 985.433(6), F.S.

Probation or Postcommitment Probation (Probation)

A child's probation program must include both a penalty and a rehabilitative component.[41] Each child is assigned a juvenile probation officer who monitors the child's compliance and helps the child connect with service providers.

If the child does not comply with terms of probation, the child may be brought before the court on a violation of probation. The violation may be a substantive violation for committing a new criminal offense or a technical violation for failure to comply with a condition of probation.[42] If a child admits to the violation or is found by the court to have violated probation, the court must enter an order revoking, modifying, or continuing probation.[43] Specifically, the court may:

- Place the child into a consequence unit [44] for up to 15 days;
- Place the child on home detention with electronic monitoring;
- Modify or continue the child's probation; or
- Revoke probation and commit the child to the DJJ.[45]

Commitment

The court may commit the child to a nonresidential or residential facility.[46] Commitment programs vary by "restrictiveness level," defined in s. 985.03(46), F.S., as "the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children." Levels of commitment are:

- Minimum-risk nonresidential, a level 2 commitment program, where children remain in their community and participate at least 5 days a week in day treatment;
- Low-risk residential, a level 4 program, where children live in a residential program and have unsupervised access to their community;
- Moderate-risk residential, a level 6 program, where children are in a residential program and have supervised access to their community;
- High-risk residential, a level 8 program, where children are not allowed access to their community; and
- Maximum-risk residential, a level 10 long-term residential program, including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to their community.[47]

Florida law caps the number of beds at residential facilities at 165 beds.[48]

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[41] Section 985.435(2) and (3), F.S., give examples of what these components include.
[42] *See Meeks v. State*, 754 So.2d 101, 103-104 (Fla. 1st DCA 2000); *Johnson v. State*, 678 So.2d 934, 934-935 (Fla. 3d DCA 1996).
[43] Section 985.439(4), F.S.
[44] Section 985.439(2), F.S., defines "consequence unit" as a secure facility specifically designated by the department for children who are taken into custody under s. 985.101, F.S., for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation.
[45] Section 985.439(4)(d), F.S.
[46] Section 985.441, F.S.
[47] Section 985.03(46)(e), F.S.
[48] Section 985.03(46), F.S.

If the court determines the child should be adjudicated delinquent and committed to the DJJ through court order, [49] the DJJ must recommend the restrictiveness level for the child. The court may commit the child at a different restrictiveness level but must set out findings for departure in the record based on a preponderance of the evidence.[50]

Once the court enters a commitment order, the DJJ is responsible for determining placement in a specific residential program based on the child's identified risks and needs.[51] Currently, the court must order a child to be placed in a specific restrictiveness level from level 2 through level 10 and the DJJ does not have the flexibility to move a child into a different restrictiveness level.

A child is committed to a residential program for an indeterminate length of time and must complete an individualized treatment plan.[52] The goals of the plan are based on the child's rehabilitative needs and include educational and vocational service goals.[53] All residential programs provide medical, mental health, substance abuse, and developmental disability services.[54]

Conditional Release and Transition-to-Adulthood Services

Conditional release is defined as the care, treatment, help, and supervision provided to a juvenile released from a residential commitment program. The purposes of conditional release are to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the DJJ to the family.[55]

The DJJ must assess each child placed into a residential commitment facility to determine the need for conditional release services upon release from the facility.[56] Children participating in conditional release services must participate in an educational program [57] if they are of compulsory school attendance age or noncompulsory school age and have not obtained a high school diploma or its equivalent.[58] A child who has received a diploma or equivalent, but is not employed, must attend college classes, other career education, or participate in workforce development.[59]

The DJJ must also provide older [60] children with opportunities to participate in "transition-to-adulthood" services that build life skills and increase the ability to live independently and be

[49] Section 985.441(1), F.S.
[50] Section 985.441(2), F.S.
[51] Department of Juvenile Justice, *Residential Services*, Comprehensive Accountability Report, Fiscal Year 2011-2012, http://www.djj.state.fl.us/research/reports/car (last visited February 24, 2014).
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] Section 985.03(12), F.S.
[56] Section 985.46(3), F.S.
[57] Pursuant to s. 1003.21(1)(a)1. and (2)(a), F.S.
[58] Section 985.46(5), F.S.
[59] *Id*.
[60] The term "older" in s. 985.461(2)(b), F.S., refers to children 17 years of age or older.

self-sufficient.[61] The DJJ is authorized to engage in a variety of activities designed to support participation in transition-to-adulthood services.[62]

Internal Agency Procedures

Administering the Juvenile Justice Continuum

Section 985.601, F.S., requires the Department of Juvenile Justice (DJJ) to develop or contract for diversified and innovative programs to provide rehabilitative treatment.

Quality Assurance and Cost-Effectiveness

Section 985.632, F.S., requires the DJJ to provide transparency to policy makers and the public about the costs and effectiveness of the programs that it operates. The DJJ is also required to develop an accountability system to assist in ensuring that children served receive the best services for their needs.

The DJJ is required to annually collect cost data for every program that it operates or contracts for and submit this data to the Legislature and the Governor.[63] The DJJ is also required to develop a cost-effectiveness model and apply the model to each commitment program. The cost-effectiveness model must compare program costs to client outcomes and program outputs, and include recidivism rates.[64] The DJJ must rank each commitment program based on the cost-effectiveness model and may terminate a program if the program has failed to achieve a minimum threshold of program effectiveness.

Departmental Contracting Powers; Personnel Standards and Screening

Section 985.644, F.S., requires DJJ employees and all personnel[65] of contract providers to complete a:

- Level 2 employment screening prior to employment (which requires fingerprinting);[66] and
- National criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person's employment.

The DJJ must electronically submit fingerprint information of DJJ employees and contract personnel (other than law enforcement, correctional, and correctional probation officers) to the FDLE.

[61] Section 985.461(1), F.S.
[62] Section 985.461(4), F.S.
[63] Section 985.632(3), F.S.
[64] Section 985.632(4)(a), F.S.
[65] Section 985.644(3)(a), F.S., states that personnel includes all owners, operators, employees, persons who have access to confidential juvenile records, and volunteers of contract providers for any program for children.
[66] Section 435.04, F.S. Level 2 employment screenings require fingerprints to be processed through statewide criminal history records checks through FDLE and national criminal history records checks through the Federal Bureau of Investigation. The screenings may include local criminal records checks through local law enforcement agencies.

Juvenile Justice Training Academies

The DJJ is required to establish and oversee juvenile justice training academies.[67] The DJJ must develop, implement, and maintain the curriculum for the training academies, develop uniform minimum job-related training, and establish a certifiable program for juvenile justice training.[68]

Section 985.66(3), F.S., requires the DJJ to provide specified components to the training programs for the juvenile justice program staff based upon a job-task analysis.[69] All department program staff and providers who deliver direct care services pursuant to contract with the DJJ must participate in and successfully complete the approved training programs relevant to their areas of employment.[70] Judges, state attorneys, public defenders, law enforcement officers, and school district personnel may also participate in these programs.

Juvenile Justice Circuit Advisory Boards

Section 985.664, F.S., authorizes juvenile justice circuit advisory boards (advisory boards) to be established in each of the 20 judicial circuits. The purpose of advisory boards is to advise the DJJ in the development and implementation of juvenile justice programs and policies related to at-risk youth.[71] The duties of the advisory boards are enumerated in s. 985.664(2), F.S.

Direct-Support Organizations

Section 985.672, F.S., defines a direct support organization as a not-for-profit organization whose sole purpose is to support the juvenile justice system and which is:

- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the DJJ's adopted goals and mission.

The DJJ may permit a direct support organization to use fixed property and facilities of the juvenile justice system free of charge.[72]

[67] Section 985.66(1), F.S.
[68] Section 985.66(1), (2), and (3), F.S.
[69] These components include designing, implementing, maintaining, evaluating, and revising a basic training program for the purpose of providing specified minimum employment training qualifications for all juvenile justice personnel, including a competency-based examination; an advanced training program intended to enhance knowledge, skills, and abilities related to job performance with competency-based examinations for each training course; a career development training program intended to prepare personnel for promotion with competency-based examinations for each training course; and juvenile justice training courses, entering into contracts for training courses intended to further safety and well-being of both citizens and juvenile offenders. Section 985.66(3), F.S.
[70] Section 985.66(3), F.S.
[71] Section 985.664(1), F.S.
[72] Section 985.672(4), F.S.

Siting of Facilities

Section 985.682, F.S., establishes procedures that must be followed when proposing a site for a juvenile justice facility. Currently, the DJJ is required to conduct a detailed statewide comprehensive study to determine current and future needs for all facility types for children committed to the DJJ.[73] The study must assess, rank, and designate appropriate sites based upon these needs.[74]

One-Time Startup Funding for Juvenile Justice Purposes

Section 985.69, F.S., authorizes the DJJ to use funds from juvenile justice appropriations as one-time startup funding for juvenile justice purposes that include remodeling or renovation of existing facilities, construction and leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the startup of facilities or programs. The DJJ is currently funded for repair and maintenance of facilities through the General Appropriations Act.

Payment of Medical Expenses for Detained Youth

Medicare Rates

Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant).[75]

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare & Medicaid Services develops fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.[76] Other Medicare providers are paid via a prospective payment system. The prospective payment system is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services).

The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill [77] capped medical payment rates that the Department of Corrections (DOC) could pay to a hospital or a health care provider providing services at a hospital. Payments to providers for services were capped at 110 percent of the Medicare allowable rate for inmate medical care if no contract existed between the DOC and a hospital, or a provider providing services at a hospital. However, hospitals reporting an operating loss to the Agency for Health Care Administration (AHCA) were capped at 125 percent of the

[73] Section 985.682(1), F.S.
[74] Section 985.682(2), F.S.
[75] Centers for Medicare & Medicaid Services, *What is Medicare?*, http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html (Last visited February 24, 2014).
[76] Centers for Medicare & Medicaid Services, *Fee Schedules – General Information*, http://www.cms.gov/FeeScheduleGenInfo/ (Last visited on February 24, 2014).
[77] Section 11, Chapter 2008-153, L.O.F.

Medicare allowable rate. In 2009, s. 945.6041, F.S., codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap.[78]

Similarly, the 2013 General Appropriations Implementing Bill capped medical payment rates that the DJJ could pay to a hospital or provider providing any health care services.[79]

Offenses Committed Against Youth under the Jurisdiction of the DJJ

Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony [80] for a DJJ employee [81] to engage in sexual misconduct [82] with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.02, F.S., provides that the children of the state must be provided with protection from abuse, neglect, and exploitation; as well as adequate nutrition, shelter, and clothing. In some instances, a DJJ employee has neglected or abused a juvenile offender resulting in harm to the juvenile offender.[83]

Currently, ch. 985, F.S., does not provide sanctions against the neglect of a youth in the DJJ's custody. As a result, prosecutors have looked outside of ch. 985, F.S., to prosecute cases involving abuse or neglect of a child in the care of the DJJ. One statute prosecutors have attempted to use to prosecute is s. 827.03, F.S., relating to criminal child neglect. However, the child neglect statute is not designed to prosecute neglect cases that arise within the unique framework of the juvenile justice environment, nor does it apply to youth in the DJJ's custody who are 18 or older.[84]

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[78] Section 8, Chapter 2009-63, L.O.F.
[79] Section 12, Chapter 2013-41, L.O.F.
[80] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[81] Section 985.701(1)(a)1.b., F.S., defines "employee" as paid staff members, volunteers, and interns who work in a DJJ program or a program operated by a provider under a contract.
[82] Section 985.701(1)(a)1.a., F.S., defines "sexual misconduct" as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the DJJ or an employee of a provider under contract with the DJJ.
[83] *DJJ supervisor thought Eric Perez was "faking" as he dies in juvie lockup, officer testifies*, BROWARD/PALM BEACH NEW TIMES, http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php; *Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ*, THE PALM BEACH POST, http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/.
[84] Section 827.01, F.S., defines a child as "any person under the age of 18 years." While the majority of youth in DJJ's custody are under 18 years old, DJJ has custody of persons 18 years old and older. Section 985.0301(5)(a), F.S., requires DJJ to retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and authorizes DJJ to retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services.

Diversion Programs/Expunction of Records

Section 943.0582, F.S., provides guidelines to the FDLE relating to the expunction of criminal history records of youth who have successfully completed a prearrest, postarrest, or teen court diversion program.

Prevention Services Programs and Providers

Section 985.605, F.S., requires the DJJ to monitor all state-funded programs, grants, appropriations, or activities designed to prevent juvenile delinquency.[85] The DJJ is authorized to expend funds to prevent juvenile delinquency as long as it maximizes public accountability and documents outcomes. Each entity that receives money from the state must design its programs to provide one of four specified strategies [86] and submit demographic information of participants to the DJJ for verification.[87]

Section 985.606, F.S., requires each state agency or entity that receives or uses state money to fund juvenile delinquency prevention programs, grants, appropriations, or activities to submit performance data to the Governor and both houses of the Legislature by January 31st of each year for the preceding fiscal year.

Tours of State Correctional Facilities

Section 945.75, F.S., requires the DOC to develop programs in which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under terms and conditions established by the DOC. The statute requires counties to develop similar programs involving county jails, commonly referred to as "scared straight programs."[88] The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.[89] The DJJ reports because it complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002 it receives between 2 million and 8 million dollars in federal funding.[90] The DJJ reports that it could lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.[91]

III. Effect of Proposed Changes:

This bill amends various provisions in law relating to juvenile delinquency, to enhance public safety, reduce recidivism, better measure performance outcomes, and improve care provided to juvenile offenders in the custody of the Department of Juvenile Justice (DJJ).

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[85] Section 985.605(1), F.S.
[86] Section 985.605(2)(a), F.S.
[87] Section 985.605(2)(c), F.S.
[88] Virginia Department of Criminal Justice Services, *Scared Straight Programs*, www.dcjs.virginia.gov/juvenile/compliance; *See also* Department of Juvenile Justice, *Scared Straight Programs: Jail and Detention Tours*, www.djj.state.fl.us/docs/research2/scared_straight_booklet_version (last visited on February 12, 2014)
[89] *Id*.
[90] Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Jail Tours* (2013) (on file with Senate Criminal Justice Committee.)
[91] *Id*.

Prevention

The bill creates s. 985.17, F.S., relating to prevention services. To reduce recidivism, protect public safety, and facilitate successful re-entry into the community, the bill requires the DJJ to:

- Engage faith- and community-based organizations;[92]
- Establish volunteer coordinators in each circuit and encourage mentor recruitment;
- Encourage the recruitment of volunteers to serve as mentors for youth in DJJ services;
- Promote the "Invest in Children" license plate to help fund programs and services;[93]
- Ensure prevention services address the multiple needs of youth at risk of becoming delinquent in order to decrease the prevalence of disproportionate minority representation in the juvenile justice system; and
- Expend prevention-related funds in a manner that maximizes accountability and ensures documentation of outcomes.

As a condition for receiving state funds, entities that receive or use state moneys to fund prevention services through contracts with the DJJ or grants from an entity will be required to:

- Design programs providing services to further one or more of the following strategies:
  - Encourage youth to attend and succeed in school;
  - Engage youth in productive and wholesome activities during non-school hours that build positive character, instill positive values, and enhance educational experiences;
  - Encourage youth to avoid the use of violence; and
  - Assist youth to acquire skills needed to find meaningful employment, including assistance in finding a suitable employer; and
- Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

The bill requires the DJJ to monitor output and outcome measures for each program strategy and annually report this data in the Comprehensive Accountability Report. The DJJ also will be required to monitor all state-funded programs that receive or use state moneys to fund the juvenile delinquency prevention services through contracts or grants for compliance with contract and grant provisions.

Offenses Committed Against Youth under the Jurisdiction of the Department of Juvenile Justice

Sexual Misconduct by an Employee

The bill amends s. 985.701, F.S., to define "juvenile offender" as "any person of any age who is detained or supervised by, or committed to the custody of, the department." This mirrors the definition used in s. 985.702, F.S.

[92] The bill further provides that the voluntary programs and services include, but are not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

[93] The bill further requires the DJJ to allocate moneys for programs and services within each county based on that county's proportionate share of the license plate annual use fee collected by the county, which is identical to how s. 320.08058(11), F.S., specifies the money should be allocated.

Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.702, F.S., is created and establishes a new criminal offense relating to willful and malicious neglect of a juvenile offender. The bill makes it a third degree felony [94] for a DJJ employee to willfully and maliciously neglect a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the neglect does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a second degree felony.[95]

An "employee" is defined in the bill as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with the DJJ. A "juvenile offender" is defined as "any person of any age who is detained by, or committed to the custody of, the department." "Neglect" is defined as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., the determination constitutes sufficient cause under s. 110.227, F.S.,[96] for dismissal from employment with the DJJ, and prohibits the employee from being employed in any capacity in the juvenile justice system.

The bill requires employees who witness the neglect of a juvenile offender to immediately report the incident to the DJJ's incident hotline. The witness must also prepare an independent report specifically describing the incident, location and time, and persons involved. The report must be submitted to the witness's supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if probable cause exists, notify the state attorney in the circuit in which the incident occurred.

Any person required to prepare a report who knowingly or willfully fails to do so or prevents another person from filing a report commits a first degree misdemeanor.[97] In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor.
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

[94] A third degree felony is punishable by up to five years imprisonment and a fine of up to $5,000. Sections 775.082, 775.083, and 775.084, F.S.
[95] A second degree felony is punishable by up to 15 years imprisonment and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.
[96] Section 110.227, F.S., relates to the suspension and dismissal of career service employees.
[97] A first degree misdemeanor is punishable by up to 1 year incarceration and a fine up to $1,000. Sections 775.082, F.S. and 775.083, F.S.

Trauma-informed Care as a Component of the Department of Juvenile Justice Model

The bill requires the DJJ to implement trauma-informed care in its model of response and delivery of services to juvenile offenders. "Trauma-informed care" is defined to mean providing services to children with a history of trauma, which recognizes the symptoms of trauma and acknowledges the role the trauma has played in the child's life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

Family Support

The bill recognizes the importance of placing facilities close to the home communities of children they house in facilitating family involvement in the treatment process and encourages the use of customized treatment plans to prepare a child for a successful transition back to his or her family and community support system.

Detention Care System

The definition of "detention care" found in s. 985.03, F.S., is revised to remove "home detention," thereby limiting the definition to "secure" and "nonsecure" detention. The bill amends the definition of "nonsecure detention" to mean:

> Temporary nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive home environment under the supervision of department staff pending adjudication, disposition, or placement. Forms of nonsecure detention may include, but are not limited, to home detention, electronic monitoring, day reporting centers, evening reporting centers, nonsecure shelters, and may include other requirements imposed by the court.

The bill authorizes the DJJ to develop evening reporting centers (centers), which are included in the definition of "nonsecure detention." These centers serve as an alternative to placing a child in secure detention and may be co-located with a juvenile assessment center. Centers must serve children and families who are awaiting a child's court hearing and must operate at a minimum during the afternoon and evening hours to provide a highly structured program of supervision. Centers may also provide academic tutoring, counseling, family engagement programs, and other activities. The bill specifies that if DJJ establishes centers, it must be do so within its existing resources.

The term "juvenile probation officer" is replaced with the term "department" throughout many of the detention-related statutes, which will allow the DJJ greater flexibility to use employees other than probation officers in initial detention placement. The bill specifies a child's "illegal possession of a firearm" can be considered as a basis for ordering detention or continued detention and requires secure detention for any child who has been taken into custody on three or more separate occasions within a 60-day period.

The bill requires detention staff to notify the appropriate law enforcement agency, school personnel, and victim when a child charged with any of the following offenses is released from secure detention or transferred to nonsecure detention:

- Murder, under s. 782.04, F.S.;
- Sexual battery, under ch. 794, F.S.;
- Stalking, under s. 784.048, F.S; or
- Domestic violence, as defined in s. 741.28, F.S.

In some respects, the notice requirement expands notice by not limiting notice to juvenile sex offenses. In other respects, this provision limits notice, as notice is only required for sexual battery, not all of the currently-included offenses that qualify a child as a juvenile sex offender.

In instances where a detained child is transferred to a jail or other facility used to detain adults,[98] the bill requires physical observation and documented checks of the child every 10 minutes. Existing law requires observations every 15 minutes.

The court must place in detention care all children who are adjudicated and awaiting placement in a commitment program. In such instances, the bill requires, rather than permits, a child who has been committed to a high-risk or maximum risk residential facility to be held in secure detention until placement.

Jurisdiction

The bill amends s. 985.0301, F.S., to authorize, rather than require, the court to transfer a detained child to a detention center in the circuit in which the child resides or will reside at the time of detention. The bill restricts transfers to only these two circumstances, which means the receiving court will no longer be able to direct where the detained child may be placed when a case is being transferred.

The bill simplifies statutory jurisdictional criteria. As a result, the court will retain jurisdiction over a child until the child:

- Is 19 years old, generally, or if the child is in a probation program;
- Is 21 years old, if the child is committed to the DJJ in any type of commitment program, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision;
- Is 21 years old, if the child is a juvenile sexual offender who has been placed on community-based treatment alternative with supervision, or in a program or facility for juvenile sexual offenders, specifically for the purpose of completing the program; or
- Satisfies restitution ordered in the case.

Contempt of Court

The bill requires the court to hold a hearing to determine if a child committed direct contempt of court and affords the child specified due process rights at this hearing. The bill also clarifies if a

[98] Section 985.265(5), F.S., sets forth instances in which a child may be detained in a jail or other facility used to detain adults.

judge places a child into a secure facility for contempt, the facility must be a detention facility. In these instances, the court needs to review the placement only upon motion by the defense attorney or state attorney. Under existing law, the court must review the placement every 72 hours.

Fingerprinting and Photographing

The bill excludes a child from fingerprint requirements if the child is issued a civil citation. This provision may better focus resources on more serious juvenile offenders by waiving fingerprinting requirements of children charged with nonserious delinquent acts.

Intake Process

Section 985.14, F.S., is amended to allow both the DJJ and juvenile assessment center personnel to perform the intake process, which may provide for a more efficient intake process in counties that operate their own juvenile assessment centers. The bill also:

- Clarifies that the intake assessment process consists of an initial assessment that may be followed by a full mental health, substance abuse, cognitive impairment, and/or psychosexual evaluation, which may help decision makers better target successful treatment and reduce recidivism; and
- Requires children to be screened to determine career or technical education problems (rather than just vocational problems), which provides more options for children in pursuing a successful career.

Disposition

Predisposition Reports

The bill requires the predisposition report prepared by the DJJ to assist the court in determining whether a child is committed is to identify appropriate educational and career (rather than vocational) goals for the child, which include:

- Successful completion of career and technical education courses (rather than vocational courses); and
- Successful completion of the child's current grade or recovery of credits or classes the child previously failed.

Probation or Postcommitment Probation (Probation)

A court is authorized by the bill to impose an alternative consequence for juveniles on probation who commit relatively minor violations (technical violations). If so, the judge must approve specific consequences for specific future violations of the conditions of probation. Alternative consequence programs:

- Must be established at the local level in coordination with law enforcement agencies, the Chief Judge of the circuit, the State Attorney, and the Public Defender; and
- May be operated by a law enforcement agency, the DJJ, a juvenile assessment center, or another entity selected by DJJ.

Commitment

The term "juvenile probation officer" is replaced with the term "department" throughout many of the commitment-related statutes, which will allow the DJJ to use employees other than probation officers to perform commitment-related duties.

The "restrictiveness levels" in s. 985.03(46), F.S., of low-risk residential (level 4) and moderate-risk residential (level 6) are combined into a single "nonsecure residential" group. This will allow the DJJ to place a child whose risk is currently low into a program that caters to children with slightly higher risk levels to ensure the child access to other needs and services.

The current cap on residential beds per facility is reduced to 90 beds from 165 beds. This reduction in the number of residential beds authorized per facility may increase efficiency of facilities in meeting the goals of commitment and reducing recidivism.

Certain youth[99] will be allowed to be committed to nonsecure residential placement under this bill if the child has:

- Previously been adjudicated or *had an adjudication withheld* for a felony offense; or
- *Previously* been adjudicated or had adjudication withheld for three or more misdemeanor offenses *within the last 18 months*.

The amendments to s. 985.275, F.S., requires the DJJ to notify a law enforcement agency and, if the offense requires victim notification under ch. 960, F.S., the victim, any time a child in the custody of the DJJ:

- Escapes from a residential commitment program or from being transported to or from one; or
- Absconds from a nonresidential commitment facility.

The DJJ also will be required by the bill to make every reasonable effort to locate the child.

Conditional Release and Transition-to-Adulthood Services

The bill amends s. 985.46, F.S., to clarify conditional release includes the provision of transition-to-adulthood services. The bill also requires a child of noncompulsory school age on conditional release supervision to participate in the education program or career and technical education courses.

The application of transition-to-adulthood services is expanded by the bill by removing the limitation that these services only be provided to "older children." As a result, any child who is under the supervision of the DJJ may be provided transition-to-adulthood services as part of his or her treatment plan.

The activities the DJJ is authorized to engage in to support participation in transition-to-adulthood services are expanded. Specifically, the DJJ may:

- Employ community re-entry teams to assist in developing a list of age appropriate activities and responsibilities to be incorporated in the child's case plan. Community re-entry teams

[99] This includes youth whose offense is a misdemeanor as well as youth who are on probation for a misdemeanor and who commit a technical violation. Section 985.441(2), F.S.

include representatives from school districts, law enforcement, workforce development services, community based service providers, and the child's family.
- Assist the child in building a portfolio of educational and vocational accomplishments, necessary identification, and resumes and cover letters to enhance the child's employability; and
- Collaborate with school district contacts to facilitate appropriate educational services based on the child's identified needs.

Internal Agency Procedures

Quality Assurance and Cost-Effectiveness

The bill amends s. 985.632, F.S. to:
- Require the annual report to collect and analyze available statistical data for the purpose of ongoing evaluation of all programs;
- Delete the terms "client" and "program effectiveness" and adds the following definitions:
  - "Program," which means any facility or service for youth that is operated by the DJJ or by a provider under contract with the DJJ; and
  - "Program group," which means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison among programs within the group;
- Codify the Comprehensive Accountability Report (CAR), [100] and requires the DJJ to work with contract service providers to develop a standard methodology for measuring and reporting program outputs and youth outcomes;
- Require the standard methodology used in the CAR to include certain terminology for measuring performance, to specify program outputs, and to specify desired child outcomes and methods to measure child outcomes; and
- Require the cost-effectiveness model to include a comparison of program costs to expected and actual child recidivism rates, rather than client outcomes and program outputs; and requires the DJJ to rank commitment programs based on performance measures and adherence to quality improvement standards.

Departmental Contracting Powers; Personnel Standards and Screening

The bill provides that law enforcement, correctional, or correctional probation officers certified pursuant to s. 943.13, F.S., are not required to submit to level 2 screenings if they are currently employed by a law enforcement agency or correctional facility.

Juvenile Justice Training Academies

Section 985.66, F.S., is amended to:
- Remove references to "academies" when referring to juvenile justice training programs;
- Require the DJJ to designate the *number* of (not just the location of) training programs and courses; and

[100] The CAR, in its current form, has been published by the DJJ since 2006. It includes all of the information required to be reported under s. 985.632, F.S., as well as additional information. *See Comprehensive Accountability Reports*, http://www.djj.state.fl.us/research/reports/car (last visited on February 12, 2014).

- Authorize all employees of contract providers who provide services or care for youth under the responsibility of the DJJ to participate in the certifiable training program.

Juvenile Justice Circuit Advisory Boards

The bill amends s. 985.664, F.S., to remove obsolete language and specifies the chair of a board serves at the pleasure of the DJJ's Secretary.

Direct-Support Organizations

Current law does not address whether the DJJ may authorize direct support organizations to use personnel services of the juvenile justice system. The bill authorizes the DJJ to permit a direct support organization to use its personnel services. Personnel services include full-time or part-time personnel, as well as payroll processing services.

One-Time Startup Funding for Juvenile Justice Purposes

The bill changes references to "startup" funding and costs in s. 985.69, F.S., to refer to "repair and maintenance" funding and costs. This allows these funds to be used for the continuing repair and maintenance of the DJJ facilities.

Payment for Medical Expenses for Detained Youth (Section 35)

The bill codifies a similar provision contained in the 2013-2014 Implementing Bill for the General Appropriations Act.[101] This provision requires, if there is no contract between the DJJ and the hospital or provider providing health care services (services) at a hospital, payments to a provider may not exceed 110 percent of the Medicare allowable rate for any services provided. The DJJ may continue to make payments for services to a provider at the current contracted rates through the current term of an executed contract.[102] However, once that contract expires, payments may not exceed 110 percent of the Medicare allowable rate.

If a contract is executed on or after July 1, 2014, payments to providers for services may not exceed 110 percent of the Medicare allowable rate, unless the services are performed at a hospital that reports a negative operating margin for the previous fiscal year to the AHCA through hospital-audited financial data. In that instance, the DJJ may pay up to 125 percent of the Medicare allowable rate.

Repeal of Provisions

The bill removes obsolete provisions, including definitions in ch. 985, F.S., relating to dependency proceedings. Dependency proceedings are within the jurisdiction of the DCF and are addressed in ch. 39, F.S.

[101] Similar provisions have been included annually in the Implementing Bill since the 2010-2011 fiscal year. *See*, Ch. 2010-153, s. 11, Laws of Fla., Ch. 2011-47, s. 19, Laws of Fla., Ch. 2012-119, s. 16, Laws of Fla.; and Ch. 2013-41, s. 41, Laws of Fla.

[102] The bill allows for contracts to be renewed during the 2013-2014 fiscal year.

The bill repeals s. 945.75, F.S., relating to state correctional facility tours by juvenile offenders which violate federal law. This repeal will prevent the federal funding allocated to state juvenile justice programs from being compromised.

Effective Date

The bill takes effect July 1, 2014. However, the criminal offense of "willful and intentional neglect of a juvenile" that is created in s. 985.702, F.S., has an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/CS/SB 700, families currently financially unable to access various services may have increased access to services, such as tutoring and counseling, as a result of the establishment of evening reporting centers.

Children currently subject to placement in secure detention for technical violations of probation may not be required to go into secure detention because the bill creates an alternative consequence option to handle noncompliance with the technical conditions of probation. This could assist these children with maintaining employment they currently have.

C. Government Sector Impact:

Department of Juvenile Justice

The bill caps the maximum bed number for all residential facilities at 90 beds, instead of the maximum bed number of 165 in current law. The DJJ currently has two residential facilities over the 90 bed limit, Riverside Academy which has 165 beds and Avon Park

Youth Academy which has 144 beds.[103] The DJJ reports the procurement process is already underway to place the excess beds at other facilities.[104]

The bill amends s. 985.25, F.S., to require any child taken into custody on three or more separate occasions within a 60-day period to be placed in secure detention care until the detention hearing. The DJJ reports that 1,500 youth met this criteria in the last fiscal year, at a cost (clothing and food) per youth of $5.16 per day. This change is estimated to cost an additional $7,740 a year and could vary depending on how many nights each youth stays at a detention center. The DJJ indicates they can absorb this increased cost within existing resources.[105]

The bill allows the DJJ to pay expenses in support of innovative programs and activities that address identified needs and the well-being of children in the DJJ's care or under its supervision. However, the bill specifies that these programs and activities must be accomplished within existing resources and the DJJ indicates that it can do so.[106]

The bill allows the DJJ to permit direct support organizations to use the DJJ personnel services, which may have a fiscal impact on the DJJ. However, the DJJ indicates any new expenses will be absorbed within existing resources.[107]

The bill adds new detention criteria which may result in some children being held in secure detention who would not otherwise have been detained, or being detained for longer periods of time. This will have an indeterminate impact on local government expenditures.

The DJJ may realize a positive fiscal impact from reduced recidivism rates as a result of the technical violation diversion program and increased supervision.

Office of State Courts Administrator (OSCA)

The OSCA indicates the following provisions of the bill will affect court operations:

- Requiring the courts to hold a hearing and ensure due process for juvenile offenders in direct contempt;
- Requiring the courts to provide a release date for offenders currently in detention; and
- Authorizing the courts to place children in alternative consequence programs for technical violations of probation.

Although the OSCA cannot accurately determine fiscal impact due to the unavailability of data needed to quantify the increase in judicial workload, the OSCA indicates they expect to be able to absorb additional workload with existing resources.[108]

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[103] Electronic mail from Jon Menendez, dated February 10, 2014 (on file with the Senate Judiciary Committee).
[104] *Id*
[105] The DJJ, *2014 DJJ Bill Analysis for SB 700.*
[106] Electronic mail from Jon Menendez, dated February 12, 2014 (on file with the Senate Judiciary Committee).
[107] *Id.*
[108] Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 700* (February 25, 2014) (on file with the Senate Judiciary Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.0515, 316.635, 318.143, 985.01, 985.02, 985.03, 985.0301, 985.037, 985.039, 985.045, 985.11, 985.14, 985.145, 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.27, 985.275, 985.433, 985.435, 985.439, 985.441, 985.46, 985.461, 985.481, 985.4815, 985.514, 985.601, 985.632, 985.644, 985.66, 985.664, 985.672, 985.682, 985.69, 985.701, 985.721, and 943.0582.

This bill creates the following sections of the Florida Statutes: 985.17, 985.6441, and 985.702.

This bill repeals the following sections of the Florida Statutes: 985.105, 985.605, 985.606, 985.61, 985.694, and 945.75.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 19, 2014:
The committee substitute:

- Adds evaluation of cognitive impairment to the types of evaluations that may be performed as part of the comprehensive evaluation during the intake process.
- Provides that several types of newly authorized initiatives must be done within the DJJ's existing resources.
- Removes the Office of Economic and Demographic Research and the Office of Program Policy and Government Accountability from the team that develops a standard methodology for the Comprehensive Accountability Report.
- Removes language authorizing the DJJ to execute contracts with hospitals for rates other than rates based on the Medicare reimbursement cap.
- Provides that the effective date of the new criminal offense of "willful and malicious neglect of a juvenile" is October 1, 2014, rather than the effective date of the bill.
- Amends the definition of "child" in s. 985.03, F.S., to apply to both married and unmarried persons under the age of 18. Currently, a married person who is under the age of 18 is not considered to be a "child" unless he or she is charged with a violation of law.
- Includes a number of technical changes, including replacing the term "home detention" with "non-secure detention" in statutes that were not amended in CS/SB 700.

CS by Judiciary on March 4, 2014:
The committee substitute:

- Makes three technical corrections which do not change the substance of the bill.

Provides legislative intent that the purpose of the juvenile justice system is to increase public safety and to place low and moderate-risk children in nonresidential programs.

B. Amendments:

None.

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

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576-02819-14

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

A bill to be entitled

An act relating to juvenile justice; amending ss. 985.01 and 985.02, F.S.; revising legislative purposes and intent; amending s. 985.03, F.S.; revising definitions; amending s. 985.0301, F.S.; clarifying jurisdictional age restrictions for children in the juvenile justice system; restricting when cases may be transferred to a different jurisdiction; amending s. 985.037, F.S.; providing for the placement of a child in a secure detention facility for contempt of court; providing due process to a child accused of direct contempt; revising the procedure for reviewing a child's placement in secure detention for contempt of court; amending ss. 985.039, 985.045, and 985.101, F.S.; conforming provisions; repealing s. 985.105, F.S., relating to the creation, duties, and qualifications of the youth custody officers in the Department of Juvenile Justice; amending s. 985.11, F.S.; revising when fingerprints must be submitted to the Department of Law Enforcement; amending s. 985.14, F.S.; revising the intake process; amending s. 985.145, F.S.; substituting "Department of Juvenile Justice" for references to "juvenile probation officer"; creating s. 985.17, F.S.; providing legislative intent; requiring the department to provide specialized services to minimize the likelihood that youth will enter the juvenile justice

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system; providing for the department to promote the Invest in Children license plate to help fund prevention programs and services; providing for the department to monitor state-funded programs, grants, contracts, appropriations, and activities designed to prevent juvenile crime and report annually on these measures; limiting expenditure of funds to those prevention services that are consistent with the law and maximize public accountability; amending s. 985.24, F.S.; revising factors to determine if the use of detention care is appropriate; authorizing the department to establish nonsecure, nonresidential evening reporting centers; conforming provisions; amending s. 985.245, F.S.; conforming provisions; amending s. 985.25, F.S.; requiring a child to be held in secure detention under certain circumstances; clarifying procedures for releasing a child before the child's detention hearing; conforming provisions; amending s. 985.255, F.S.; providing that a child shall be given a detention hearing within 24 hours after being taken into custody; clarifying when a court may order continued detention care; revising specified factors for ordering continued detention care; clarifying when a child charged with domestic violence can be held in secure detention; revising written findings required to retain a child charged with domestic violence in secure detention; deleting obsolete provisions; amending s. 985.26, F.S.; conforming terminology; amending s. 985.265, F.S.;

revising procedures for transferring a child to another detention status; providing new notification requirements for when a child is released or transferred from secure detention; revising the frequency of physical observation checks for children detained in jail facilities; amending s. 985.27, F.S.; requiring a child to be held in secure detention pending placement in a high-risk or maximum-risk residential program; conforming provisions; amending s. 985.275, F.S.; requiring the department to notify specified parties when a child absconds from a commitment program; requiring the department to make every reasonable effort to locate the absconded child; amending s. 985.433, F.S.; revising the content of a predisposition report; conforming terminology; amending s. 985.435, F.S.; authorizing a probation program to include an alternative consequence component that may be used to address noncompliance with the technical conditions of probation; requiring the department to identify a child's risk of reoffending if the child is being placed on probation or postcommitment probation; amending s. 985.439, F.S.; authorizing the department to establish alternative sanctions for violations of probation or postcommitment probation; conforming terminology; amending s. 985.441, F.S.; providing that a child on probation for certain offenses may not be committed for a probation violation that is technical in nature; conforming terminology; amending s. 985.46, F.S.;

revising the definition of the term "conditional release"; revising terminology; amending s. 985.461, F.S.; expanding the opportunity for transition-to-adulthood services to all children; revising provisions that the department may use to support participation in transition-to-adulthood services; conforming terminology; amending ss. 985.481 and 985.4815, F.S.; deleting obsolete provisions; amending s. 985.514, F.S.; conforming provisions; amending s. 985.601, F.S.; requiring the department's programs to include trauma-informed care, family engagement resources and programs, and gender-specific programming; authorizing the department to pay the expenses of programs and activities that address the needs and well-being of children in its care or under its supervision; conforming terminology; repealing ss. 985.605, 985.606, and 985.61, F.S.; deleting provisions relating to prevention services programs and providers and early delinquency intervention programs; amending s. 985.632, F.S.; providing for the establishment of a performance accountability system for contract providers; revising definitions; providing for the development of a Comprehensive Accountability Report; requiring the department to prepare and submit the report annually to the Governor and Legislature; specifying content that must be included in the report; revising provisions relating to the cost-effectiveness model and quality improvement; amending s. 985.644, F.S.; clarifying an

exemption for specified certified law enforcement, correctional, and correctional probation officers relating to a requirement to submit to level 2 background screenings; creating s. 985.6441, F.S.; providing definitions; limiting the amount that the department may pay a hospital or health care provider for health care services based on a percentage of the Medicare allowable rate; providing applicability; amending s. 985.66, F.S.; revising specified juvenile justice staff development and training procedures; expanding application of training requirements to contract providers who care for children in the department's custody; amending s. 985.664, F.S.; deleting obsolete provisions relating to the initial selection of the juvenile justice circuit advisory board chairs; revising procedures for appointing juvenile justice circuit advisory board chairs; providing that chairs serve at the pleasure of the secretary; amending s. 985.672, F.S.; clarifying language concerning expenditures of the direct-support organization's funds; authorizing the direct-support organization to use department personnel services; defining the term "personnel services"; amending s. 985.682, F.S.; deleting obsolete provisions regarding a comprehensive study relating to the siting of facilities; amending s. 985.69, F.S.; providing for the use of specified funds for repair and maintenance; repealing s. 985.694, F.S.; deleting a provision relating to the Juvenile Care and Maintenance Trust

Fund; amending s. 985.701, F.S.; defining the term "juvenile offender" for purposes of prohibiting sexual misconduct with juvenile offenders; creating s. 985.702, F.S.; providing an effective date; providing definitions; providing for the imposition of criminal penalties against specified employees who inflict neglect upon juvenile offenders; providing enhanced penalties for such treatment that results in great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender; specifying that such conduct constitutes sufficient cause for an employee's dismissal from employment; prohibiting such employee from future employment with the juvenile justice system; providing incident reporting requirements; prohibiting an employee who witnesses such an incident from knowingly or willfully failing to report such incident; prohibiting false reporting, preventing another from reporting, or coercing another to alter testimony or reports; providing criminal penalties; amending s. 985.721, F.S.; correcting a cross-reference; amending s. 943.0582, F.S.; clarifying that minors are not eligible for expunction if they have been charged by a state attorney for other crimes; repealing s. 945.75, F.S.; deleting a requirement that the Department of Corrections and counties develop programs under which a judge may order juveniles who have committed delinquent acts to tour correctional facilities; amending ss. 121.0515, 316.635, and 318.143, F.S.; conforming provisions and

correcting cross-references; providing effective dates.

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

Section 1. Section 985.01, Florida Statutes, is amended to read:

985.01 Purposes and intent.—

(1) The purposes of this chapter are:

(a) To increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children.

(b) ~~(a)~~ To provide judicial and other procedures to assure due process through which children, victims, and other interested parties are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.

(c) ~~(b)~~ To provide ~~for the care, safety, and protection of children in~~ an environment that fosters healthy social, emotional, intellectual, educational, and physical development; to ensure secure and safe custody; and to promote the health and well-being of all children under the state's care.

(d) ~~(c)~~ To ensure the protection of society, by providing for a comprehensive standardized assessment of the child's needs so that the most appropriate control, discipline, punishment,

and treatment can be administered consistent with the seriousness of the act committed, the community's long-term need for public safety, the prior record of the child, and the specific rehabilitation needs of the child, while also providing, whenever possible, restitution to the victim of the offense.

(e) ~~(d)~~ To preserve and strengthen the child's family ties whenever possible, by providing for removal of the child from the physical custody of a parent ~~parental custody~~ only when his or her welfare or the safety and protection of the public cannot be adequately safeguarded without such removal; and, when the child is removed from his or her own family, to secure custody, care, and discipline for the child as nearly as possible equivalent to that which should have been given by the parents~~;~~ ~~and to assure, in all cases in which a child must be permanently removed from parental custody, that the child be placed in an approved family home, adoptive home, independent living program, or other placement that provides the most stable and permanent living arrangement for the child, as determined by the court~~.

(f) ~~(e)~~ 1. To assure that the adjudication and disposition of a child alleged or found to have committed a violation of Florida law be exercised with appropriate discretion and in keeping with the seriousness of the offense and the need for treatment services, and that all findings made under this chapter be based upon facts presented at a hearing that meets the constitutional standards of fundamental fairness and due process.

2. To assure that the sentencing and placement of a child tried as an adult be appropriate and in keeping with the

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seriousness of the offense and the child's need for rehabilitative services, and that the proceedings and procedures applicable to such sentencing and placement be applied within the full framework of constitutional standards of fundamental fairness and due process.

(g) ~~(f)~~ To provide children committed to the department with training in life skills, including career and technical education, when appropriate.

(h) To care for children in the least restrictive and most appropriate service environments, ensuring that children assessed as low and moderate risk to reoffend are not committed to residential programs.

(i) To allocate resources for the most effective programs, services, and treatments to ensure that children, their families, and their community support systems are connected with these programs at the points along the juvenile justice continuum where they will have the most impact.

(2) It is the intent of the Legislature that this chapter be liberally interpreted and construed in conformity with its declared purposes.

Section 2. Paragraphs (g) and (h) of subsection (1), subsections (2) and (3), paragraph (b) of subsection (4), and subsections (5) and (7) of section 985.02, Florida Statutes, are amended, and subsections (8) and (9) are added to that section, to read:

985.02 Legislative intent for the juvenile justice system.—

(1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with the following protections:

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(g) Access to prevention programs and ~~preventive~~ services.

~~(h) An independent, trained advocate when intervention is necessary, and a skilled guardian or caretaker in a safe environment when alternative placement is necessary.~~

(2) SUBSTANCE ABUSE SERVICES.—The Legislature finds that children in the care of the state's ~~dependency and~~ delinquency system ~~systems~~ need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's ~~dependency and~~ delinquency system ~~systems~~ must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems. It is therefore the purpose of the Legislature to provide authority for the state to contract with community substance abuse treatment providers for the development and operation of specialized support and overlay services for the ~~dependency and~~ delinquency system ~~systems~~, which will be fully implemented and utilized as resources permit.

(3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—It is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

(a) Develop and implement effective methods of preventing and reducing acts of delinquency, with a focus on maintaining and strengthening the family as a whole so that children may

remain in their homes or communities.

(b) Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.

(c) Provide well-trained personnel, high-quality services, and cost-effective programs within the juvenile justice system.

(d) Increase the capacity of local governments and public and private agencies to conduct rehabilitative treatment programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention.

~~The Legislature intends that detention care, in addition to providing secure and safe custody, will promote the health and well-being of the children committed thereto and provide an environment that fosters their social, emotional, intellectual, and physical development.~~

(4) DETENTION.—

(b) The Legislature intends that a juvenile found to have committed a delinquent act understands the consequences and the serious nature of such behavior. Therefore, the Legislature finds that secure detention is appropriate to provide punishment for children who pose a threat to public safety ~~that discourages further delinquent behavior~~. The Legislature also finds that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. It is the intent of the

Legislature to establish clear criteria in order to identify these juveniles and remove them from the juvenile justice system.

(5) SITING OF FACILITIES.—

(a) The Legislature finds that timely siting and development of needed residential facilities for juvenile offenders is critical to the public safety of the citizens of this state and to the effective rehabilitation of juvenile offenders.

(b) It is the purpose of the Legislature to guarantee that such facilities are sited and developed within reasonable timeframes after they are legislatively authorized and appropriated.

(c) The Legislature further finds that such facilities must be located in areas of the state close to the home communities of the children they house in order to ensure the most effective rehabilitation efforts, ~~and the most intensive~~ postrelease supervision, and case management. The placement of facilities close to the home communities of the children they house is also intended to facilitate family involvement in the treatment process. Residential facilities shall have no more than 90 ~~165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols~~,~~ and have facilities that coexist separately in distinct locations on the same property.

(d) It is the intent of the Legislature that all other departments and agencies of the state shall cooperate fully with the Department of Juvenile Justice to accomplish the siting of

facilities for juvenile offenders.

The supervision, counseling, and rehabilitative treatment~~, and punitive~~ efforts of the juvenile justice system should avoid the inappropriate use of correctional programs and large institutions. ~~The Legislature finds that detention services should exceed the primary goal of providing safe and secure custody pending adjudication and disposition.~~

(7) GENDER-SPECIFIC PROGRAMMING.—

(a) The Legislature finds that the ~~prevention, treatment, and rehabilitation~~ needs of children ~~youth~~ served by the juvenile justice system are gender-specific. A gender-specific approach is one in which programs, services, and treatments comprehensively address the unique developmental needs of a targeted gender group under the care of the department. Young women and men have different pathways to delinquency, display different patterns of offending, and respond differently to interventions, treatment, and services.

(b) ~~Gender-specific programming refers to unique program models and services that comprehensively address the needs of a targeted gender group. Gender-specific services require the adherence to the principle of equity to ensure that the different interests of young women and men are recognized and varying needs are met, with equality as the desired outcome.~~ Gender-specific interventions focus ~~programming focuses~~ on the differences between young females' and young males' social roles and responsibilities, ~~positions in society,~~ access to and use of resources, history of trauma, and reasons for interaction with the juvenile justice system ~~and social codes governing behavior~~.

Gender-specific programs increase the effectiveness of programs by making interventions more appropriate to the specific needs of young women and men and ensuring that these programs do not unknowingly create, maintain, or reinforce gender roles or relations that may be damaging.

(8) TRAUMA-INFORMED CARE.—The Legislature finds that the department should use trauma-informed care as an approach to treating children with histories of trauma. Trauma-informed care assists service providers in recognizing the symptoms of trauma and acknowledges the role trauma has played in the child's life. Services for children should be based on an understanding of the vulnerabilities and triggers of trauma survivors that traditional service delivery approaches may exacerbate, so that these services and programs can be more supportive and avoid retraumatization. The department should use trauma-specific interventions that are designed to address the consequences of trauma in the child and to facilitate healing.

(9) FAMILY AND COMMUNITY ENGAGEMENT.—The Legislature finds that families and community support systems are critical to the success of children and to ensure they are nondelinquent. Therefore, when appropriate, children who can safely be held accountable when served and treated in their homes and communities should be diverted from more restrictive placements within the juvenile justice system. There should be an emphasis on strengthening the family and immersing the family members in their community support system. The department should develop customized plans that acknowledge the importance of family and community support systems. The customized plans should recognize a child's individual needs, capitalize on their strengths,

reduce their risks, and prepare them for a successful transition to, and unification with, their family and community support system. The child's family must be considered in the department's process of assessing the needs, services and treatment, and community connections of the children who are involved in the juvenile justice system or in danger of becoming involved in the system.

Section 3. Section 985.03, Florida Statutes, is reordered and amended to read:

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

(1) "Abscond" means to hide, conceal, or absent oneself from the jurisdiction of the court or supervision of the department to avoid prosecution or supervision.

(2) ~~(1)~~ "Addictions receiving facility" means a substance abuse service provider as defined in chapter 397.

(3) ~~(2)~~ "Adjudicatory hearing" means a hearing for the court to determine whether or not the facts support the allegations stated in the petition, as is provided for under s. 985.35 in delinquency cases.

(4) ~~(3)~~ "Adult" means any natural person other than a child.

(5) ~~(4)~~ "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

(6) ~~(5)~~ "Authorized agent" or "designee" of the department means a person or agency assigned or designated by the department ~~or the Department of Children and Family Services, as appropriate,~~ to perform duties or exercise powers under this

chapter and includes contract providers and their employees ~~for purposes of providing services to and managing cases of children in need of services and families in need of services~~.

(7) ~~(6)~~ "Child" or "juvenile" or "youth" means any ~~unmarried~~ person under the age of 18 ~~who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services;~~ or any ~~married or unmarried~~ person who is alleged to have committed ~~charged with~~ a violation of law occurring prior to the time that person reached the age of 18 years.

(8) ~~(7)~~ "Child in need of services" has the same meaning as provided in s. 984.03 ~~means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the department or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also, under this chapter, be found by the court:~~

~~(a) To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the department or the Department of Children and Family Services;~~

~~(b) To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation under ss. 1003.26 and 1003.27 and through~~

~~voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; or~~

~~(c) To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.~~

(9) ~~(8)~~ "Child who has been found to have committed a delinquent act" means a child who, under this chapter, is found by a court to have committed a violation of law or to be in direct or indirect contempt of court, except that this definition does not include an act constituting contempt of court arising out of a dependency proceeding or a proceeding concerning a child or family in need of services.

~~(9) "Child support" means a court-ordered obligation, enforced under chapter 61 and ss. 409.2551-409.2597, for monetary support for the care, maintenance, training, and education of a child.~~

(10) "Circuit" means any of the 20 judicial circuits as set forth in s. 26.021.

(11) "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a juvenile offender's or a child's physical, psychological, educational, career and technical education ~~vocational~~, and social condition and family environment as they relate to the child's need for

rehabilitative and treatment services, including substance abuse treatment services, mental health services, developmental services, literacy services, medical services, family services, and other specialized services, as appropriate.

(12) "Conditional release" means the care, treatment, help, ~~and~~ supervision, and provision of transition-to-adulthood services provided to a juvenile released from a residential commitment program which is intended to promote rehabilitation and prevent recidivism. The purpose of conditional release is to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the department to his or her ~~the~~ family. Conditional release includes, but is not limited to, nonresidential community-based programs.

(13) "Court~~,~~" ~~unless otherwise expressly stated,~~ means the circuit court assigned to exercise jurisdiction under this chapter, unless otherwise expressly stated.

(14) "Day treatment" means a nonresidential, community-based program designed to provide therapeutic intervention to youth who are served by the department, ~~who are~~ placed on probation or conditional release, or ~~are~~ committed to the minimum-risk nonresidential level. A day treatment program may provide educational and career and technical education ~~vocational~~ services and shall provide case management services; individual, group, and family counseling; training designed to address delinquency risk factors; and monitoring of a youth's compliance with, and facilitation of a youth's completion of, sanctions if ordered by the court. Program types may include, but are not limited to, career programs, marine programs,

juvenile justice alternative schools, training and rehabilitation programs, and gender-specific programs.

(15)(a) "Delinquency program" means any intake, probation, or similar program; regional detention center or facility; or community-based program, whether owned and operated by or contracted by the department, or institution owned and operated by or contracted by the department, which provides intake, supervision, or custody and care of children who are alleged to be or who have been found to be delinquent under this chapter.

(b) "Delinquency program staff" means supervisory and direct care staff of a delinquency program as well as support staff who have direct contact with children in a delinquency program.

~~(c) "Delinquency prevention programs" means programs designed for the purpose of reducing the occurrence of delinquency, including criminal gang activity, and juvenile arrests. The term excludes arbitration, diversionary or mediation programs, and community service work or other treatment available subsequent to a child committing a delinquent act.~~

(16) "Department" means the Department of Juvenile Justice.

(17) "Designated facility" or "designated treatment facility" means any facility designated by the department to provide treatment to juvenile offenders.

(18) "Detention care" means the temporary care of a child in secure or~~,~~ nonsecure~~, or home~~ detention, pending a court adjudication or disposition or execution of a court order. There are two ~~three~~ types of detention care, as follows:

(a) "Secure detention" means temporary custody of the child

while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.

~~(b) "Nonsecure detention" means temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement.~~

(b)~~(c)~~ "Nonsecure detention" ~~"Home detention"~~ means temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement. Forms of nonsecure detention include, but are not limited to, home detention, electronic monitoring, day reporting centers, evening reporting centers, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the court.

(19) "Detention center or facility" means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure ~~or nonsecure~~ custody. A facility used for the commitment of adjudicated delinquents shall not be considered a detention center or facility.

(20) "Detention hearing" means a hearing for the court to determine if a child should be placed in temporary custody, as provided for under part V in delinquency cases.

(21) "Disposition hearing" means a hearing in which the

court determines the most appropriate dispositional services in the least restrictive available setting provided for under part VII, in delinquency cases.

(22) "Family" means a collective of persons, consisting of a child and a parent, guardian, adult custodian, or adult relative, in which:

(a) The persons reside in the same house or living unit; or

(b) The parent, guardian, adult custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(23) "Family in need of services" has the same meaning as provided in s. 984.03 ~~means a family that has a child for whom there is no pending investigation into an allegation of abuse, neglect, or abandonment or no current supervision by the department or the Department of Children and Family Services for an adjudication of dependency or delinquency~~. ~~The child must also have been referred to a law enforcement agency or the department for:~~

~~(a) Running away from parents or legal custodians;~~

~~(b) Persistently disobeying reasonable and lawful demands of parents or legal custodians, and being beyond their control; or~~

~~(c) Habitual truancy from school.~~

~~(24) "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.~~

~~(25) "Habitually truant" means that:~~

~~(a) The child has 15 unexcused absences within 90 calendar days with or without the knowledge or justifiable consent of the~~

~~child's parent or legal guardian, is subject to compulsory school attendance under s. 1003.21(1) and (2)(a), and is not exempt under s. 1003.21(3), s. 1003.24, or any other exemptions specified by law or the rules of the State Board of Education.~~

~~(b) Escalating activities to determine the cause, and to attempt the remediation, of the child's truant behavior under ss. 1003.26 and 1003.27 have been completed.~~

~~If a child who is subject to compulsory school attendance is responsive to the interventions described in ss. 1003.26 and 1003.27 and has completed the necessary requirements to pass the current grade as indicated in the district pupil progression plan, the child shall not be determined to be habitually truant and shall be passed. If a child within the compulsory school attendance age has 15 unexcused absences within 90 calendar days or fails to enroll in school, the state attorney may file a child-in-need-of-services petition. Before filing a petition, the child must be referred to the appropriate agency for evaluation. After consulting with the evaluating agency, the state attorney may elect to file a child-in-need-of-services petition.~~

~~(c) A school representative, designated according to school board policy, and a juvenile probation officer of the department have jointly investigated the truancy problem or, if that was not feasible, have performed separate investigations to identify conditions that could be contributing to the truant behavior; and if, after a joint staffing of the case to determine the necessity for services, such services were determined to be needed, the persons who performed the investigations met jointly~~

~~with the family and child to discuss any referral to appropriate community agencies for economic services, family or individual counseling, or other services required to remedy the conditions that are contributing to the truant behavior.~~

~~(d) The failure or refusal of the parent or legal guardian or the child to participate, or make a good faith effort to participate, in the activities prescribed to remedy the truant behavior, or the failure or refusal of the child to return to school after participation in activities required by this subsection, or the failure of the child to stop the truant behavior after the school administration and the department have worked with the child as described in s. 1003.27(3) shall be handled as prescribed in s. 1003.27.~~

~~(26) "Halfway house" means a community-based residential program for 10 or more committed delinquents at the moderate-risk commitment level which is operated or contracted by the department.~~

(24) ~~(27)~~ "Intake" means the initial acceptance and screening by the department or juvenile assessment center personnel of a complaint or a law enforcement report or probable cause affidavit of delinquency~~, family in need of services, or child in need of services~~ to determine the recommendation to be taken in the best interests of the child, the family, and the community. The emphasis of intake is on diversion and the least restrictive available services. Consequently, intake includes such alternatives as:

(a) The disposition of the complaint, report, or probable cause affidavit without court or public agency action or judicial handling when appropriate.

(b) The referral of the child to another public or private agency when appropriate.

(c) The recommendation by the department ~~juvenile probation officer~~ of judicial handling when appropriate and warranted.

(25) ~~(28)~~ "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

(26) ~~(29)~~ "Juvenile justice continuum" includes, but is not limited to, ~~delinquency~~ prevention programs and services designed for the purpose of preventing or reducing delinquent acts, including criminal activity by criminal gangs, and juvenile arrests, as well as programs and services targeted at children who have committed delinquent acts, and children who have previously been committed to residential treatment programs for delinquents. The term includes children-in-need-of-services and families-in-need-of-services programs under chapter 984; conditional release; substance abuse and mental health programs; educational and career programs; recreational programs; community services programs; community service work programs; mother-infant programs; and alternative dispute resolution programs serving children at risk of delinquency and their families, whether offered or delivered by state or local governmental entities, public or private for-profit or not-for-profit organizations, or religious or charitable organizations.

(27) ~~(30)~~ "Juvenile probation officer" means the authorized agent of the department who performs the intake, case management, or supervision functions.

(28) ~~(31)~~ "Legal custody or guardian" means a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian, whether an agency or an

individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(29) ~~(32)~~ "Licensed child-caring agency" means a person, society, association, or agency licensed by the Department of Children and Families ~~Family Services~~ to care for, receive, and board children.

(30) ~~(33)~~ "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

(31) ~~(34)~~ "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.

(32) ~~(35)~~ "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

(33) ~~(36)~~ "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues,

fostering joint problem solving, and exploring settlement alternatives.

(34) ~~(37)~~ "Mother-infant program" means a residential program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents, which is operated or contracted by the department. A mother-infant program facility must be licensed as a child care facility under s. 402.308 and must provide the services and support necessary to enable each juvenile mother committed to the facility to provide for the needs of her infants who, upon agreement of the mother, may accompany her in the program.

(35) ~~(38)~~ "Necessary medical treatment" means care which is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.

(36) ~~(39)~~ "Next of kin" means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.

(37) ~~(40)~~ "Ordinary medical care" means medical procedures that are administered or performed on a routine basis and include, but are not limited to, inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventive services, medication management, chronic disease detection and treatment, and other medical procedures that are administered or performed on a routine basis and do not involve hospitalization, surgery, the use of general anesthesia, or the provision of psychotropic medications.

(38) ~~(41)~~ "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be

required under s. 63.062(1). If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of either s. 39.503(1) or s. 63.062(1).

(39) ~~(42)~~ "Preliminary screening" means the gathering of preliminary information to be used in determining a child's need for further evaluation or assessment or for referral for other substance abuse services through means such as psychosocial interviews; urine and breathalyzer screenings; and reviews of available educational, delinquency, and dependency records of the child.

~~(43) "Preventive services" means social services and other supportive and rehabilitative services provided to the parent of the child, the legal guardian of the child, or the custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's need for a safe, continuous, stable living environment and shall promote family autonomy and shall strengthen family life as the first priority whenever possible.~~

(40) "Prevention" means programs, strategies, initiatives, and networks designed to keep children from making initial or further contact with the juvenile justice system.

(41) ~~(44)~~ "Probation" means the legal status of probation created by law and court order in cases involving a child who

has been found to have committed a delinquent act. Probation is an individualized program in which the freedom of the child is limited and the child is restricted to noninstitutional quarters or restricted to the child's home in lieu of commitment to the custody of the department. Youth on probation may be assessed and classified for placement in day-treatment probation programs designed for youth who represent a minimum risk to themselves and public safety and do not require placement and services in a residential setting.

(42) ~~(45)~~ "Relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

(44) ~~(46)~~ "Restrictiveness level" means the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children. Sections 985.601(10) and 985.721 apply to children placed in programs at any residential commitment level. The restrictiveness levels of commitment are as follows:

(a) *Minimum-risk nonresidential.*—Programs or program models at this commitment level work with youth who remain in the community and participate at least 5 days per week in a day treatment program. Youth assessed and classified for programs at this commitment level represent a minimum risk to themselves and public safety and do not require placement and services in residential settings. Youth in this level have full access to, and reside in, the community. Youth who have been found to have committed delinquent acts that involve firearms, that are sexual

offenses, or that would be life felonies or first degree felonies if committed by an adult may not be committed to a program at this level.

~~(b) *Low-risk residential.*—Programs or program models at this commitment level are residential but may allow youth to have unsupervised access to the community. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Youth assessed and classified for placement in programs at this commitment level represent a low risk to themselves and public safety but do require placement and services in residential settings. Children who have been found to have committed delinquent acts that involve firearms, delinquent acts that are sexual offenses, or delinquent acts that would be life felonies or first degree felonies if committed by an adult shall not be committed to a program at this level.~~

(b) ~~(c)~~ *Nonsecure* ~~*Moderate-risk*~~ *residential.*—Programs or program models at this commitment level are residential but may allow youth to have supervised access to the community. Facilities at this commitment level are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors. Residential facilities at this commitment level shall have no more than 90 ~~165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide~~

~~multilevel education and~~ treatment program ~~programs~~ using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for placement in programs at this commitment level represent a low or moderate risk to public safety and require close supervision. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary.

(c) ~~(d)~~ *High-risk residential.*—Programs or program models at this commitment level are residential and do not allow youth to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be approved by a court for a youth who has made successful progress in his or her program in order for the youth to attend a family emergency or, during the final 60 days of his or her placement, to visit his or her home, enroll in school or a career and technical education ~~vocational~~ program, complete a job interview, or participate in a community service project. High-risk residential facilities are hardware-secure with perimeter fencing and locking doors. Residential facilities at this commitment level shall have no more than 90 ~~165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property.

Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary. The facility may provide for single cell occupancy, except that youth may be housed together during prerelease transition.

(d) ~~(c)~~ *Maximum-risk residential.*—Programs or program models at this commitment level include juvenile correctional facilities and juvenile prisons. The programs at this commitment level are long-term residential and do not allow youth to have access to the community. Facilities at this commitment level are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Residential facilities at this commitment level shall have no more than 90 ~~165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary. Facilities

at this commitment level ~~The facility~~ shall provide for single cell occupancy, except that youth may be housed together during prerelease transition. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

(43) ~~(47)~~ "Respite" means a placement that is available for the care, custody, and placement of a youth charged with domestic violence as an alternative to secure detention or for placement of a youth when a shelter bed for a child in need of services or a family in need of services is unavailable.

(45) ~~(48)~~ "Secure detention center or facility" means a physically restricting facility for the temporary care of children~~,~~ pending adjudication, disposition, or placement.

(46) ~~(49)~~ "Shelter" means a place for the temporary care of a child who is alleged to be or who has been found to be delinquent.

~~(50) "Shelter hearing" means a hearing provided for under s. 984.14 in family-in-need-of-services cases or child-in-need-of-services cases.~~

~~(51) "Staff-secure shelter" means a facility in which a child is supervised 24 hours a day by staff members who are awake while on duty. The facility is for the temporary care and assessment of a child who has been found to be dependent, who has violated a court order and been found in contempt of court, or whom the Department of Children and Family Services is unable to properly assess or place for assistance within the continuum of services provided for dependent children.~~

(47) ~~(52)~~ "Substance abuse" means using, without medical

reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(48) ~~(53)~~ "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law.

(49) ~~(54)~~ "Temporary legal custody" means the relationship that a juvenile court creates between a child and an adult relative of the child, adult nonrelative approved by the court, or other person until a more permanent arrangement is ordered. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the temporary legal custody relationship.

(50) ~~(55)~~ "Temporary release" means the terms and conditions under which a child is temporarily released from a residential commitment facility or allowed home visits. If the temporary release is from a nonsecure ~~moderate-risk~~ residential facility, a high-risk residential facility, or a maximum-risk residential facility, the terms and conditions of the temporary release must be approved by the child, the court, and the facility. ~~The term includes periods during which the child is supervised pursuant to a conditional release program or a period during which the~~

~~child is supervised by a juvenile probation officer or other nonresidential staff of the department or staff employed by an entity under contract with the department.~~

(51) ~~(56)~~ "Transition-to-adulthood services" means services that are provided for youth in the custody of the department or under the supervision of the department and that have the objective of instilling the knowledge, skills, and aptitudes essential to a socially integrated, self-supporting adult life. The services may include, but are not limited to:

(a) Assessment of the youth's ability and readiness for adult life.

(b) A plan for the youth to acquire the knowledge, information, and counseling necessary to make a successful transition to adulthood.

(c) Services that have proven effective toward achieving the transition to adulthood.

(52) "Trauma-informed care" means services that are provided to children with a history of trauma, recognizing the symptoms of trauma and acknowledging the role that trauma has played in the child's life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

(53) ~~(57)~~ "Violation of law" or "delinquent act" means a violation of any law of this state, the United States, or any other state which is a misdemeanor or a felony or a violation of a county or municipal ordinance which would be punishable by incarceration if the violation were committed by an adult.

(54) ~~(58)~~ "Waiver hearing" means a hearing provided for under s. 985.556(4).

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Section 4. Subsections (4) and (5) of section 985.0301, Florida Statutes, are amended to read:

985.0301 Jurisdiction.—

(4)(a) Petitions alleging delinquency shall be filed in the county where the delinquent act or violation of law occurred. The ~~, but the~~ circuit court for that county may transfer the case to the circuit court of the circuit in which the child resides or will reside at the time of detention or placement for dispositional purposes. A child who has been detained may ~~shall~~ be transferred to the ~~appropriate~~ detention center or facility in the circuit in which the child resides or will reside at the time of detention ~~or other placement directed by the receiving court~~.

(b) The jurisdiction to be exercised by the court when a child is taken into custody before the filing of a petition under subsection (2) shall be exercised by the circuit court for the county in which the child is taken into custody, which court shall have personal jurisdiction of the child and the child's parent or legal guardian. Upon the filing of a petition in the appropriate circuit court, the court that is exercising initial jurisdiction of the person of the child shall, if the child has been detained, immediately order the child to be transferred to the detention center or facility or other placement as ordered by the court having subject matter jurisdiction of the case.

(5)(a) Notwithstanding s. ~~ss.~~ 743.07~~, 985.43, 985.433, 985.435, 985.439, and 985.441~~, and except as provided in paragraph (b) ~~ss. 985.461 and 985.465 and paragraph (f)~~, when the jurisdiction of any child who is alleged to have committed a delinquent act or violation of law is obtained, the court shall

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retain jurisdiction to dispose a case, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child which the court had before the child became an adult. ~~For the purposes of s. 985.461, the court may retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services. The additional services do not extend involuntary court-sanctioned residential commitment and therefore require voluntary participation by the affected youth.~~

(b) The court shall retain jurisdiction, ~~Notwithstanding ss. 743.07 and 985.455(3), the term of any order placing a child in a probation program must be until the child's 19th birthday~~ unless relinquished by its own order:

1. Over a child on probation until the child reaches 19 years of age ~~he or she is released by the court on the motion of an interested party or on his or her own motion~~.

2. Over a child committed to the department until the child reaches 21 years of age, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision.

(c) The court shall retain jurisdiction over a juvenile sexual offender, as defined in s. 985.475, who has been placed on community-based treatment alternative with supervision or who has been placed in a program or facility for juvenile sexual offenders, pursuant to s. 985.48, until the juvenile sexual offender reaches 21 years of age, specifically for the purpose of allowing the juvenile to complete the program.

~~(c) Notwithstanding ss. 743.07 and 985.455(3), the term of the commitment must be until the child is discharged by the~~

~~department or until he or she reaches the age of 21 years. Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441, 985.455, and 985.513, and except as provided in this section, a child may not be held under a commitment from a court under s. 985.439, s. 985.441(1)(a) or (b), or s. 985.455 after becoming 21 years of age.~~

~~(d) The court may retain jurisdiction over a child committed to the department for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program to allow the child to participate in a juvenile conditional release program pursuant to s. 985.46. The jurisdiction of the court may not be retained after the child's 22nd birthday. However, if the child is not successful in the conditional release program, the department may use the transfer procedure under s. 985.441(4).~~

~~(e) The court may retain jurisdiction over a child committed to the department for placement in an intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program until the child reaches the age of 21. If the court exercises this jurisdiction retention, it shall do so solely for the purpose of the child completing the intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, or in a residential sex offender program. Such jurisdiction retention does not apply for other programs, other purposes, or new offenses.~~

~~(f) The court may retain jurisdiction over a child committed to a juvenile correctional facility or a juvenile~~

~~prison until the child reaches the age of 21 years, specifically for the purpose of allowing the child to complete such program.~~

~~(g) The court may retain jurisdiction over a juvenile sexual offender who has been placed in a program or facility for juvenile sexual offenders until the juvenile sexual offender reaches the age of 21, specifically for the purpose of completing the program.~~

(d) ~~(h)~~ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied. To retain jurisdiction, the court shall enter a restitution order, which is separate from any disposition or order of commitment, on or prior to the date that the court's jurisdiction would cease under this section. The contents of the restitution order shall be limited to the child's name and address, the name and address of the parent or legal guardian, the name and address of the payee, the case number, the date and amount of restitution ordered, any amount of restitution paid, the amount of restitution due and owing, and a notation that costs, interest, penalties, and attorney fees may also be due and owing. The terms of the restitution order are subject to s. 775.089(5).

(e) ~~(i)~~ This subsection does not prevent the exercise of jurisdiction by any court having jurisdiction of the child if the child, after becoming an adult, commits a violation of law.

Section 5. Subsections (2) and (4) of section 985.037, Florida Statutes, are amended to read:

985.037 Punishment for contempt of court; alternative sanctions.—

(2) PLACEMENT IN A SECURE DETENTION FACILITY.—A child may

be placed in a secure detention facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate, or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction. A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility not to exceed 5 days for a first offense and not to exceed 15 days for a second or subsequent offense.

(4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE PROCESS.—

(a) If a child is charged with direct contempt of court, including traffic court, the court may impose an authorized sanction immediately. The court must hold a hearing to determine if the child committed direct contempt. Due process must be afforded to the child during this hearing.

(b) If a child is charged with indirect contempt of court, the court must hold a hearing within 24 hours to determine whether the child committed indirect contempt of a valid court order. At the hearing, the following due process rights must be provided to the child:

1. Right to a copy of the order to show cause alleging facts supporting the contempt charge.

2. Right to an explanation of the nature and the consequences of the proceedings.

3. Right to legal counsel and the right to have legal counsel appointed by the court if the juvenile is indigent, under s. 985.033.

4. Right to confront witnesses.

5. Right to present witnesses.

6. Right to have a transcript or record of the proceeding.

7. Right to appeal to an appropriate court.

The child's parent or guardian may address the court regarding the due process rights of the child. Upon motion by the defense attorney or state attorney, the court shall review the placement of the child ~~every 72 hours~~ to determine whether it is appropriate for the child to remain in the facility.

(c) The court may not order that a child be placed in a secure detention facility for punishment for contempt unless the court determines that an alternative sanction is inappropriate or unavailable or that the child was initially ordered to an alternative sanction and did not comply with the alternative sanction. The court is encouraged to order a child to perform community service, up to the maximum number of hours, where appropriate before ordering that the child be placed in a secure detention facility as punishment for contempt of court.

(d) In addition to any other sanction imposed under this section, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend, a child's driver ~~driver's~~ license or driving privilege. The court may order that a child's driver ~~driver's~~ license or driving privilege be withheld or suspended for up to 1 year for a first offense of contempt and up to 2 years for a second or subsequent offense. If the child's driver ~~driver's~~ license or driving privilege is suspended or revoked for any reason at the time the sanction for contempt is imposed, the court shall extend the period of suspension or revocation by the additional period ordered under this paragraph. If the child's driver ~~driver's~~

license is being withheld at the time the sanction for contempt is imposed, the period of suspension or revocation ordered under this paragraph shall begin on the date on which the child is otherwise eligible to drive.

Section 6. Paragraph (a) of subsection (1) of section 985.039, Florida Statutes, is amended to read:

985.039 Cost of supervision; cost of care.—

(1) Except as provided in subsection (3) or subsection (4):

(a) When any child is placed into nonsecure ~~home~~ detention, probation, or other supervision status with the department, or is committed to the minimum-risk nonresidential restrictiveness level, the court shall order the parent of such child to pay to the department a fee for the cost of the supervision of such child in the amount of $1 per day for each day that the child is in such status.

Section 7. Subsection (5) of section 985.045, Florida Statutes, is amended to read:

985.045 Court records.—

(5) This chapter does not prohibit a circuit court from providing a restitution order containing the information prescribed in s. 985.0301(5)(d) ~~985.0301(5)(h)~~ to a collection court or a private collection agency for the sole purpose of collecting unpaid restitution ordered in a case in which the circuit court has retained jurisdiction over the child and the child's parent or legal guardian. The collection court or private collection agency shall maintain the confidential status of the information to the extent such confidentiality is provided by law.

Section 8. Paragraph (d) of subsection (1) and subsection

(3) of section 985.101, Florida Statutes, are amended to read:

985.101 Taking a child into custody.—

(1) A child may be taken into custody under the following circumstances:

(d) By a law enforcement officer who has probable cause to believe that the child is in violation of the conditions of the child's probation, nonsecure ~~home~~ detention, postcommitment probation, or conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment.

Nothing in this subsection shall be construed to allow the detention of a child who does not meet the detention criteria in part V.

(3) When a child is taken into custody as provided in this section, the person taking the child into custody shall attempt to notify the parent, guardian, or legal custodian of the child. The person taking the child into custody shall continue such attempt until the parent, guardian, or legal custodian of the child is notified or the child is delivered to the department ~~a juvenile probation officer~~ under ss. 985.14 and 985.145, whichever occurs first. If the child is delivered to the department ~~a juvenile probation officer~~ before the parent, guardian, or legal custodian is notified, the department ~~juvenile probation officer~~ shall continue the attempt to notify until the parent, guardian, or legal custodian of the child is notified. Following notification, the parent or guardian must provide identifying information, including name, address, date of birth, social security number, and driver ~~driver's~~ license

number or identification card number of the parent or guardian to the person taking the child into custody or the department ~~juvenile probation officer~~.

Section 9. Section 985.105, Florida Statutes, is repealed.

Section 10. Paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is amended to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as

defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 11. Subsection (2) of section 985.14, Florida

Statutes, is amended to read:

985.14 Intake and case management system.—

(2) The intake process shall be performed by the department or juvenile assessment center personnel through a case management system. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process shall consist of a preliminary screening and may be followed by a comprehensive assessment. The comprehensive assessment may consist of a full mental health, cognitive impairment, substance abuse, or psychosexual evaluation. The intake process shall result in choosing the most appropriate services through a balancing of the interests and needs of the child with those of the family and the community ~~public~~. The department ~~juvenile probation officer~~ shall be responsible for making informed decisions and recommendations to other agencies, the state attorney, and the courts so that the child and family may receive the least intrusive service alternative throughout the judicial process. The department shall establish uniform procedures for the department ~~juvenile probation officer~~ to provide a preliminary screening of the child and family for substance abuse and mental health services prior to the filing of a petition or as soon as possible thereafter and prior to a disposition hearing.

Section 12. Section 985.145, Florida Statutes, is amended to read:

985.145 Responsibilities of the department ~~juvenile probation officer~~ during intake; screenings and assessments.—

(1) The department ~~juvenile probation officer~~ shall serve as the primary case manager for the purpose of managing, coordinating, and monitoring the services provided to the child. Each program administrator within the Department of Children and Families ~~Family Services~~ shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the department ~~assigned juvenile probation officer~~ shall be responsible for the following:

(a) *Reviewing probable cause affidavit.*—The department ~~juvenile probation officer~~ shall make a preliminary determination as to whether the report, affidavit, or complaint is complete, consulting with the state attorney as may be necessary. A report, affidavit, or complaint alleging that a child has committed a delinquent act or violation of law shall be made to the intake office operating in the county in which the child is found or in which the delinquent act or violation of law occurred. Any person or agency having knowledge of the facts may make such a written report, affidavit, or complaint and shall furnish to the intake office facts sufficient to establish the jurisdiction of the court and to support a finding by the court that the child has committed a delinquent act or violation of law.

(b) *Notification concerning apparent insufficiencies in probable cause affidavit.*—In any case where the department ~~juvenile probation officer~~ or the state attorney finds that the report, affidavit, or complaint is insufficient by the standards for a probable cause affidavit, the department ~~juvenile~~

~~probation officer~~ or state attorney shall return the report, affidavit, or complaint, without delay, to the person or agency originating the report, affidavit, or complaint or having knowledge of the facts or to the appropriate law enforcement agency having investigative jurisdiction of the offense, and shall request, and the person or agency shall promptly furnish, additional information in order to comply with the standards for a probable cause affidavit.

(c) *Screening.*—During the intake process, the department ~~juvenile probation officer~~ shall screen each child or shall cause each child to be screened in order to determine:

1. Appropriateness for release; referral to a diversionary program, including, but not limited to, a teen court program; referral for community arbitration; or referral to some other program or agency for the purpose of nonofficial or nonjudicial handling.

2. The presence of medical, psychiatric, psychological, substance abuse, educational, or career and technical education ~~vocational~~ problems, or other conditions that may have caused the child to come to the attention of law enforcement or the department. The child shall also be screened to determine whether the child poses a danger to himself or herself or others in the community. The results of this screening shall be made available to the court and to court officers. In cases where such conditions are identified and a nonjudicial handling of the case is chosen, the department ~~juvenile probation officer~~ shall attempt to refer the child to a program or agency, together with all available and relevant assessment information concerning the child's precipitating condition.

(d) *Completing risk assessment instrument.*—The department ~~juvenile probation officer~~ shall ensure that a risk assessment instrument establishing the child's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court.

(e) *Rights.*—The department ~~juvenile probation officer~~ shall inquire as to whether the child understands his or her rights to counsel and against self-incrimination.

(f) *Multidisciplinary assessment.*—The department ~~juvenile probation officer~~ shall coordinate the multidisciplinary assessment when required, which includes the classification and placement process that determines the child's priority needs, risk classification, and treatment plan. When sufficient evidence exists to warrant a comprehensive assessment and the child fails to voluntarily participate in the assessment efforts, the department ~~juvenile probation officer~~ shall inform the court of the need for the assessment and the refusal of the child to participate in such assessment. This assessment, classification, and placement process shall develop into the predisposition report.

(g) *Comprehensive assessment.*—The department ~~juvenile probation officer~~, pursuant to uniform procedures established by the department and upon determining that the report, affidavit, or complaint is complete, shall:

1. Perform the preliminary screening and make referrals for a comprehensive assessment regarding the child's need for substance abuse treatment services, mental health services, intellectual disability services, literacy services, or other educational or treatment services.

2. If indicated by the preliminary screening, provide for a comprehensive assessment of the child and family for substance abuse problems, using community-based licensed programs with clinical expertise and experience in the assessment of substance abuse problems.

3. If indicated by the preliminary screening, provide for a comprehensive assessment of the child and family for mental health problems, using community-based psychologists, psychiatrists, or other licensed mental health professionals who have clinical expertise and experience in the assessment of mental health problems.

(h) *Referrals for services.*—The department ~~juvenile probation officer~~ shall make recommendations for services and facilitate the delivery of those services to the child, including any mental health services, educational services, family counseling services, family assistance services, and substance abuse services.

(i) *Recommendation concerning a petition.*—Upon determining that the report, affidavit, or complaint complies with the standards of a probable cause affidavit and that the interests of the child and the public will be best served, the department ~~juvenile probation officer~~ may recommend that a delinquency petition not be filed. If such a recommendation is made, the department ~~juvenile probation officer~~ shall advise in writing the person or agency making the report, affidavit, or complaint, the victim, if any, and the law enforcement agency having investigative jurisdiction over the offense of the recommendation; the reasons therefor; and that the person or agency may submit, within 10 days after the receipt of such

notice, the report, affidavit, or complaint to the state attorney for special review. The state attorney, upon receiving a request for special review, shall consider the facts presented by the report, affidavit, or complaint, and by the department ~~juvenile probation officer~~ who made the recommendation that no petition be filed, before making a final decision as to whether a petition or information should or should not be filed.

(j) *Completing intake report.*—Subject to the interagency agreement authorized under this paragraph, the department ~~the juvenile probation officer for each case in which a child is alleged to have committed a violation of law or delinquent act and is not detained~~ shall submit a written report to the state attorney for each case in which a child is alleged to have committed a violation of law or delinquent act and is not detained. The report shall be submitted within 20 days after the date the child is taken into custody and include ~~,including~~ the original police report, complaint, or affidavit, or a copy thereof, and ~~including~~ a copy of the child's prior juvenile record~~, within 20 days after the date the child is taken into custody~~. In cases in which the child is in detention, the intake office report must be submitted within 24 hours after the child is placed into detention. The intake office report may include a recommendation that a petition or information be filed or that no petition or information be filed and may set forth reasons for the recommendation. The state attorney and the department may, on a district-by-district basis, enter into interagency agreements denoting the cases that will require a recommendation and those for which a recommendation is unnecessary.

(2) Prior to requesting that a delinquency petition be

filed or prior to filing a dependency petition, the department ~~juvenile probation officer~~ may request the parent or legal guardian of the child to attend a course of instruction in parenting skills, training in conflict resolution, and the practice of nonviolence; to accept counseling; or to receive other assistance from any agency in the community which notifies the clerk of the court of the availability of its services. Where appropriate, the department ~~juvenile probation officer~~ shall request both parents or guardians to receive such parental assistance. The department ~~juvenile probation officer~~ may, in determining whether to request that a delinquency petition be filed, take into consideration the willingness of the parent or legal guardian to comply with such request. The parent or guardian must provide the department ~~juvenile probation officer~~ with identifying information, including the parent's or guardian's name, address, date of birth, social security number, and driver ~~driver's~~ license number or identification card number in order to comply with s. 985.039.

(3) When indicated by the comprehensive assessment, the department is authorized to contract within appropriated funds for services with a local nonprofit community mental health or substance abuse agency licensed or authorized under chapter 394 or chapter 397 or other authorized nonprofit social service agency providing related services. The determination of mental health or substance abuse services shall be conducted in coordination with existing programs providing mental health or substance abuse services in conjunction with the intake office.

(4) Client information resulting from the screening and evaluation shall be documented under rules of the department and

shall serve to assist the department ~~juvenile probation officer~~ in providing the most appropriate services and recommendations in the least intrusive manner. Such client information shall be used in the multidisciplinary assessment and classification of the child, but such information, and any information obtained directly or indirectly through the assessment process, is inadmissible in court prior to the disposition hearing, unless the child's written consent is obtained. At the disposition hearing, documented client information shall serve to assist the court in making the most appropriate custody, adjudicatory, and dispositional decision.

(5) If the screening and assessment indicate that the interests of the child and the public will be best served, the department ~~juvenile probation officer~~, with the approval of the state attorney, may refer the child for care, diagnostic, and evaluation services; substance abuse treatment services; mental health services; intellectual disability services; a diversionary, arbitration, or mediation program; community service work; or other programs or treatment services voluntarily accepted by the child and the child's parents or legal guardian. If a child volunteers to participate in any work program under this chapter or volunteers to work in a specified state, county, municipal, or community service organization supervised work program or to work for the victim, the child is considered an employee of the state for the purposes of liability. In determining the child's average weekly wage, unless otherwise determined by a specific funding program, all remuneration received from the employer is considered a gratuity, and the child is not entitled to any benefits

otherwise payable under s. 440.15 regardless of whether the child may be receiving wages and remuneration from other employment with another employer and regardless of the child's future wage-earning capacity.

(6) The victim, if any, and the law enforcement agency that investigated the offense shall be notified immediately by the state attorney of the action taken under subsection (5).

Section 13. Section 985.17, Florida Statutes, is created to read:

985.17 Prevention services.—

(1) The Legislature finds that prevention services decrease recidivism by addressing the needs of at-risk youth and their families, preventing further involvement of such youth in the juvenile justice system, protecting the safety of the public, and facilitating successful reentry of at-risk youth into the community. To assist with decreasing recidivism, the department's prevention services shall strengthen protective factors and reduce risk factors using tested and effective approaches.

(2) A goal of the department's prevention services shall be to develop the capacity for local communities to serve their youth.

(a) The department shall engage faith and community-based organizations to provide a full range of voluntary programs and services to prevent and reduce juvenile delinquency, including, but not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

(b) The department shall establish volunteer coordinators in each circuit and encourage the recruitment of volunteers to

serve as mentors for youth in department services.

(c) The department shall promote the sale of the Invest in Children license plate to help fund programs and services to prevent juvenile delinquency. The department shall allocate money for programs and services within each county based on that county's proportionate share of the license plate annual use fees collected by the county.

(3) The department's prevention services for youth at risk of becoming delinquent should:

(a) Focus on preventing initial or further involvement of such youth in the juvenile justice system by including services such as literacy services, gender-specific programming, recreational services, and after-school services, and should include targeted services to troubled, truant, ungovernable, abused, trafficked, or runaway youth. To decrease the likelihood that a youth will commit a delinquent act, the department should use mentoring and may provide specialized services addressing the strengthening of families, job training, and substance abuse.

(b) Address the multiple needs of such youth in order to decrease the prevalence of disproportionate minority representation in the juvenile justice system.

(4) The department shall expend funds related to the prevention services in a manner consistent with the policies expressed in ss. 984.02 and 985.01 and in a manner that maximizes accountability to the public and ensures the documentation of outcomes.

(a) As a condition of receipt of state funds, all entities that receive or use state moneys to fund prevention services

through contracts with the department or grants from any entity dispersed by the department shall:

1. Design the programs providing such services to further one or more of the following strategies:

a. Encouraging youth to attend and succeed in school, which may include special assistance and tutoring to address deficiencies in academic performance and collecting outcome data to reveal the number of days youth attended school while participating in the program.

b. Engaging youth in productive and wholesome activities during nonschool hours that build positive character, instill positive values, and enhance educational experiences.

c. Encouraging youth to avoid the use of violence.

d. Assisting youth in acquiring the skills needed to find meaningful employment, which may include assisting the youth in finding a suitable employer.

2. Provide the department with demographic information, dates of services, and types of interventions received by each youth.

(b) The department shall monitor output and outcome measures for each program strategy in paragraph (a) and annually report the outputs and outcomes in the Comprehensive Accountability Report as provided in s. 985.632.

(c) The department shall monitor all state-funded programs that receive or use state moneys to fund the prevention services through contracts or grants with the department for compliance with all provisions in the contracts and grants.

Section 14. Section 985.24, Florida Statutes, is amended to read:

985.24 Use of detention; prohibitions.—

(1) All determinations and court orders regarding the use of ~~secure, nonsecure, or home~~ detention care shall be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;

(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;

(c) Presents a history of committing a property offense prior to adjudication, disposition, or placement;

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(e) Requests protection from imminent bodily harm.

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into secure or~~,~~ nonsecure~~, or home~~ detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

(3) A child alleged to be dependent under chapter 39 may

not, under any circumstances, be placed into secure detention care.

(4) The department may, within its existing resources, develop nonsecure, nonresidential evening reporting centers as an alternative to placing a child in secure detention. Evening reporting centers may be collocated with a juvenile assessment center. If established, evening reporting centers shall serve children and families who are awaiting a child's court hearing and, at a minimum, operate during the afternoon and evening hours to provide a highly structured program of supervision. Evening reporting centers may also provide academic tutoring, counseling, family engagement programs, and other activities.

(5) ~~(4)~~ The department shall continue to identify alternatives to secure detention care and shall develop such alternatives and annually submit them to the Legislature for authorization and appropriation.

Section 15. Paragraph (b) of subsection (2) and subsection (4) of section 985.245, Florida Statutes, are amended to read:

985.245 Risk assessment instrument.—

(2)

(b) The risk assessment instrument shall take into consideration, but need not be limited to, prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower

population of children than s. 985.255. The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure or~~,~~ nonsecure~~, or home~~ detention care.

(4) For a child who is under the supervision of the department through probation, ~~home detention,~~ nonsecure detention, conditional release, postcommitment probation, or commitment and who is charged with committing a new offense, the risk assessment instrument may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department and the new offense.

Section 16. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

(1) The department ~~juvenile probation officer~~ shall receive custody of a child who has been taken into custody from the law enforcement agency or court and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is appropriate ~~required~~.

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into secure ~~detention care,~~ or nonsecure detention care~~, or home detention care~~ shall be made by the department ~~juvenile probation officer~~ under ss. 985.24 and 985.245(1).

(b) The department ~~juvenile probation officer~~ shall base

the decision whether ~~or not~~ to place the child into secure ~~detention care, home detention care,~~ or nonsecure detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245. However, a child charged with possessing or discharging a firearm on school property in violation of s. 790.115 shall be placed in secure detention care. A child who has been taken into custody on three or more separate occasions within a 60-day period shall be placed in secure detention care until the child's detention hearing.

(c) If the final score on the child's risk assessment instrument indicates ~~juvenile probation officer determines that a child who is eligible for~~ detention care is appropriate, but the department otherwise determines the child ~~based upon the results of the risk assessment instrument~~ should be released, the department ~~juvenile probation officer~~ shall contact the state attorney, who may authorize release.

(d) If the final score on the risk assessment instrument indicates detention is not appropriate ~~authorized~~, the child may be released by the department ~~juvenile probation officer~~ in accordance with ss. 985.115 and 985.13.

Under no circumstances shall the department ~~juvenile probation officer~~ or the state attorney or law enforcement officer authorize the detention of any child in a jail or other facility intended or used for the detention of adults, without an order of the court.

Section 17. Subsections (1) and (2) and paragraphs (a) and (c) of subsection (3) of section 985.255, Florida Statutes, are

amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into secure or nonsecure ~~or home~~ detention care shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order continued detention ~~or detained in secure detention care prior to a detention hearing may continue to be detained by the court~~ if:

(a) The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession of or discharging a firearm on school property in violation of s. 790.115 or the illegal possession of a firearm.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a

felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations prior to court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on nonsecure ~~home~~ detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:~~,~~

1. For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or

2. At two or more court hearings of any nature on the same case regardless of the results of the risk assessment

instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

~~(j) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.~~

(2) A child who is charged with committing an offense that is classified as an act of domestic violence as defined in s. 741.28 and whose risk assessment instrument indicates secure detention is not appropriate ~~who does not meet detention criteria~~ may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available; or~~.~~

(b) It is necessary to place the child in secure detention in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that respite care is unavailable or it ~~detention care~~ is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

(3)(a) ~~A child who meets any of the criteria in subsection (1) and who is ordered to be detained under that subsection shall be given a hearing within 24 hours after being taken into custody.~~ The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the department ~~juvenile probation officer~~ and, based on the criteria in subsection (1), shall determine the need for continued detention. ~~A child placed into secure, nonsecure, or home detention care may continue to be so detained by the court.~~

(c) Except as provided in s. 790.22(8) or in s. 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific

instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child's initial detention placement.

Section 18. Subsections (1), (2), and (3) of section 985.26, Florida Statutes, are amended to read:

985.26 Length of detention.—

(1) A child may not be placed into or held in secure or~~,~~ nonsecure~~, or home~~ detention care for longer than 24 hours unless the court orders such detention care, and the order includes specific instructions that direct the release of the child from such detention care, in accordance with s. 985.255. The order shall be a final order, reviewable by appeal under s. 985.534 and the Florida Rules of Appellate Procedure. Appeals of such orders shall take precedence over other appeals and other pending matters.

(2) A child may not be held in secure or~~,~~ nonsecure~~, or home~~ detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court. However, upon good

cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

(3) Except as provided in subsection (2), a child may not be held in secure or~~,~~ nonsecure~~, or home~~ detention care for more than 15 days following the entry of an order of adjudication.

Section 19. Section 985.265, Florida Statutes, is amended to read:

985.265 Detention transfer and release; education; adult jails.—

(1) If a child is detained under this part, the department may transfer the child from nonsecure ~~or home~~ detention care to secure detention care only if significantly changed circumstances warrant such transfer.

(2) If a child is on release status and not detained under this part, the child may be placed into secure or~~,~~ nonsecure~~, or home~~ detention care only pursuant to a court hearing in which the original risk assessment instrument and the~~, rescored based on~~ newly discovered evidence or changed circumstances are introduced into evidence with a rescored risk assessment instrument ~~with the results recommending detention, is introduced into evidence~~.

(3)(a) When a juvenile sexual offender is placed in detention, detention staff shall provide appropriate monitoring and supervision to ensure the safety of other children in the

facility.

(b) When a juvenile ~~sexual offender, under this subsection,~~ is released from secure detention or transferred to ~~home detention or~~ nonsecure detention, detention staff shall immediately notify the appropriate law enforcement agency~~, and~~ school personnel, and victim if the juvenile is charged with committing any of the following offenses or attempting to commit any of the following offenses:

1. Murder, under s. 782.04;

2. Sexual battery, under chapter 794;

3. Stalking, under s. 784.048; or

4. Domestic violence, as defined in s. 741.28.

(4)(a) While a child who is currently enrolled in school is in nonsecure ~~or home~~ detention care, the child shall continue to attend school unless otherwise ordered by the court.

(b) While a child is in secure detention care, the child shall receive education commensurate with his or her grade level and educational ability.

(5) The court shall order the delivery of a child to a jail or other facility intended or used for the detention of adults:

(a) When the child has been transferred or indicted for criminal prosecution as an adult under part X, except that the court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility; or

(b) When a child taken into custody in this state is wanted

by another jurisdiction for prosecution as an adult.

The child shall be housed separately from adult inmates to prohibit a child from having regular contact with incarcerated adults, including trustees. "Regular contact" means sight and sound contact. Separation of children from adults shall permit no more than haphazard or accidental contact. The receiving jail or other facility shall contain a separate section for children and shall have an adequate staff to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 ~~15~~ minutes. This subsection does not prohibit placing two or more children in the same cell. Under no circumstances shall a child be placed in the same cell with an adult.

Section 20. Section 985.27, Florida Statutes, is amended to read:

985.27 Postdisposition ~~Postcommitment~~ detention while awaiting commitment placement.—

(1) The court must place all children who are adjudicated and awaiting placement in a commitment program in detention care. Children who are in ~~home detention care or~~ nonsecure detention care may be placed on electronic monitoring.

~~(a) A child who is awaiting placement in a low-risk residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. A child who is~~

~~placed in home detention care, nonsecure detention care, or home or nonsecure detention care with electronic monitoring, while awaiting placement in a minimum-risk or low-risk program, may be held in secure detention care for 5 days, if the child violates the conditions of the home detention care, the nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.~~

(a) ~~(b)~~ A child who is awaiting placement in a nonsecure ~~moderate-risk~~ residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and legal holidays, and except as otherwise provided in this section. A child who is placed in ~~home detention care,~~ nonsecure detention care~~,~~ or ~~home or~~ nonsecure detention care with electronic monitoring, while awaiting placement in a nonsecure residential ~~moderate-risk~~ program, may be held in secure detention care for 5 days, if the child violates the conditions of the ~~home detention care, the~~ nonsecure detention care~~,~~ or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.

(b) ~~(c)~~ If the child is committed to a high-risk residential

program, the child must be held in secure detention care until placement or commitment is accomplished.

(c) ~~(d)~~ If the child is committed to a maximum-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.

(2) Regardless of detention status, a child being transported by the department to a residential commitment facility of the department may be placed in secure detention overnight, not to exceed a 24-hour period, for the specific purpose of ensuring the safe delivery of the child to his or her residential commitment program, court, appointment, transfer, or release.

Section 21. Subsection (1) of section 985.275, Florida Statutes, is amended to read:

985.275 Detention of escapee or absconder on authority of the department.—

(1) If an authorized agent of the department has reasonable grounds to believe that any delinquent child committed to the department has escaped from a residential commitment facility or from being lawfully transported thereto or therefrom, or has absconded from a nonresidential commitment facility, the agent shall notify law enforcement and, if the offense would require notification under chapter 960, notify the victim. The agent shall make every reasonable effort as permitted within existing resources provided to the department to locate the delinquent child and the child may be returned to the facility ~~take the child into active custody and may deliver the child to the facility~~ or, if it is closer, to a detention center for return to the facility. However, a child may not be held in detention

longer than 24 hours, excluding Saturdays, Sundays, and legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that detention is required based on the criteria in s. 985.255. The order shall state the reasons for such finding. The reasons shall be reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

Section 22. Paragraph (b) of subsection (4), paragraph (h) of subsection (6), and paragraph (a) of subsection (7) of section 985.433, Florida Statutes, are amended to read:

985.433 Disposition hearings in delinquency cases.—When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

(4) Before the court determines and announces the disposition to be imposed, it shall:

(b) Discuss with the child his or her compliance with any predisposition ~~home release~~ plan or other plan imposed since the date of the offense.

(6) The first determination to be made by the court is a determination of the suitability or nonsuitability for adjudication and commitment of the child to the department. This determination shall include consideration of the recommendations of the department, which may include a predisposition report. The predisposition report shall include, whether as part of the child's multidisciplinary assessment, classification, and placement process components or separately, evaluation of the following criteria:

(h) The child's educational status, including, but not

limited to, the child's strengths, abilities, and unmet and special educational needs. The report shall identify appropriate educational and career ~~vocational~~ goals for the child. Examples of appropriate goals include:

1. Attainment of a high school diploma or its equivalent.

2. Successful completion of literacy courses ~~course(s)~~.

3. Successful completion of career and technical education courses ~~vocational course(s)~~.

4. Successful attendance and completion of the child's current grade or recovery of credits of classes the child previously failed, if enrolled in school.

5. Enrollment in an apprenticeship or a similar program.

It is the intent of the Legislature that the criteria set forth in this subsection are general guidelines to be followed at the discretion of the court and not mandatory requirements of procedure. It is not the intent of the Legislature to provide for the appeal of the disposition made under this section.

(7) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing. The determination shall include a specific finding of the reasons for the decision to adjudicate and to commit the child to the department, including any determination that the child was a member of a criminal gang.

(a) The department ~~juvenile probation officer~~ shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness

level most appropriate for the child if commitment is recommended. If the court has determined that the child was a member of a criminal gang, that determination shall be given great weight in identifying the most appropriate restrictiveness level for the child. The court shall consider the department's recommendation in making its commitment decision.

Section 23. Subsections (4) through (6) of section 985.435, Florida Statutes, are renumbered as subsections (5) through (7), respectively, subsection (3) and present subsection (4) of that section are amended, and a new subsection (4) is added to that section, to read:

985.435 Probation and postcommitment probation; community service.—

(3) A probation program must also include a rehabilitative program component such as a requirement of participation in substance abuse treatment or in a school or career and technical education ~~other educational~~ program. The nonconsent of the child to treatment in a substance abuse treatment program in no way precludes the court from ordering such treatment. Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of postcommitment probation, the court may order the child to submit to random testing for the purpose of detecting and monitoring the use of alcohol or controlled substances.

(4) A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation, but has not committed any new violations of law. The alternative

consequence component is designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation must be detailed in the disposition order.

(5) ~~(4)~~ An identification of the child's risk of reoffending ~~A classification scale for levels of supervision~~ shall be provided by the department, taking into account the child's needs and risks relative to probation supervision requirements to reasonably ensure the public safety. Probation programs for children shall be supervised by the department or by any other person or agency specifically authorized by the court. These programs must include, but are not limited to, structured or restricted activities as described in this section and s. 985.439, and shall be designed to encourage the child toward acceptable and functional social behavior.

Section 24. Subsections (1) and (4) of section 985.439, Florida Statutes, are amended to read:

985.439 Violation of probation or postcommitment probation.—

(1)(a) This section is applicable when the court has jurisdiction over a child on probation or postcommitment probation, regardless of adjudication ~~an adjudicated delinquent child~~.

(b) If the conditions of the probation program or the postcommitment probation program are violated, the department or the state attorney may bring the child before the court on a petition alleging a violation of the program. A ~~Any~~ child who

violates the conditions of probation or postcommitment probation must be brought before the court if sanctions are sought.

(4) Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of probation or postcommitment probation, the court shall enter an order revoking, modifying, or continuing probation or postcommitment probation. In each such case, the court shall enter a new disposition order and, in addition to the sanctions set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. If the child is found to have violated the conditions of probation or postcommitment probation, the court may:

(a) Place the child in a consequence unit in that judicial circuit, if available, for up to 5 days for a first violation and up to 15 days for a second or subsequent violation.

(b) Place the child in nonsecure ~~on home~~ detention with electronic monitoring. However, this sanction may be used only if a residential consequence unit is not available.

(c) If the violation of probation is technical in nature and not a new violation of law, place the child in an alternative consequence program designed to provide swift and appropriate consequences to any further violations of probation.

1. Alternative consequence programs shall be established, within existing resources, at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.

2. Alternative consequence programs may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, a county or municipality, or another

entity selected by the department.

3. Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.

(d) ~~(c)~~ Modify or continue the child's probation program or postcommitment probation program.

(e) ~~(d)~~ Revoke probation or postcommitment probation and commit the child to the department.

Section 25. Subsection (2) of section 985.441, Florida Statutes, is amended to read:

985.441 Commitment.—

(2) Notwithstanding subsection (1), the court having jurisdiction over an adjudicated delinquent child whose ~~underlying~~ offense is ~~was~~ a misdemeanor, or a child who is currently on probation for a misdemeanor, may not commit the child for any misdemeanor offense or any probation violation that is technical in nature and not a new violation of law at a restrictiveness level other than minimum-risk nonresidential ~~unless the probation violation is a new violation of law constituting a felony~~. However, the court may commit such child to a nonsecure ~~low-risk or moderate-risk~~ residential placement if:

(a) The child has previously been adjudicated or had adjudication withheld for a felony offense;

(b) The child has previously been adjudicated or had adjudication withheld for three or more misdemeanor offenses within the previous 18 months;

(c) The child is before the court for disposition for a violation of s. 800.03, s. 806.031, or s. 828.12; or

(d) The court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. Such finding must be in writing.

Section 26. Paragraph (a) of subsection (1) and subsection (5) of section 985.46, Florida Statutes, are amended to read:

985.46 Conditional release.—

(1) The Legislature finds that:

(a) Conditional release is the care, treatment, help, ~~and~~ supervision, and provision of transition-to-adulthood services to ~~provided~~ juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.

(5) Participation in the educational program by students of compulsory school attendance age pursuant to s. 1003.21(1) and (2)(a) is mandatory for juvenile justice youth on conditional release or postcommitment probation status. A student of noncompulsory school-attendance age who has not received a high school diploma or its equivalent must participate in an ~~the~~ educational program or career and technical education course. A youth who has received a high school diploma or its equivalent and is not employed must participate in workforce development or other career or technical education or attend a community college or a university while in the program, subject to available funding.

Section 27. Subsections (1) through (5) of section 985.461, Florida Statutes, are amended to read:

985.461 Transition to adulthood.—

(1) The Legislature finds that ~~older~~ youth are faced with the need to learn how to support themselves within legal means

and overcome the stigma of being delinquent. In most cases, parents expedite this transition. It is the intent of the Legislature that the department provide ~~older~~ youth in its custody or under its supervision with opportunities for participating in transition-to-adulthood services while in the department's commitment programs or in probation or conditional release programs in the community. These services should be reasonable and appropriate for the youths' respective ages or special needs and provide activities that build life skills and increase the ability to live independently and become self-sufficient.

(2) Youth served by the department who are in the custody of the Department of Children and Families ~~Family Services~~ and who entered juvenile justice placement from a foster care placement, if otherwise eligible, may receive independent living transition services pursuant to s. 409.1451. Court-ordered commitment or probation with the department is not a barrier to eligibility for the array of services available to a youth who is in the dependency foster care system only.

(3) For a dependent child in the foster care system, adjudication for delinquency does not, by itself, disqualify such child for eligibility in the Department of Children and Families' ~~Family Services'~~ independent living program.

(4) As part of the child's treatment plan, the department may provide transition-to-adulthood services to children released from residential commitment. To support participation in transition-to-adulthood services and subject to appropriation, the department may:

(a) Assess the child's skills and abilities to live

independently and become self-sufficient. The specific services to be provided shall be determined using an assessment of his or her readiness for adult life.

(b) Use community reentry teams to assist in the development of ~~Develop~~ a list of age-appropriate activities and responsibilities to be incorporated in the child's written case plan for any youth ~~17 years of age or older~~ who is under the custody or supervision of the department. Community reentry teams may include representatives from school districts, law enforcement, workforce development services, community-based service providers, and the youth's family. Such community reentry teams must be created within existing resources provided to the department. Activities may include, but are not limited to, life skills training, including training to develop banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, and time management or organizational skills; educational support; employment training; and counseling.

(c) Provide information related to social security insurance benefits and public assistance.

(d) Request parental or guardian permission for the youth to participate in transition-to-adulthood services. Upon such consent, age-appropriate activities shall be incorporated into the youth's written case plan. This plan may include specific goals and objectives and shall be reviewed and updated at least quarterly. If the parent or guardian is cooperative, the plan may not interfere with the parent's or guardian's rights to nurture and train his or her child in ways that are otherwise in compliance with the law and court order.

(e) Contract for transition-to-adulthood services that include residential services and assistance and allow the child to live independently of the daily care and supervision of an adult in a setting that is not licensed under s. 409.175. A child under the care or supervision of the department ~~who has reached 17 years of age but is not yet 19 years of age~~ is eligible for such services if he or she does not pose a danger to the public and is able to demonstrate minimally sufficient skills and aptitude for living under decreased adult supervision, as determined by the department, using established procedures and assessments.

(f) Assist the child in building a portfolio of educational and vocational accomplishments, necessary identification, resumes, and cover letters in an effort to enhance the child's employability.

(g) Collaborate with school district contacts to facilitate appropriate educational services based on the child's identified needs.

(5) For a child ~~who is 17 years of age or older,~~ under the department's care or supervision, and without benefit of parents or legal guardians capable of assisting the child in the transition to adult life, the department may provide an assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the assessment and within existing resources, services and training may be provided in order to develop the necessary skills and abilities ~~before the child's 18th birthday~~.

Section 28. Paragraph (b) of subsection (3) of section 985.481, Florida Statutes, is amended to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(3)

(b) ~~No later than November 1, 2007,~~ The department must make the information described in subparagraph (a)1. available electronically to the Department of Law Enforcement in its database and in a format that is compatible with the requirements of the Florida Crime Information Center.

Section 29. Subsection (5) of section 985.4815, Florida Statutes, is amended to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

(5) In addition to notification and transmittal requirements imposed by any other provision of law, the department shall compile information on any sexual offender and provide the information to the Department of Law Enforcement. ~~No later than November 1, 2007,~~ The department must make the information available electronically to the Department of Law Enforcement in its database in a format that is compatible with the requirements of the Florida Crime Information Center.

Section 30. Subsection (1) of section 985.514, Florida Statutes, is amended to read:

985.514 Responsibility for cost of care; fees.—

(1) When any child is placed into secure or nonsecure ~~home~~ detention care or into other placement for the purpose of being supervised by the department pursuant to a court order following a detention hearing, the court shall order the child's parents to pay fees to the department as provided in s. 985.039.

Section 31. Paragraph (a) of subsection (3) and paragraph

(a) of subsection (9) of section 985.601, Florida Statutes, are amended to read:

985.601 Administering the juvenile justice continuum.—

(3)(a) The department shall develop or contract for diversified and innovative programs to provide rehabilitative treatment, including early intervention and prevention, diversion, comprehensive intake, case management, diagnostic and classification assessments, trauma-informed care, individual and family counseling, family engagement resources and programs, gender-specific programming, shelter care, diversified detention care emphasizing alternatives to secure detention, diversified probation, halfway houses, foster homes, community-based substance abuse treatment services, community-based mental health treatment services, community-based residential and nonresidential programs, mother-infant programs, and environmental programs. The department may pay expenses in support of innovative programs and activities that address identified needs and the well-being of children in the department's care or under its supervision, subject to the requirements of chapters 215, 216, and 287. Each program shall place particular emphasis on reintegration and conditional release for all children in the program.

(9)(a) The department shall operate a statewide, regionally administered system of detention services for children, in accordance with a comprehensive plan for the regional administration of all detention services in the state. The plan must provide for the maintenance of adequate availability of detention services for all counties. The plan must cover all the department's operating circuits, with each operating circuit

having access to a secure facility and nonsecure ~~and home~~ detention programs, and the plan may be altered or modified by the Department of Juvenile Justice as necessary.

Section 32. Sections 985.605, 985.606, and 985.61, Florida Statutes, are repealed.

Section 33. Section 985.632, Florida Statutes, is amended to read:

985.632 Quality improvement ~~assurance~~ and cost-effectiveness; Comprehensive Accountability Report.—

(1) INTENT.—It is the intent of the Legislature that the department establish a performance accountability system for each provider who contracts with the department for the delivery of services to children. The contract shall include both output measures, such as the number of children served, and outcome measures, including program completion and postcompletion recidivism. Each contractor shall report performance results to the department annually. The department's Bureau of Research and Planning shall summarize performance results from all contracts and report the information to the Legislature annually in the Comprehensive Accountability Report. The report shall:

(a) Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs that ~~of the department which~~ achieve desired performance levels.

(b) Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.

(c) Provide information to aid in developing related policy issues and concerns.

(d) Provide information to the public about the

effectiveness of such programs in meeting established goals and objectives.

(e) Provide a basis for a system of accountability so that each child ~~client~~ is afforded the best programs to meet his or her needs.

(f) Improve service delivery to children through the use of technical assistance ~~clients~~.

(g) Modify or eliminate activities or programs that are not effective.

(h) Collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

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

~~(a) "Client" means any person who is being provided treatment or services by the department or by a provider under contract with the department.~~

(a) "Program" means any facility or service for youth that is operated by the department or by a provider under contract with the department.

(b) "Program component" means an aggregation of generally related objectives which, because of their special character, related workload, and interrelated output, can logically be considered an entity for purposes of organization, management, accounting, reporting, and budgeting.

~~(c) "Program effectiveness" means the ability of the program to achieve desired client outcomes, goals, and objectives.~~

(c) "Program group" means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison amongst programs within the group.

(3) COMPREHENSIVE ACCOUNTABILITY REPORT.-The department, in consultation with contract service providers, shall develop and use a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group. The standard methodology must:

(a) Include common terminology and operational definitions for measuring the performance of system and program administration, program outputs, and program outcomes.

(b) Specify program outputs for each program and for each program group within the juvenile justice continuum.

(c) Specify desired child outcomes and methods by which to measure child outcomes for each program and program group

~~annually collect and report cost data for every program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in~~

~~cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~

(4)~~(a)~~ COST-EFFECTIVENESS MODEL.—The department, in consultation with the Office of Economic and Demographic Research and contract service providers, shall develop a cost-effectiveness model and apply the model to each commitment program. ~~Program recidivism rates shall be a component of the model.~~

(a) The cost-effectiveness model shall compare program costs to expected and actual child recidivism rates ~~client outcomes and program outputs~~. It is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the cost-effectiveness model.

(b) The department shall rank commitment programs based on the cost-effectiveness model, performance measures, and adherence to quality improvement standards and shall ~~submit a~~ report this data in the annual Comprehensive Accountability Report ~~to the appropriate substantive and fiscal committees of each house of the Legislature by December 31 of each year~~.

(c) Based on reports of the department on child ~~client~~ outcomes and program outputs and on the department's most recent cost-effectiveness rankings, the department may terminate a program operated by the department or a provider if the program has failed to achieve a minimum standard ~~threshold~~ of program effectiveness. This paragraph does not preclude the department

from terminating a contract as provided under this section or as otherwise provided by law or contract, and does not limit the department's authority to enter into or terminate a contract.

(d) In collaboration with the Office of Economic and Demographic Research, and contract service providers, the department shall develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance-based program budgeting measures approved by the Legislature to the extent the department deems appropriate. The department shall notify the Office of Program Policy Analysis and Government Accountability of any meetings to refine the model.

(e) Contingent upon specific appropriation, the department, in consultation with the Office of Economic and Demographic Research, and contract service providers, shall:

1. Construct a profile of each commitment program that uses the results of the quality improvement data portion of the Comprehensive Accountability ~~assurance~~ Report required by this section, the cost-effectiveness data portion of the Comprehensive Accountability Report required in this subsection, and other reports available to the department.

2. Target, for a more comprehensive evaluation, any commitment program that has achieved consistently high, low, or disparate ratings in the reports required under subparagraph 1. and target, for technical assistance, any commitment program that has achieved low or disparate ratings in the reports required under subparagraph 1.

3. Identify the essential factors that contribute to the high, low, or disparate program ratings.

4. Use the results of these evaluations in developing or refining juvenile justice programs or program models, child ~~client~~ outcomes and program outputs, provider contracts, quality improvement ~~assurance~~ standards, and the cost-effectiveness model.

(5) QUALITY IMPROVEMENT.—The department shall:

(a) Establish a comprehensive quality improvement ~~assurance~~ system for each program operated by the department or operated by a provider under contract with the department. Each contract entered into by the department must provide for quality improvement ~~assurance~~.

(b) Provide operational definitions of and criteria for quality improvement ~~assurance~~ for each specific program component.

(c) Establish quality improvement ~~assurance~~ goals and objectives for each specific program component.

(d) Establish the information and specific data elements required for the quality improvement ~~assurance~~ program.

(e) Develop a quality improvement ~~assurance~~ manual of specific, standardized terminology and procedures to be followed by each program.

(f) Evaluate each program operated by the department or a provider under a contract with the department annually and establish minimum standards ~~thresholds~~ for each program component. If a provider fails to meet the established minimum standards ~~thresholds~~, such failure shall cause the department to cancel the provider's contract unless the provider achieves compliance with minimum standards ~~thresholds~~ within 6 months or unless there are documented extenuating circumstances. In

addition, the department may not contract with the same provider for the canceled service for a period of 12 months. If a department-operated program fails to meet the established minimum standards ~~thresholds~~, the department must take necessary and sufficient steps to ensure and document program changes to achieve compliance with the established minimum standards ~~thresholds~~. If the department-operated program fails to achieve compliance with the established minimum standards ~~thresholds~~ within 6 months and if there are no documented extenuating circumstances, the department must notify the Executive Office of the Governor and the Legislature of the corrective action taken. Appropriate corrective action may include, but is not limited to:

1. Contracting out for the services provided in the program;

2. Initiating appropriate disciplinary action against all employees whose conduct or performance is deemed to have materially contributed to the program's failure to meet established minimum standards ~~thresholds~~;

3. Redesigning the program; or

4. Realigning the program.

(6) COMPREHENSIVE ACCOUNTABILITY REPORT SUBMISSION.—The department shall submit the Comprehensive Accountability Report ~~an annual report~~ to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than February 1 of each year. The Comprehensive Accountability Report ~~annual report~~ must contain, at a minimum,

for each specific program component: a comprehensive description of the population served by the program; a specific description of the services provided by the program; cost; a comparison of expenditures to federal and state funding; immediate and long-range concerns; and recommendations to maintain, expand, improve, modify, or eliminate each program component so that changes in services lead to enhancement in program quality. The department shall ensure the reliability and validity of the information contained in the report.

(7)~~(6)~~ ONGOING EVAULATIONS; REPORTS.—The department shall collect and analyze available statistical data for the purpose of ongoing evaluation of all programs. The department shall provide the Legislature with necessary information and reports to enable the Legislature to make informed decisions regarding the effectiveness of, and any needed changes in, services, programs, policies, and laws.

Section 34. Paragraph (a) of subsection (1) and paragraph (b) of subsection (3) of section 985.644, Florida Statutes, are amended to read:

985.644 Departmental contracting powers; personnel standards and investigation ~~screening~~.—

(1) The department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(a) Each contract entered into by the department for services delivered on an appointment or intermittent basis by a

provider that does not have regular custodial responsibility for children and each contract with a school for ~~before or aftercare~~ services must ensure that all owners, operators, and personnel who have direct contact with children are subject to level 2 background screening pursuant to chapter 435.

(3)

(b) ~~Except for~~ Law enforcement, correctional, and correctional probation officers, certified pursuant to s. 943.13, are not required to submit to level 2 screenings as long as they are currently employed by a law enforcement agency or correctional facility. ~~to whom s. 943.13(5) applies,~~ The department shall electronically submit to the Department of Law Enforcement:

1. Fingerprint information obtained during the employment screening required by subparagraph (a)1.

2. Fingerprint information for all persons employed by the department, or by a provider under contract with the department, in delinquency facilities, services, or programs if such fingerprint information has not previously been ~~electronically~~ submitted pursuant to this section ~~to the Department of Law Enforcement under this paragraph~~.

Section 35. Section 985.6441, Florida Statutes, is created to read:

985.6441 Health care services.—

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

(a) "Health care provider" has the same meaning as provided in s. 766.105.

(b) "Hospital" means a hospital licensed under chapter 395.

(2) When compensating health care providers, the department

must comply with the following reimbursement limitations:

(a) Payments to a hospital or a health care provider may not exceed 110 percent of the Medicare allowable rate for any health care services provided if there is no contract between the department and the hospital or the health care provider providing services at a hospital.

(b)1. The department may continue to make payments for health care services at the contracted rates for contracts executed before July 1, 2014, through the current term of the contract if a contract has been executed between the department and a hospital or a health care provider providing services at a hospital.

2. Payments may not exceed 110 percent of the Medicare allowable rate after the current term of the contract expires or after the contract is renewed during the 2013-2014 fiscal year.

(c) Payments may not exceed 110 percent of the Medicare allowable rate under a contract executed on or after July 1, 2014, between the department and a hospital or a health care provider providing services at a hospital.

(d) Notwithstanding paragraphs (a)-(c), the department may pay up to 125 percent of the Medicare allowable rate for health care services at a hospital that reports, or has reported, a negative operating margin for the previous fiscal year to the Agency for Health Care Administration through hospital-audited financial data.

Section 36. Subsections (1), (2), and (3) of section 985.66, Florida Statutes, are amended to read:

985.66 Juvenile justice training ~~academies~~; staff development and training; Juvenile Justice Training Trust Fund.—

(1) LEGISLATIVE PURPOSE.—In order to enable the state to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff that will meet the needs of such persons in their discharge of duties while at the same time meeting the requirements for the American Correction Association accreditation by the Commission on Accreditation for Corrections, it is the purpose of the Legislature to require the department to establish, maintain, and oversee the operation of juvenile justice training, programs, and courses ~~academies~~ in the state. The purpose of the Legislature in establishing staff development and training programs is to provide employees of the department, any private or public entity, or contract providers who provide services or care for children under the responsibility of the department with the knowledge and skills needed to appropriately interact with children and provide such care and services ~~foster better staff morale and reduce mistreatment and aggressive and abusive behavior in delinquency programs~~; to positively impact the recidivism of children in the juvenile justice system; and to afford greater protection of the public through an improved level of services delivered by a professionally trained juvenile justice ~~program~~ staff to children who are alleged to be or who have been found to be delinquent.

(2) STAFF DEVELOPMENT AND TRAINING.—The department shall:

(a) Designate the number and location of the training programs and courses; assess, design, ~~academies;~~ develop, implement, evaluate, maintain, and update the curriculum to be

used in the training of juvenile justice ~~program~~ staff; establish timeframes for participation in and completion of training by juvenile justice ~~program~~ staff; develop, implement, score, analyze, maintain, and update job-related examinations; develop, implement, analyze, and update the types and frequencies for ~~of~~ evaluations of the training programs, courses, and instructors ~~academics~~; and manage ~~approve, modify, or disapprove~~ the budget and contracts for all the training deliverables ~~academics, and the contractor to be selected to organize and operate the training academics and to provide the training curriculum~~.

(b) Establish uniform minimum job-related preservice and inservice training courses and examinations for juvenile justice program staff.

(c) Consult and cooperate with the state or any political subdivision; any private entity or contractor; and with private and public universities, colleges, community colleges, and other educational institutions concerning the development of juvenile justice training and programs or courses of instruction, including, but not limited to, education and training in the areas of juvenile justice.

(d) Enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as necessary in the execution of the powers of the department or the performance of its duties.

(3) JUVENILE JUSTICE TRAINING PROGRAM.—The department shall establish a certifiable program for juvenile justice training pursuant to this section, and all department program staff and

providers who deliver direct care services pursuant to contract with the department shall be required to participate in and successfully complete the department-approved program of training pertinent to their areas of responsibility. Judges, state attorneys, and public defenders, law enforcement officers, ~~and~~ school district personnel, and employees of contract providers who provide services or care for children under the responsibility of the department may participate in such training program. For the juvenile justice program staff, the department shall, based on a job-task analysis:

(a) Design, implement, maintain, evaluate, and revise a basic training program, including a competency-based examination, for the purpose of providing minimum employment training qualifications for all juvenile justice personnel. All program staff of the department and providers who deliver direct-care services who are hired after October 1, 1999, must meet the following minimum requirements:

1. Be at least 19 years of age.

2. Be a high school graduate or its equivalent as determined by the department.

3. Not have been convicted of any felony or a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after September 30, 1999, pleads guilty or nolo contendere to or is found guilty of any felony or a misdemeanor involving perjury or false statement is not eligible for employment, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subparagraph, any person who pled nolo contendere to a

misdemeanor involving a false statement before October 1, 1999, and who has had such record of that plea sealed or expunged is not ineligible for employment for that reason.

4. Abide by all ~~the provisions~~ of s. 985.644(1) regarding fingerprinting and background investigations and other screening requirements for personnel.

5. Execute and submit to the department an affidavit-of-application form, adopted by the department, attesting to his or her compliance with subparagraphs 1.-4. The affidavit must be executed under oath and constitutes an official statement under s. 837.06. The affidavit must include conspicuous language that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The employing agency shall retain the affidavit.

(b) Design, implement, maintain, evaluate, and revise an advanced training program, including a competency-based examination for each training course, which is intended to enhance knowledge, skills, and abilities related to job performance.

(c) Design, implement, maintain, evaluate, and revise a career development training program, including a competency-based examination for each training course. Career development courses are intended to prepare personnel for promotion.

(d) The department is encouraged to design, implement, maintain, evaluate, and revise juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders.

Section 37. Subsection (5) of section 985.664, Florida

Statutes, is amended to read:

985.664 Juvenile justice circuit advisory boards.—

(5)~~(a) To form the initial juvenile justice circuit advisory board, the Secretary of Juvenile Justice, in consultation with the juvenile justice county councils in existence on October 1, 2013, shall appoint the chair of the board, who must meet the board membership requirements in subsection (4). Within 45 days after being appointed, the chair shall appoint the remaining members to the juvenile justice circuit advisory board and submit the appointments to the department for approval.~~

~~(b) Thereafter,~~ When a vacancy in the office of the chair occurs, ~~the Secretary of Juvenile Justice, in consultation with~~ the juvenile justice circuit advisory board, shall appoint a new chair, who must meet the board membership requirements in subsection (4). The chair shall appoint members to vacant seats within 45 days after the vacancy and submit the appointments to the department for approval. The chair shall serve at the pleasure of the Secretary of Juvenile Justice.

Section 38. Subsections (1) and (4) of section 985.672, Florida Statutes, are amended to read:

985.672 Direct-support organization; definition; use of property; board of directors; audit.—

(1) DEFINITION.—As used in this section, the term "direct-support organization" means an organization whose sole purpose is to support the juvenile justice system and which is:

(a) A corporation not-for-profit incorporated under chapter 617 and which is approved by the Department of State;

(b) Organized and operated to conduct programs and

activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the Department of Juvenile Justice or the juvenile justice system operated by a county commission or a circuit board;

(c) Determined by the Department of Juvenile Justice to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the Department of Juvenile Justice.

Expenditures of the organization shall be ~~expressly~~ used for the prevention ~~to prevent~~ and amelioration of ~~ameliorate~~ juvenile delinquency. The expenditures of the direct-support organization may not be used for the purpose of lobbying as defined in s. 11.045.

(4) USE OF PROPERTY.—The department may permit, without charge, appropriate use of fixed property, ~~and~~ facilities, and personnel services of the juvenile justice system by the direct-support organization, subject to ~~the provisions of~~ this section. For the purposes of this subsection, the term "personnel services" includes full-time or part-time personnel, as well as payroll processing services.

(a) The department may prescribe any condition with which the direct-support organization must comply in order to use fixed property or facilities of the juvenile justice system.

(b) The department may not permit the use of any fixed property or facilities of the juvenile justice system by the

direct-support organization if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

(c) The department shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which a direct-support organization must comply to use property or facilities of the department.

Section 39. Subsections (1) through (4) and subsection (9) of section 985.682, Florida Statutes, are amended to read:

985.682 Siting of facilities; study; criteria.—

~~(1) The department is directed to conduct or contract for a statewide comprehensive study to determine current and future needs for all types of facilities for children committed to the custody, care, or supervision of the department under this chapter.~~

~~(2) The study shall assess, rank, and designate appropriate sites, and shall be reflective of the different purposes and uses for all facilities, based upon the following criteria:~~

~~(a) Current and future estimates of children originating from each county;~~

~~(b) Current and future estimates of types of delinquent acts committed in each county;~~

~~(c) Geographic location of existing facilities;~~

~~(d) Availability of personnel within the local labor market;~~

~~(e) Current capacity of facilities in the area;~~

~~(f) Total usable and developable acreage of various sites based upon the use and purpose of the facility;~~

~~(g) Accessibility of each site to existing utility, transportation, law enforcement, health care, fire protection, refuse collection, water, and sewage disposal services;~~

~~(h) Susceptibility of each site to flooding hazards or other adverse natural environmental consequences;~~

~~(i) Site location in relation to desirable and undesirable proximity to other public facilities, including schools;~~

~~(j) Patterns of residential growth and projected population growth; and~~

~~(k) Such other criteria as the department, in conjunction with local governments, deems appropriate.~~

~~(3) The department shall recommend certification of the study by the Governor and Cabinet within 2 months after its receipt.~~

~~(4) Upon certification of the study by the Governor and Cabinet, the department shall notify those counties designated as being in need of a facility.~~

(5) ~~(9)~~ The Governor and Cabinet shall consider the following when determining whether to grant the appeal from the decision of the local government on the requested modification:

(a) The record of the proceedings before the local government.

(b) Reports and studies by any other agency relating to matters within the jurisdiction of such agency which may be potentially affected by the proposed site.

(c) Existing ~~The statewide study, as established in subsection (1); other existing~~ studies, ~~;~~ reports and information maintained by the department as the Governor and Cabinet may request addressing the feasibility and availability of

alternative sites in the general area, ~~;~~ and the need for a facility in the area based on the average number of petitions, commitments, and transfers into the criminal court from the county to state facilities for the most recent 3 calendar years.

Section 40. Section 985.69, Florida Statutes, is amended to read:

985.69 Repair and maintenance ~~One-time startup~~ funding for juvenile justice purposes.—Funds from juvenile justice appropriations may be used ~~utilized~~ as ~~one-time startup~~ funding for juvenile justice purposes that include, but are not limited to, remodeling or renovation of existing facilities, ~~construction costs, leasing costs,~~ purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the repair and maintenance ~~startup~~ of facilities or programs.

Section 41. Section 985.694, Florida Statutes, is repealed.

Section 42. Paragraph (a) of subsection (1) of section 985.701, Florida Statutes, is amended to read:

985.701 Sexual misconduct prohibited; reporting required; penalties.—

(1)(a)1. As used in this section ~~subsection~~, the term:

a. "Sexual misconduct" means fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

b. "Employee" includes paid staff members, volunteers, and interns who work in a department program or a program operated by a provider under a contract.

c. "Juvenile offender" means any person of any age who is detained or supervised by, or committed to the custody of, the department.

2. An employee who engages in sexual misconduct with a juvenile offender ~~detained or supervised by, or committed to the custody of, the department~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

3. The consent of the juvenile offender to any act of sexual misconduct is not a defense to prosecution under this subsection.

4. This subsection does not apply to an employee of the department, or an employee of a provider under contract with the department, who:

a. Is legally married to a juvenile offender who is detained or supervised by, or committed to the custody of, the department.

b. Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a juvenile offender ~~detained or supervised by, or committed to the custody of, the department~~.

Section 43. Effective October, 1, 2014, Section 985.702, Florida Statutes, is created to read:

985.702 Willful and malicious neglect of a juvenile offender prohibited; reporting required; penalties.-

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

(a) "Employee" means a paid staff member, volunteer, or intern who works in a department program or a program operated by a provider under a contract with the department.

(b) "Juvenile offender" means any person of any age who is detained by or committed to the custody of the department.

(c) "Neglect" means:

1. An employee's failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or

2. An employee's failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

(2)(a) An employee who willfully and maliciously neglects a juvenile offender without causing great bodily harm, permanent disability, or permanent disfigurement commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) An employee who willfully and maliciously neglects a juvenile offender and in so doing causes great bodily harm, permanent disability, or permanent disfigurement commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Notwithstanding prosecution, any violation of paragraph (a) or paragraph (b), as determined by the Public Employees Relations Commission, constitutes sufficient cause under s.

110.227 for dismissal from employment with the department, and such person may not again be employed in any capacity in the juvenile justice system.

(3) An employee who witnesses the infliction of neglect upon a juvenile offender shall immediately report the incident to the department's incident hotline and prepare, date, and sign an independent report that specifically describes the nature of the incident, the location and time of the incident, and the persons involved in the incident. The employee shall deliver the report to the employee's supervisor or program director, who must provide copies to the department's inspector general and the circuit juvenile justice manager. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that a violation of subsection (2) has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

(4)(a) A person who is required to prepare a report under this section who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of neglect upon a

juvenile offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 44. Subsection (2) of section 985.721, Florida Statutes, is amended to read:

985.721 Escapes from secure detention or residential commitment facility.—An escape from:

(2) Any residential commitment facility described in s. 985.03(44) ~~985.03(46)~~, maintained for the custody, treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or

constitutes escape within the intent and meaning of s. 944.40 and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 45. Paragraphs (c) and (f) of subsection (3) of section 943.0582, Florida Statutes, are amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if that minor:

(c) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent misdemeanor, and that he or she has not otherwise been charged by the state attorney with or found to have committed any criminal offense or comparable

ordinance violation.

(f) Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable ordinance violation.

Section 46. Section 945.75, Florida Statutes, is repealed.

Section 47. Paragraphs (h) through (k) of subsection (3) of section 121.0515, Florida Statutes, are redesignated as paragraphs (g) through (j), respectively, and paragraphs (e) through (i) of subsection (2), present paragraphs (g) and (k) of subsection (3), paragraph (b) of subsection (5), paragraph (d) of subsection (8), and paragraph (c) of subsection (10) of that section are amended to read:

121.0515 Special Risk Class.—

(2) MEMBERSHIP.—

~~(e) Effective July 1, 2001, "special risk member" includes any member who is employed as a youth custody officer by the Department of Juvenile Justice and meets the special criteria set forth in paragraph (3)(g).~~

(e)~~(f)~~ Effective October 1, 2005, through June 30, 2008, the member must be employed by a law enforcement agency or medical examiner's office in a forensic discipline and meet the special criteria set forth in paragraph (3)(g) ~~(3)(h)~~.

(f)~~(g)~~ Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory and meet the special criteria set forth in paragraph (3)(h) ~~(3)(i)~~.

(g)~~(h)~~ Effective July 1, 2008, the member must be employed

by a local government law enforcement agency or medical examiner's office and meet the special criteria set forth in paragraph (3)(i) ~~(3)(j)~~.

(h)~~(i)~~ Effective August 1, 2008, "special risk member" includes any member who meets the special criteria for continued membership set forth in paragraph (3)(j) ~~(3)(k)~~.

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

~~(g) Effective July 1, 2001, the member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community;~~

(j)~~(k)~~ The member must have already qualified for and be actively participating in special risk membership under paragraph (a), paragraph (b), or paragraph (c), must have suffered a qualifying injury as defined in this paragraph, must not be receiving disability retirement benefits as provided in s. 121.091(4), and must satisfy the requirements of this paragraph.

1. The ability to qualify for the class of membership defined in paragraph (2)(h) ~~(2)(i)~~ occurs when two licensed medical physicians, one of whom is a primary treating physician of the member, certify the existence of the physical injury and medical condition that constitute a qualifying injury as defined in this paragraph and that the member has reached maximum medical improvement after August 1, 2008. The certifications

from the licensed medical physicians must include, at a minimum, that the injury to the special risk member has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and:

a. That this physical loss or loss of use is total and permanent, except if the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.

b. That this physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.

c. That, notwithstanding this physical loss or loss of use, the individual can perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. That use of artificial limbs is not possible or does not alter the member's ability to perform the essential job functions of the member's position.

e. That the physical loss or loss of use is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

2. For the purposes of this paragraph, "qualifying injury" means an injury sustained in the line of duty, as certified by the member's employing agency, by a special risk member that does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg.

Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

3. The new position, as described in sub-subparagraph 1.c., that is required for qualification as a special risk member under this paragraph is not required to be a position with essential job functions that entitle an individual to special risk membership. Whether a new position as described in sub-subparagraph 1.c. exists and is available to the special risk member is a decision to be made solely by the employer in accordance with its hiring practices and applicable law.

4. This paragraph does not grant or create additional rights for any individual to continued employment or to be hired or rehired by his or her employer that are not already provided within the Florida Statutes, the State Constitution, the Americans with Disabilities Act, if applicable, or any other applicable state or federal law.

(5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

(b) Any member who is a special risk member on July 1, 2008, and who became eligible to participate under paragraph (3)(g) ~~(3)(h)~~ but fails to meet the criteria for Special Risk Class membership established by paragraph (3)(h) ~~(3)(i)~~ or paragraph (3)(i) ~~(3)(j)~~ shall have his or her special risk designation removed and thereafter shall be a Regular Class member and earn only Regular Class membership credit. The department may review the special risk designation of members to determine whether or not those members continue to meet the

criteria for Special Risk Class membership.

(8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

(d) Notwithstanding any other provision of this subsection, this subsection does not apply to any special risk member who qualifies for continued membership pursuant to paragraph (3)(j) ~~(3)(k)~~.

(10) CREDIT FOR UPGRADED SERVICE.—

(c) Any member of the Special Risk Class who has earned creditable service through June 30, 2008, in another membership class of the Florida Retirement System in a position with the Department of Law Enforcement or the Division of State Fire Marshal and became covered by the Special Risk Class as described in paragraph (3)(h) ~~(3)(i)~~, or with a local government law enforcement agency or medical examiner's office and became covered by the Special Risk Class as described in paragraph (3)(i) ~~(3)(j)~~, which service is within the purview of the Special Risk Class, and is employed in such position on or after July 1, 2008, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. The cost for such credit must be an amount representing the actuarial accrued liability for the difference in accrual value during the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. The cost must

be paid immediately upon notification by the division. The local government employer may purchase the upgraded service credit on behalf of the member if the member has been employed by that employer for at least 3 years.

Section 48. Paragraph (a) of subsection (4) of section 316.635, Florida Statutes, is amended to read:

316.635 Courts having jurisdiction over traffic violations; powers relating to custody and detention of minors.—

(4) A minor who willfully fails to appear before any court or judicial officer as required by written notice to appear is guilty of contempt of court. Upon a finding by a court, after notice and a hearing, that a minor is in contempt of court for willful failure to appear pursuant to a valid notice to appear, the court may:

(a) For a first offense, order the minor to serve up to 5 days in a staff-secure shelter as defined in chapter 984 ~~or chapter 985~~ or, if space in a staff-secure shelter is unavailable, in a secure juvenile detention center.

Section 49. Paragraph (a) of subsection (2) of section 318.143, Florida Statutes, is amended to read:

318.143 Sanctions for infractions by minors.—

(2) Failure to comply with one or more of the sanctions imposed by the court constitutes contempt of court. Upon a finding by the court, after notice and a hearing, that a minor is in contempt of court for failure to comply with court-ordered sanctions, the court may:

(a) For a first offense, order the minor to serve up to 5 days in a staff-secure shelter as defined in chapter 984 ~~or chapter 985~~ or, if space in a staff-secure shelter is

unavailable, in a secure juvenile detention center.

Section 50. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 700
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senators Bradley and Detert
SUBJECT:	Department of Juvenile Justice
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Favorable**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Clodfelter	Sadberry	ACJ	**Fav/CS**
4.	Clodfelter	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 700 amends chapter 985, Florida Statutes, which provides a framework for the juvenile justice system in Florida and delineates duties and responsibilities of the Department of Juvenile Justice (DJJ or department). Specifically, the bill enhances the state's focus on serious juvenile offenders, adopts measures to reduce recidivism, and increases care of juvenile offenders in the department's custody.

To provide an increased focus on serious cases and public safety, the bill:

- Requires the DJJ to notify a law enforcement agency and the victim of a juvenile offender who has escaped or absconded while in custody during commitment;
- Grants the court jurisdiction over a juvenile sex offender under THE DJJ supervision until he or she is 21 years old;
- Encourages the DJJ to develop evening-reporting centers to better support children in nonsecure detention;
- Authorizes the court to order juvenile offenders who commit technical violations of probation into a diversion program; and
- Waives fingerprinting requirements for children committing offenses that may only result in a civil citation.

To reduce recidivism through recognizing the special needs of children and the need for transitional services, the bill:

- Authorizes intake personnel to incorporate mental health, substance abuse, and psychosexual evaluations as part of the intake process;
- Establishes trauma-informed care as part of the DJJ model;
- Encourages placement of children in their home communities to facilitate family and community support;
- Enhances the transition-to-adult services offered and lifts the age restriction of youth clients eligible for service; and
- Requires the DJJ to focus on prevention services through providing academic and community support for at-risk youth.

To improve care to juveniles in the residential custody of the DJJ, the bill:

- Combines the commitment levels of low-risk and moderate-risk residential commitments into the newly-designated nonsecure residential commitment level and caps the number of beds authorized per facility at 90 beds, rather than the current cap of 165 beds;
- Creates a criminal offense of willful and malicious neglect, punishable as a third degree felony if the employee's lack of care does not result in harm to the juvenile offender in DJJ custody and as a second degree felony if great bodily harm results; and
- Allows for prosecution under the new criminal offense for any victim in commitment care, not just children under the age of 18.

To increase performance accountability, the bill requires the DJJ to adopt a system to measure performance based on recidivism rates of providers and programs, and to annually report findings to the Legislature.

The bill codifies a provision found in the 2013-2014 Implementing Bill for the General Appropriations Act which caps the allowable rate for hospital health services provided to juveniles at 110 percent of the Medicare allowable rate, with a cap of 125 percent in limited cases.

This bill grants the DJJ greater flexibility in the assessment process by allowing a DJJ employee other than a juvenile probation officer to participate in intake, screenings, and assessments.

The DJJ indicates that the bill will result in a small increase in costs which can be absorbed within existing resources. The Office of State Courts Administrator also indicates it expects that it will not need additional resources for any increased workload in the court system. The new detention criteria may result in some children being held in secure detention who would not be held under current law, and some others being held for a longer period of time. This may have an indeterminate fiscal impact on local government expenditures for a share of detention costs.

II. Present Situation:

Department of Juvenile Justice/Department of Health and Human Services

In years past, the Department of Health and Rehabilitative Services (HRS) participated in all court proceedings relating to children, including dependency and delinquency cases.[1] In 1994, the Legislature created the Department of Juvenile Justice (DJJ), and assigned the DJJ responsibility for juvenile delinquency cases and children in need of services and families in need of services (CINS/FINS) cases. The HRS retained jurisdiction of dependency cases. Despite this bifurcation, laws governing delinquency and dependency remained together in ch. 39, F.S.[2]

In 1997, the Legislature transferred provisions relating to juvenile delinquency proceedings in ch. 39, F.S., into ch. 984, F.S., (relating to CINS/FINS) and ch. 985, F.S., (relating to juvenile delinquency cases).[3] However, the legislation inadvertently included a handful of provisions relating to dependency in the transfer. Dependency duties are now the responsibility of the Department of Children and Families (DCF).[4]

Jurisdiction

Section 985.0301(1), F.S., provides that Florida's circuit courts have exclusive original jurisdiction in criminal proceedings in which a child is alleged to have committed a violation. Currently, the circuit court where the alleged violation occurred may transfer a case to the circuit court in which the child resides or will reside at the time of detention or placement.[5] A child detainee must be transferred to the appropriate detention center or facility or other placement directed by the court receiving the case.[6]

The court retains jurisdiction over a child until the child:

- Is 19 years old, if the child's case has not been resolved;
- Is 19 years old, if the child is ordered to participate in a probation program, including participation in transition-to-adulthood services;
- Is 21 years old, if the child is committed to the DJJ;
- Is 22 years old, if the child is committed to the DJJ for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program;[7]
- Is 21 years old, if the child is committed to the DJJ for placement in an intensive residential treatment program for 10-13 year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program;
- Is 21 years old, if the child is committed to a juvenile correctional facility or a juvenile prison, specifically for the purpose of allowing the child to complete the program;

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[1] Florida Department of Juvenile Justice, *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/about-us/history (last visited on February 21, 2014).
[2] *Id.*
[3] *Id.*
[4] Section 39.01(21), F.S.
[5] Section 985.0301(4)(a), F.S.
[6] *Id.*
[7] This is solely for the child to complete a conditional release program. Section 985.0301(5)(d), F.S.

- Is 21 years old, if the child is a juvenile sexual offender who has been placed in a program or facility for juvenile sexual offenders, specifically to complete the program; or
- Completes payment of court-ordered restitution.[8]

Contempt of Court

Section 985.037, F.S., authorizes the court to punish a child for contempt for interfering with the court or court administration, or for violating a court order or ch. 985, F.S. Direct contempt results from conduct committed by the juvenile in the presence of the judge, while indirect contempt concerns conduct committed outside the judge's presence.[9]

A child charged with direct contempt may be sanctioned immediately.[10] If a child is charged with indirect contempt, the court must hold a hearing within 24 hours to determine if the child committed indirect contempt.[11] In indirect contempt proceedings, the child is given specified due process rights.[12]

If a court finds that a child committed contempt of court, the court may order the child to serve an alternative sanction[13] or order the placement of the child into a secure facility[14] for a specified time.[15] If a child is placed into a secure facility, the court must review the placement every 72 hours.[16]

Fingerprinting and Photographing

Section 985.11(1)(a), F.S., requires a child who is charged with or found to have committed specified offenses to be fingerprinted by the appropriate law enforcement agency, and requires the law enforcement agency to submit the fingerprints to the Florida Department of Law Enforcement (FDLE).

Intake Process

Every child under the age of 18 charged with a crime in Florida is referred to the DJJ.[17] Intake and screening services for youth referred to the DJJ are performed at a Juvenile Assessment Center[18] by a DJJ employee.[19] Once brought into intake, the DJJ assigns the child a juvenile

[8] Section 985.0301(5), F.S.
[9] *Kelley v. Rice*, 800 So.2d 247, 251 (Fla. 2d DCA 2001); *E.T. v. State*, 587 So.2d 615, 616 (Fla. 1st DCA 1991).
[10] Section 985.037(4)(a), F.S.
[11] Section 985.037(4)(b), F.S.
[12] *Id*.
[13] Section 985.037(3), F.S. Each judicial circuit is required to have an alternative sanctions coordinator to coordinate and maintain a spectrum of contempt sanction alternatives. The alternative sanctions coordinator serves under the chief judge of the circuit. The court may immediately request that the alternative sanctions coordinator recommend the most appropriate sanctions placement.
[14] A child may only be placed into a secure facility if alternative sanctions are unavailable or inappropriate. Section 985.037(1), F.S.
[15] Five days for a first offense and 15 days for a second or subsequent offense of contempt. Section 985.037(2), F.S.
[16] Section 985.037(4), F.S.
[17] A referral is similar to an arrest in the adult criminal justice system.
[18] Section 985.135(4), F.S.
[19] Section 985.14(2), F.S.

probation officer, conducts an assessment, and recommends appropriate sanctions and services to the state attorney and the court.[20] The probation officer serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.[21]

Detention Care System

Detention care is the temporary care of children pursuant to an adjudication or order of the court.[22] Children may be detained in one of three types of detention care: secure,[23] nonsecure,[24] and home detention[25] when specific statutory criteria are met.

Section 985.24, F.S., provides guidelines for the court to use in ordering detention care, including that the child:

- Presents a substantial risk of not appearing at a hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court; or
- Requests protection from imminent bodily harm.

If a law enforcement agency takes a child into custody, the DJJ must accept custody of the child and review the facts in the arrest report to determine what, if any, detention care is necessary.[26] The probation officer makes an initial decision regarding detention care placement using the "Detention Risk Assessment Instrument."[27] In certain instances, the probation officer does not have discretion and must place a child in secure detention (e.g., when a child is charged with possessing or discharging a firearm on school property).[28]

A child may not be held in secure, nonsecure, or home detention for more than 24 hours without a detention hearing.[29] A detention hearing is conducted by a circuit judge who reviews the

[20] Section 985.14(1) and (2), F.S.
[21] Section 985.145(1), F.S.
[22] Section 985.03(18), F.S.
[23] Section 985.03(18)(a), F.S., defines "secure detention" as temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.
[24] Section 985.03(18)(b), F.S., defines "nonsecure detention" as temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement. However, the DJJ reports that its current practice for detention is to only utilize secure or home detention; nonsecure detention has not been used for several years. Department of Juvenile Justice, *2014 Bill Analysis for SB 700* (2014) (on file with the Senate Judiciary Committee).
[25] Section 985.03(18)(c), F.S., defines "home detention" as temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication, disposition, or placement.
[26] Section 985.25(1), F.S.
[27] Sections 985.25(1)(b) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.
[28] Section 985.25(1)(b), F.S.
[29] Section 985.26(1), F.S. The child has the right to be represented at this hearing or can waive the right. Section 985.033, F.S.

assessment instrument to determine whether probable cause exists that the child committed the offense and the need for continued detention.[30] A court's detention order must include specific instructions for release of the child from detention (generally, a 21-day limit applies to secure, nonsecure, or home detention[31]).[32]

If the child is a juvenile sex offender, detention staff must notify the appropriate law enforcement agency and school personnel of the child's release from secure detention or transfer to nonsecure detention.[33]

Disposition

The state attorney formally charges a child with a criminal offense by filing a petition for delinquency.[34] Because a child may be detained if adjudicated delinquent, federal constitutional law requires many of the same due process safeguards afforded to adult criminal defendants[35] and that the case proceed to adjudicatory hearing (trial)[36] as quickly as possible. If the court finds that the child committed the violation of law, the court may either withhold adjudication of delinquency or adjudicate the child delinquent.[37]

If the court finds that a child has committed an offense, the court must hold a disposition hearing to determine appropriate punishment. Before making a final disposition, the court reviews a pre-disposition report[38] prepared by the DJJ.[39] The pre-disposition report identifies appropriate educational and vocational goals, which include successful completion of vocational courses, and successful attendance and completion of the child's current grade. The court must then determine whether it is appropriate to commit the child to the DJJ or probation and community-based sanctions.[40]

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[30] Section 985.255(3), F.S.
[31] Section 985.26(2), F.S. A child may be held up to 30 days if the child is charged with what would be, if committed by an adult, a capital felony, a life felony, a first degree felony, or a second degree felony offense.
[32] Section 985.255(3)(c), F.S.
[33] Similarly, once a juvenile sex offender is released from a commitment program, the DJJ must notify the FDLE under ss. 985.481 and 985.4815, F.S. The DJJ has been required to provide this notification electronically since November 1, 2007.
[34] Section 985.318, F.S.
[35] Section 985.35(2)(a), (b), and (c), F.S., provides that the child is entitled to present evidence, cross examine witnesses, protect himself or herself from self-incrimination, and to not have evidence that was illegally seized or obtained presented to the court in the case against them. Facts must be established beyond a reasonable doubt and rules of evidence apply to the proceedings. Additionally, s. 985.033(1), F.S., provides that a child is entitled to legal counsel at all stages of any delinquency court proceeding.
[36] Section 985.03(2), F.S., defines an "adjudicatory hearing" as a hearing for the court to determine whether the facts support the allegations stated in the petition, as provided under s. 985.35, F.S. In an adjudicatory hearing, the judge decides both questions of fact and law. Section 985.35(2), F.S.
[37] Section 985.35, F.S. An adjudication of delinquency by a court is not considered a conviction.
[38] Section 985.433(6), F.S., requires the pre-disposition report to include a summary of the juvenile's present offense, a statement by the youth, background information regarding the familial and community environment, a narrative explaining the juvenile's employment or school history, psychological data, restitution information, criminal history, risk assessment, and the recommendations of DJJ concerning disposition of the case.
[39] Section 985.43, F.S.
[40] Section 985.433(6), F.S.

Probation or Postcommitment Probation (Probation)

A child's probation program must include both a penalty and a rehabilitative component.[41] Each child is assigned a juvenile probation officer who monitors the child's compliance and helps the child connect with service providers.

If the child does not comply with terms of probation, the child may be brought before the court on a violation of probation. The violation may be a substantive violation for committing a new criminal offense or a technical violation for failure to comply with a condition of probation.[42] If a child admits to the violation or is found by the court to have violated probation, the court must enter an order revoking, modifying, or continuing probation.[43] Specifically, the court may:

- Place the child into a consequence unit [44] for up to 15 days;
- Place the child on home detention with electronic monitoring;
- Modify or continue the child's probation; or
- Revoke probation and commit the child to the DJJ.[45]

Commitment

The court may commit the child to a nonresidential or residential facility.[46] Commitment programs vary by "restrictiveness level," defined in s. 985.03(46), F.S., as "the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children." Levels of commitment are:

- Minimum-risk nonresidential, a level 2 commitment program, where children remain in their community and participate at least 5 days a week in day treatment;
- Low-risk residential, a level 4 program, where children live in a residential program and have unsupervised access to their community;
- Moderate-risk residential, a level 6 program, where children are in a residential program and have supervised access to their community;
- High-risk residential, a level 8 program, where children are not allowed access to their community; and
- Maximum-risk residential, a level 10 long-term residential program, including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to their community.[47]

Florida law caps the number of beds at residential facilities at 165 beds.[48]

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[41] Section 985.435(2) and (3), F.S., give examples of what these components include.
[42] *See Meeks v. State*, 754 So.2d 101, 103-104 (Fla. 1st DCA 2000); *Johnson v. State*, 678 So.2d 934, 934-935 (Fla. 3d DCA 1996).
[43] Section 985.439(4), F.S.
[44] Section 985.439(2), F.S., defines "consequence unit" as a secure facility specifically designated by the department for children who are taken into custody under s. 985.101, F.S., for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation.
[45] Section 985.439(4)(d), F.S.
[46] Section 985.441, F.S.
[47] Section 985.03(46)(e), F.S.
[48] Section 985.03(46), F.S.

If the court determines the child should be adjudicated delinquent and committed to the DJJ through court order, [49] the DJJ must recommend the restrictiveness level for the child. The court may commit the child at a different restrictiveness level but must set out findings for departure in the record based on a preponderance of the evidence.[50]

Once the court enters a commitment order, the DJJ is responsible for determining placement in a specific residential program based on the child's identified risks and needs.[51] Currently, the court must order a child to be placed in a specific restrictiveness level from level 2 through level 10 and the DJJ does not have the flexibility to move a child into a different restrictiveness level.

A child is committed to a residential program for an indeterminate length of time and must complete an individualized treatment plan.[52] The goals of the plan are based on the child's rehabilitative needs and include educational and vocational service goals.[53] All residential programs provide medical, mental health, substance abuse, and developmental disability services.[54]

Conditional Release and Transition-to-Adulthood Services

Conditional release is defined as the care, treatment, help, and supervision provided to a juvenile released from a residential commitment program. The purposes of conditional release are to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the DJJ to the family.[55]

The DJJ must assess each child placed into a residential commitment facility to determine the need for conditional release services upon release from the facility.[56] Children participating in conditional release services must participate in an educational program [57] if they are of compulsory school attendance age or noncompulsory school age and have not obtained a high school diploma or its equivalent.[58] A child who has received a diploma or equivalent, but is not employed, must attend college classes, other career education, or participate in workforce development.[59]

The DJJ must also provide older [60] children with opportunities to participate in "transition-to-adulthood" services that build life skills and increase the ability to live independently and be

[49] Section 985.441(1), F.S.
[50] Section 985.441(2), F.S.
[51] Department of Juvenile Justice, *Residential Services*, Comprehensive Accountability Report, Fiscal Year 2011-2012, http://www.djj.state.fl.us/research/reports/car (last visited February 24, 2014).
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] Section 985.03(12), F.S.
[56] Section 985.46(3), F.S.
[57] Pursuant to s. 1003.21(1)(a)1. and (2)(a), F.S.
[58] Section 985.46(5), F.S.
[59] *Id*.
[60] The term "older" in s. 985.461(2)(b), F.S., refers to children 17 years of age or older.

self-sufficient.[61] The DJJ is authorized to engage in a variety of activities designed to support participation in transition-to-adulthood services.[62]

Internal Agency Procedures

Administering the Juvenile Justice Continuum

Section 985.601, F.S., requires the Department of Juvenile Justice (DJJ) to develop or contract for diversified and innovative programs to provide rehabilitative treatment.

Quality Assurance and Cost-Effectiveness

Section 985.632, F.S., requires the DJJ to provide transparency to policy makers and the public about the costs and effectiveness of the programs that it operates. The DJJ is also required to develop an accountability system to assist in ensuring that children served receive the best services for their needs.

The DJJ is required to annually collect cost data for every program that it operates or contracts for and submit this data to the Legislature and the Governor.[63] The DJJ is also required to develop a cost-effectiveness model and apply the model to each commitment program. The cost-effectiveness model must compare program costs to client outcomes and program outputs, and include recidivism rates.[64] The DJJ must rank each commitment program based on the cost-effectiveness model and may terminate a program if the program has failed to achieve a minimum threshold of program effectiveness.

Departmental Contracting Powers; Personnel Standards and Screening

Section 985.644, F.S., requires DJJ employees and all personnel[65] of contract providers to complete a:

- Level 2 employment screening prior to employment (which requires fingerprinting);[66] and
- National criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person's employment.

The DJJ must electronically submit fingerprint information of DJJ employees and contract personnel (other than law enforcement, correctional, and correctional probation officers) to the FDLE.

[61] Section 985.461(1), F.S.
[62] Section 985.461(4), F.S.
[63] Section 985.632(3), F.S.
[64] Section 985.632(4)(a), F.S.
[65] Section 985.644(3)(a), F.S., states that personnel includes all owners, operators, employees, persons who have access to confidential juvenile records, and volunteers of contract providers for any program for children.
[66] Section 435.04, F.S. Level 2 employment screenings require fingerprints to be processed through statewide criminal history records checks through FDLE and national criminal history records checks through the Federal Bureau of Investigation. The screenings may include local criminal records checks through local law enforcement agencies.

Juvenile Justice Training Academies

The DJJ is required to establish and oversee juvenile justice training academies.[67] The DJJ must develop, implement, and maintain the curriculum for the training academies, develop uniform minimum job-related training, and establish a certifiable program for juvenile justice training.[68]

Section 985.66(3), F.S., requires the DJJ to provide specified components to the training programs for the juvenile justice program staff based upon a job-task analysis.[69] All department program staff and providers who deliver direct care services pursuant to contract with the DJJ must participate in and successfully complete the approved training programs relevant to their areas of employment.[70] Judges, state attorneys, public defenders, law enforcement officers, and school district personnel may also participate in these programs.

Juvenile Justice Circuit Advisory Boards

Section 985.664, F.S., authorizes juvenile justice circuit advisory boards (advisory boards) to be established in each of the 20 judicial circuits. The purpose of advisory boards is to advise the DJJ in the development and implementation of juvenile justice programs and policies related to at-risk youth.[71] The duties of the advisory boards are enumerated in s. 985.664(2), F.S.

Direct-Support Organizations

Section 985.672, F.S., defines a direct support organization as a not-for-profit organization whose sole purpose is to support the juvenile justice system and which is:

- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the DJJ's adopted goals and mission.

The DJJ may permit a direct support organization to use fixed property and facilities of the juvenile justice system free of charge.[72]

[67] Section 985.66(1), F.S.
[68] Section 985.66(1), (2), and (3), F.S.
[69] These components include designing, implementing, maintaining, evaluating, and revising a basic training program for the purpose of providing specified minimum employment training qualifications for all juvenile justice personnel, including a competency-based examination; an advanced training program intended to enhance knowledge, skills, and abilities related to job performance with competency-based examinations for each training course; a career development training program intended to prepare personnel for promotion with competency-based examinations for each training course; and juvenile justice training courses, entering into contracts for training courses intended to further safety and well-being of both citizens and juvenile offenders. Section 985.66(3), F.S.
[70] Section 985.66(3), F.S.
[71] Section 985.664(1), F.S.
[72] Section 985.672(4), F.S.

Siting of Facilities

Section 985.682, F.S., establishes procedures that must be followed when proposing a site for a juvenile justice facility. Currently, the DJJ is required to conduct a detailed statewide comprehensive study to determine current and future needs for all facility types for children committed to the DJJ.[73] The study must assess, rank, and designate appropriate sites based upon these needs.[74]

One-Time Startup Funding for Juvenile Justice Purposes

Section 985.69, F.S., authorizes the DJJ to use funds from juvenile justice appropriations as one-time startup funding for juvenile justice purposes that include remodeling or renovation of existing facilities, construction and leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the startup of facilities or programs. The DJJ is currently funded for repair and maintenance of facilities through the General Appropriations Act.

Payment of Medical Expenses for Detained Youth

Medicare Rates

Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant).[75]

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare & Medicaid Services develops fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.[76] Other Medicare providers are paid via a prospective payment system. The prospective payment system is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services).

The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill [77] capped medical payment rates that the Department of Corrections (DOC) could pay to a hospital or a health care provider providing services at a hospital. Payments to providers for services were capped at 110 percent of the Medicare allowable rate for inmate medical care if no contract existed between the DOC and a hospital, or a provider providing services at a hospital. However, hospitals reporting an operating loss to the Agency for Health Care Administration (AHCA) were capped at 125 percent of the

[73] Section 985.682(1), F.S.
[74] Section 985.682(2), F.S.
[75] Centers for Medicare & Medicaid Services, *What is Medicare?*, http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html (Last visited February 24, 2014).
[76] Centers for Medicare & Medicaid Services, *Fee Schedules – General Information*, http://www.cms.gov/FeeScheduleGenInfo/ (Last visited on February 24, 2014).
[77] Section 11, Chapter 2008-153, L.O.F.

Medicare allowable rate. In 2009, s. 945.6041, F.S., codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap.[78]

Similarly, the 2013 General Appropriations Implementing Bill capped medical payment rates that the DJJ could pay to a hospital or provider providing any health care services.[79]

Offenses Committed Against Youth under the Jurisdiction of the DJJ

Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony [80] for a DJJ employee [81] to engage in sexual misconduct [82] with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.02, F.S., provides that the children of the state must be provided with protection from abuse, neglect, and exploitation; as well as adequate nutrition, shelter, and clothing. In some instances, a DJJ employee has neglected or abused a juvenile offender resulting in harm to the juvenile offender.[83]

Currently, ch. 985, F.S., does not provide sanctions against the neglect of a youth in the DJJ's custody. As a result, prosecutors have looked outside of ch. 985, F.S., to prosecute cases involving abuse or neglect of a child in the care of the DJJ. One statute prosecutors have attempted to use to prosecute is s. 827.03, F.S., relating to criminal child neglect. However, the child neglect statute is not designed to prosecute neglect cases that arise within the unique framework of the juvenile justice environment, nor does it apply to youth in the DJJ's custody who are 18 or older.[84]

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[78] Section 8, Chapter 2009-63, L.O.F.
[79] Section 12, Chapter 2013-41, L.O.F.
[80] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[81] Section 985.701(1)(a)1.b., F.S., defines "employee" as paid staff members, volunteers, and interns who work in a DJJ program or a program operated by a provider under a contract.
[82] Section 985.701(1)(a)1.a., F.S., defines "sexual misconduct" as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the DJJ or an employee of a provider under contract with the DJJ.
[83] *DJJ supervisor thought Eric Perez was "faking" as he dies in juvie lockup, officer testifies*, BROWARD/PALM BEACH NEW TIMES, http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php; *Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ*, THE PALM BEACH POST, http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/.
[84] Section 827.01, F.S., defines a child as "any person under the age of 18 years." While the majority of youth in DJJ's custody are under 18 years old, DJJ has custody of persons 18 years old and older. Section 985.0301(5)(a), F.S., requires DJJ to retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and authorizes DJJ to retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services.

Diversion Programs/Expunction of Records

Section 943.0582, F.S., provides guidelines to the FDLE relating to the expunction of criminal history records of youth who have successfully completed a prearrest, postarrest, or teen court diversion program.

Prevention Services Programs and Providers

Section 985.605, F.S., requires the DJJ to monitor all state-funded programs, grants, appropriations, or activities designed to prevent juvenile delinquency.[85] The DJJ is authorized to expend funds to prevent juvenile delinquency as long as it maximizes public accountability and documents outcomes. Each entity that receives money from the state must design its programs to provide one of four specified strategies [86] and submit demographic information of participants to the DJJ for verification.[87]

Section 985.606, F.S., requires each state agency or entity that receives or uses state money to fund juvenile delinquency prevention programs, grants, appropriations, or activities to submit performance data to the Governor and both houses of the Legislature by January 31st of each year for the preceding fiscal year.

Tours of State Correctional Facilities

Section 945.75, F.S., requires the DOC to develop programs in which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under terms and conditions established by the DOC. The statute requires counties to develop similar programs involving county jails, commonly referred to as "scared straight programs."[88] The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.[89] The DJJ reports because it complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002 it receives between 2 million and 8 million dollars in federal funding.[90] The DJJ reports that it could lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.[91]

III. Effect of Proposed Changes:

This bill amends various provisions in law relating to juvenile delinquency, to enhance public safety, reduce recidivism, better measure performance outcomes, and improve care provided to juvenile offenders in the custody of the Department of Juvenile Justice (DJJ).

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[85] Section 985.605(1), F.S.
[86] Section 985.605(2)(a), F.S.
[87] Section 985.605(2)(c), F.S.
[88] Virginia Department of Criminal Justice Services, *Scared Straight Programs*, www.dcjs.virginia.gov/juvenile/compliance; *See also* Department of Juvenile Justice, *Scared Straight Programs: Jail and Detention Tours*, www.djj.state.fl.us/docs/research2/scared_straight_booklet_version (last visited on February 12, 2014)
[89] *Id*.
[90] Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Jail Tours* (2013) (on file with Senate Criminal Justice Committee.)
[91] *Id*.

Prevention

The bill creates s. 985.17, F.S., relating to prevention services. To reduce recidivism, protect public safety, and facilitate successful re-entry into the community, the bill requires the DJJ to:

- Engage faith- and community-based organizations;[92]
- Establish volunteer coordinators in each circuit and encourage mentor recruitment;
- Encourage the recruitment of volunteers to serve as mentors for youth in DJJ services;
- Promote the "Invest in Children" license plate to help fund programs and services;[93]
- Ensure prevention services address the multiple needs of youth at risk of becoming delinquent in order to decrease the prevalence of disproportionate minority representation in the juvenile justice system; and
- Expend prevention-related funds in a manner that maximizes accountability and ensures documentation of outcomes.

As a condition for receiving state funds, entities that receive or use state moneys to fund prevention services through contracts with the DJJ or grants from an entity will be required to:

- Design programs providing services to further one or more of the following strategies:
  - Encourage youth to attend and succeed in school;
  - Engage youth in productive and wholesome activities during non-school hours that build positive character, instill positive values, and enhance educational experiences;
  - Encourage youth to avoid the use of violence; and
  - Assist youth to acquire skills needed to find meaningful employment, including assistance in finding a suitable employer; and
- Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

The bill requires the DJJ to monitor output and outcome measures for each program strategy and annually report this data in the Comprehensive Accountability Report. The DJJ also will be required to monitor all state-funded programs that receive or use state moneys to fund the juvenile delinquency prevention services through contracts or grants for compliance with contract and grant provisions.

Offenses Committed Against Youth under the Jurisdiction of the Department of Juvenile Justice

Sexual Misconduct by an Employee

The bill amends s. 985.701, F.S., to define "juvenile offender" as "any person of any age who is detained or supervised by, or committed to the custody of, the department." This mirrors the definition used in s. 985.702, F.S.

[92] The bill further provides that the voluntary programs and services include, but are not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

[93] The bill further requires the DJJ to allocate moneys for programs and services within each county based on that county's proportionate share of the license plate annual use fee collected by the county, which is identical to how s. 320.08058(11), F.S., specifies the money should be allocated.

Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.702, F.S., is created and establishes a new criminal offense relating to willful and malicious neglect of a juvenile offender. The bill makes it a third degree felony [94] for a DJJ employee to willfully and maliciously neglect a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the neglect does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a second degree felony.[95]

An "employee" is defined in the bill as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with the DJJ. A "juvenile offender" is defined as "any person of any age who is detained by, or committed to the custody of, the department." "Neglect" is defined as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., the determination constitutes sufficient cause under s. 110.227, F.S.,[96] for dismissal from employment with the DJJ, and prohibits the employee from being employed in any capacity in the juvenile justice system.

The bill requires employees who witness the neglect of a juvenile offender to immediately report the incident to the DJJ's incident hotline. The witness must also prepare an independent report specifically describing the incident, location and time, and persons involved. The report must be submitted to the witness's supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if probable cause exists, notify the state attorney in the circuit in which the incident occurred.

Any person required to prepare a report who knowingly or willfully fails to do so or prevents another person from filing a report commits a first degree misdemeanor.[97] In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor.
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

[94] A third degree felony is punishable by up to five years imprisonment and a fine of up to $5,000. Sections 775.082, 775.083, and 775.084, F.S.
[95] A second degree felony is punishable by up to 15 years imprisonment and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.
[96] Section 110.227, F.S., relates to the suspension and dismissal of career service employees.
[97] A first degree misdemeanor is punishable by up to 1 year incarceration and a fine up to $1,000. Sections 775.082, F.S. and 775.083, F.S.

Trauma-informed Care as a Component of the Department of Juvenile Justice Model

The bill requires the DJJ to implement trauma-informed care in its model of response and delivery of services to juvenile offenders. "Trauma-informed care" is defined to mean providing services to children with a history of trauma, which recognizes the symptoms of trauma and acknowledges the role the trauma has played in the child's life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

Family Support

The bill recognizes the importance of placing facilities close to the home communities of children they house in facilitating family involvement in the treatment process and encourages the use of customized treatment plans to prepare a child for a successful transition back to his or her family and community support system.

Detention Care System

The definition of "detention care" found in s. 985.03, F.S., is revised to remove "home detention," thereby limiting the definition to "secure" and "nonsecure" detention. The bill amends the definition of "nonsecure detention" to mean:

> Temporary nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive home environment under the supervision of department staff pending adjudication, disposition, or placement. Forms of nonsecure detention may include, but are not limited, to home detention, electronic monitoring, day reporting centers, evening reporting centers, nonsecure shelters, and may include other requirements imposed by the court.

The definition of "child" in s. 985.03, F.S., is amended to apply to both married and unmarried persons under the age of 18. Currently, a married person who is under the age of 18 is not considered to be a "child" unless he or she is charged with a violation of law.

The bill authorizes the DJJ to develop evening reporting centers (centers), which are included in the definition of "nonsecure detention." These centers serve as an alternative to placing a child in secure detention and may be co-located with a juvenile assessment center. Centers must serve children and families who are awaiting a child's court hearing and must operate at a minimum during the afternoon and evening hours to provide a highly structured program of supervision. Centers may also provide academic tutoring, counseling, family engagement programs, and other activities. The bill specifies that if DJJ establishes centers, it must be do so within its existing resources.

The term "juvenile probation officer" is replaced with the term "department" throughout many of the detention-related statutes, which will allow the DJJ greater flexibility to use employees other than probation officers in initial detention placement. The bill specifies a child's "illegal

possession of a firearm" can be considered as a basis for ordering detention or continued detention and requires secure detention for any child who has been taken into custody on three or more separate occasions within a 60-day period.

The bill requires detention staff to notify the appropriate law enforcement agency, school personnel, and victim when a child charged with any of the following offenses is released from secure detention or transferred to nonsecure detention:

- Murder, under s. 782.04, F.S.;
- Sexual battery, under ch. 794, F.S.;
- Stalking, under s. 784.048, F.S; or
- Domestic violence, as defined in s. 741.28, F.S.

In some respects, the notice requirement expands notice by not limiting notice to juvenile sex offenses. In other respects, this provision limits notice, as notice is only required for sexual battery, not all of the currently-included offenses that qualify a child as a juvenile sex offender.

In instances where a detained child is transferred to a jail or other facility used to detain adults,[98] the bill requires physical observation and documented checks of the child every 10 minutes. Existing law requires observations every 15 minutes.

The court must place in detention care all children who are adjudicated and awaiting placement in a commitment program. In such instances, the bill requires, rather than permits, a child who has been committed to a high-risk or maximum risk residential facility to be held in secure detention until placement.

Jurisdiction

The bill amends s. 985.0301, F.S., to authorize, rather than require, the court to transfer a detained child to a detention center in the circuit in which the child resides or will reside at the time of detention. The bill restricts transfers to only these two circumstances, which means the receiving court will no longer be able to direct where the detained child may be placed when a case is being transferred.

The bill simplifies statutory jurisdictional criteria. As a result, the court will retain jurisdiction over a child until the child:

- Is 19 years old, generally, or if the child is in a probation program;
- Is 21 years old, if the child is committed to the DJJ in any type of commitment program, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision;
- Is 21 years old, if the child is a juvenile sexual offender who has been placed on community-based treatment alternative with supervision, or in a program or facility for juvenile sexual offenders, specifically for the purpose of completing the program; or
- Satisfies restitution ordered in the case.

[98] Section 985.265(5), F.S., sets forth instances in which a child may be detained in a jail or other facility used to detain adults.

Contempt of Court

The bill requires the court to hold a hearing to determine if a child committed direct contempt of court and affords the child specified due process rights at this hearing. The bill also clarifies if a judge places a child into a secure facility for contempt, the facility must be a detention facility. In these instances, the court needs to review the placement only upon motion by the defense attorney or state attorney. Under existing law, the court must review the placement every 72 hours.

Fingerprinting and Photographing

The bill excludes a child from fingerprint requirements if the child is issued a civil citation. This provision may better focus resources on more serious juvenile offenders by waiving fingerprinting requirements of children charged with nonserious delinquent acts.

Intake Process

Section 985.14, F.S., is amended to allow both the DJJ and juvenile assessment center personnel to perform the intake process, which may provide for a more efficient intake process in counties that operate their own juvenile assessment centers. The bill also:

- Clarifies that the intake assessment process consists of an initial assessment that may be followed by a full mental health, substance abuse, cognitive impairment, and/or psychosexual evaluation, which may help decision makers better target successful treatment and reduce recidivism; and
- Requires children to be screened to determine career or technical education problems (rather than just vocational problems), which provides more options for children in pursuing a successful career.

Disposition

Predisposition Reports

The bill requires the predisposition report prepared by the DJJ to assist the court in determining whether a child is committed is to identify appropriate educational and career (rather than vocational) goals for the child, which include:

- Successful completion of career and technical education courses (rather than vocational courses); and
- Successful completion of the child's current grade or recovery of credits or classes the child previously failed.

Probation or Postcommitment Probation (Probation)

A court is authorized by the bill to impose an alternative consequence for juveniles on probation who commit relatively minor violations (technical violations). If so, the judge must approve specific consequences for specific future violations of the conditions of probation. Alternative consequence programs:

- Must be established at the local level in coordination with law enforcement agencies, the Chief Judge of the circuit, the State Attorney, and the Public Defender; and

- May be operated by a law enforcement agency, the DJJ, a juvenile assessment center, or another entity selected by DJJ.

Commitment

The term "juvenile probation officer" is replaced with the term "department" throughout many of the commitment-related statutes, which will allow the DJJ to use employees other than probation officers to perform commitment-related duties.

The "restrictiveness levels" in s. 985.03(46), F.S., of low-risk residential (level 4) and moderate-risk residential (level 6) are combined into a single "nonsecure residential" group. This will allow the DJJ to place a child whose risk is currently low into a program that caters to children with slightly higher risk levels to ensure the child access to other needs and services.

The current cap on residential beds per facility is reduced to 90 beds from 165 beds. This reduction in the number of residential beds authorized per facility may increase efficiency of facilities in meeting the goals of commitment and reducing recidivism.

Certain youth[99] will be allowed to be committed to nonsecure residential placement under this bill if the child has:
- Previously been adjudicated or *had an adjudication withheld* for a felony offense; or
- *Previously* been adjudicated or had adjudication withheld for three or more misdemeanor offenses *within the last 18 months*.

The amendments to s. 985.275, F.S., requires the DJJ to notify a law enforcement agency and, if the offense requires victim notification under ch. 960, F.S., the victim, any time a child in the custody of the DJJ:
- Escapes from a residential commitment program or from being transported to or from one; or
- Absconds from a nonresidential commitment facility.

The DJJ also will be required by the bill to make every reasonable effort to locate the child.

Conditional Release and Transition-to-Adulthood Services

The bill amends s. 985.46, F.S., to clarify conditional release includes the provision of transition-to-adulthood services. The bill also requires a child of noncompulsory school age on conditional release supervision to participate in the education program or career and technical education courses.

The application of transition-to-adulthood services is expanded by the bill by removing the limitation that these services only be provided to "older children." As a result, any child who is under the supervision of the DJJ may be provided transition-to-adulthood services as part of his or her treatment plan.

[99] This includes youth whose offense is a misdemeanor as well as youth who are on probation for a misdemeanor and who commit a technical violation. Section 985.441(2), F.S.

The activities the DJJ is authorized to engage in to support participation in transition-to-adulthood services are expanded. Specifically, the DJJ may:

- Employ community re-entry teams to assist in developing a list of age appropriate activities and responsibilities to be incorporated in the child's case plan. Community re-entry teams include representatives from school districts, law enforcement, workforce development services, community based service providers, and the child's family.
- Assist the child in building a portfolio of educational and vocational accomplishments, necessary identification, and resumes and cover letters to enhance the child's employability; and
- Collaborate with school district contacts to facilitate appropriate educational services based on the child's identified needs.

Internal Agency Procedures

Quality Assurance and Cost-Effectiveness

The bill amends s. 985.632, F.S. to:

- Require the annual report to collect and analyze available statistical data for the purpose of ongoing evaluation of all programs;
- Delete the terms "client" and "program effectiveness" and adds the following definitions:
  - "Program," which means any facility or service for youth that is operated by the DJJ or by a provider under contract with the DJJ; and
  - "Program group," which means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison among programs within the group;
- Codify the Comprehensive Accountability Report (CAR), [100] and requires the DJJ to work with contract service providers to develop a standard methodology for measuring and reporting program outputs and youth outcomes;
- Require the standard methodology used in the CAR to include certain terminology for measuring performance, to specify program outputs, and to specify desired child outcomes and methods to measure child outcomes; and
- Require the cost-effectiveness model to include a comparison of program costs to expected and actual child recidivism rates, rather than client outcomes and program outputs; and requires the DJJ to rank commitment programs based on performance measures and adherence to quality improvement standards.

Departmental Contracting Powers; Personnel Standards and Screening

The bill provides that law enforcement, correctional, or correctional probation officers certified pursuant to s. 943.13, F.S., are not required to submit to level 2 screenings if they are currently employed by a law enforcement agency or correctional facility.

Juvenile Justice Training Academies

Section 985.66, F.S., is amended to:

[100] The CAR, in its current form, has been published by the DJJ since 2006. It includes all of the information required to be reported under s. 985.632, F.S., as well as additional information. *See Comprehensive Accountability Reports*, http://www.djj.state.fl.us/research/reports/car (last visited on February 12, 2014).

- Remove references to "academies" when referring to juvenile justice training programs;
- Require the DJJ to designate the *number* of (not just the location of) training programs and courses; and
- Authorize all employees of contract providers who provide services or care for youth under the responsibility of the DJJ to participate in the certifiable training program.

Juvenile Justice Circuit Advisory Boards

The bill amends s. 985.664, F.S., to remove obsolete language and specifies the chair of a board serves at the pleasure of the DJJ's Secretary.

Direct-Support Organizations

Current law does not address whether the DJJ may authorize direct support organizations to use personnel services of the juvenile justice system. The bill authorizes the DJJ to permit a direct support organization to use its personnel services. Personnel services include full-time or part-time personnel, as well as payroll processing services.

One-Time Startup Funding for Juvenile Justice Purposes

The bill changes references to "startup" funding and costs in s. 985.69, F.S., to refer to "repair and maintenance" funding and costs. This allows these funds to be used for the continuing repair and maintenance of the DJJ facilities.

Payment for Medical Expenses for Detained Youth (Section 35)

The bill codifies a similar provision contained in the 2013-2014 Implementing Bill for the General Appropriations Act.[101] This provision requires, if there is no contract between the DJJ and the hospital or provider providing health care services (services) at a hospital, payments to a provider may not exceed 110 percent of the Medicare allowable rate for any services provided. The DJJ may continue to make payments for services to a provider at the current contracted rates through the current term of an executed contract.[102] However, once that contract expires, payments may not exceed 110 percent of the Medicare allowable rate.

If a contract is executed on or after July 1, 2014, payments to providers for services may not exceed 110 percent of the Medicare allowable rate, unless the services are performed at a hospital that reports a negative operating margin for the previous fiscal year to the AHCA through hospital-audited financial data. In that instance, the DJJ may pay up to 125 percent of the Medicare allowable rate.

[101] Similar provisions have been included annually in the Implementing Bill since the 2010-2011 fiscal year. *See*, Ch. 2010-153, s. 11, Laws of Fla., Ch. 2011-47, s. 19, Laws of Fla., Ch. 2012-119, s. 16, Laws of Fla.; and Ch. 2013-41, s. 41, Laws of Fla.

[102] The bill allows for contracts to be renewed during the 2013-2014 fiscal year.

Repeal of Provisions

The bill removes obsolete provisions, including definitions in ch. 985, F.S., relating to dependency proceedings. Dependency proceedings are within the jurisdiction of the DCF and are addressed in ch. 39, F.S.

The bill repeals s. 945.75, F.S., relating to state correctional facility tours by juvenile offenders which violate federal law. This repeal will prevent the federal funding allocated to state juvenile justice programs from being compromised.

Effective Date

The bill takes effect July 1, 2014. However, the criminal offense of "willful and intentional neglect of a juvenile" that is created in s. 985.702, F.S., has an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/CS/SB 700, families currently financially unable to access various services may have increased access to services, such as tutoring and counseling, as a result of the establishment of evening reporting centers.

Children currently subject to placement in secure detention for technical violations of probation may not be required to go into secure detention because the bill creates an alternative consequence option to handle noncompliance with the technical conditions of probation. This could assist these children with maintaining employment they currently have.

C. Government Sector Impact:

Department of Juvenile Justice

The bill caps the maximum bed number for all residential facilities at 90 beds, instead of the maximum bed number of 165 in current law. The DJJ currently has two residential facilities over the 90 bed limit, Riverside Academy which has 165 beds and Avon Park Youth Academy which has 144 beds.[103] The DJJ reports the procurement process is already underway to place the excess beds at other facilities.[104]

The bill amends s. 985.25, F.S., to require any child taken into custody on three or more separate occasions within a 60-day period to be placed in secure detention care until the detention hearing. The DJJ reports that 1,500 youth met this criteria in the last fiscal year, at a cost (clothing and food) per youth of $5.16 per day. This change is estimated to cost an additional $7,740 a year and could vary depending on how many nights each youth stays at a detention center. The DJJ indicates they can absorb this increased cost within existing resources.[105]

The bill allows the DJJ to pay expenses in support of innovative programs and activities that address identified needs and the well-being of children in the DJJ's care or under its supervision. However, the bill specifies that these programs and activities must be accomplished within existing resources and the DJJ indicates that it can do so.[106]

The bill allows the DJJ to permit direct support organizations to use the DJJ personnel services, which may have a fiscal impact on the DJJ. However, the DJJ indicates any new expenses will be absorbed within existing resources.[107]

The bill adds new detention criteria which may result in some children being held in secure detention who would not otherwise have been detained, or being detained for longer periods of time. This will have an indeterminate impact on local government expenditures.

The DJJ may realize a positive fiscal impact from reduced recidivism rates as a result of the technical violation diversion program and increased supervision.

Office of State Courts Administrator (OSCA)

The OSCA indicates the following provisions of the bill will affect court operations:

- Requiring the courts to hold a hearing and ensure due process for juvenile offenders in direct contempt;
- Requiring the courts to provide a release date for offenders currently in detention; and

[103] Electronic mail from Jon Menendez, dated February 10, 2014 (on file with the Senate Judiciary Committee).
[104] *Id*
[105] The DJJ, *2014 DJJ Bill Analysis for SB 700.*
[106] Electronic mail from Jon Menendez, dated February 12, 2014 (on file with the Senate Judiciary Committee).
[107] *Id.*

- Authorizing the courts to place children in alternative consequence programs for technical violations of probation.

Although the OSCA cannot accurately determine fiscal impact due to the unavailability of data needed to quantify the increase in judicial workload, the OSCA indicates they expect to be able to absorb additional workload with existing resources.[108]

Prison Bed Impact

The Criminal Justice Impact Conference found the new offense of "willful and intentional neglect of a juvenile" created in s. 985.702, F.S. would have an insignificant impact on the need for prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.0515, 316.635, 318.143, 985.01, 985.02, 985.03, 985.0301, 985.037, 985.039, 985.045, 985.11, 985.14, 985.145, 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.27, 985.275, 985.433, 985.435, 985.439, 985.441, 985.46, 985.461, 985.481, 985.4815, 985.514, 985.601, 985.632, 985.644, 985.66, 985.664, 985.672, 985.682, 985.69, 985.701, 985.721, and 943.0582.

This bill creates the following sections of the Florida Statutes: 985.17, 985.6441, and 985.702.

This bill repeals the following sections of the Florida Statutes: 985.105, 985.605, 985.606, 985.61, 985.694, and 945.75.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The committee substitute:

- Adds evaluation of cognitive impairment to the types of evaluations that may be performed as part of the comprehensive evaluation during the intake process.
- Provides that several types of newly authorized initiatives must be done within the DJJ's existing resources.

[108] Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 700* (February 25, 2014) (on file with the Senate Judiciary Committee).

- Removes the Office of Economic and Demographic Research and the Office of Program Policy and Government Accountability from the team that develops a standard methodology for the Comprehensive Accountability Report.
- Removes language authorizing the DJJ to execute contracts with hospitals for rates other than rates based on the Medicare reimbursement cap.
- Provides that the effective date of the new criminal offense of "willful and malicious neglect of a juvenile" is October 1, 2014, rather than the effective date of the bill.
- Amends the definition of "child" in s. 985.03, F.S., to apply to both married and unmarried persons under the age of 18. Currently, a married person who is under the age of 18 is not considered to be a "child" unless he or she is charged with a violation of law.
- Includes a number of technical changes, including replacing the term "home detention" with "non-secure detention".

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 19, 2014:
The committee substitute:

- Adds evaluation of cognitive impairment to the types of evaluations that may be performed as part of the comprehensive evaluation during the intake process.
- Provides that several types of newly authorized initiatives must be done within the DJJ's existing resources.
- Removes the Office of Economic and Demographic Research and the Office of Program Policy and Government Accountability from the team that develops a standard methodology for the Comprehensive Accountability Report.
- Removes language authorizing the DJJ to execute contracts with hospitals for rates other than rates based on the Medicare reimbursement cap.
- Provides that the effective date of the new criminal offense of "willful and malicious neglect of a juvenile" is October 1, 2014, rather than the effective date of the bill.
- Amends the definition of "child" in s. 985.03, F.S., to apply to both married and unmarried persons under the age of 18. Currently, a married person who is under the age of 18 is not considered to be a "child" unless he or she is charged with a violation of law.
- Includes a number of technical changes, including replacing the term "home detention" with "non-secure detention" in statutes that were not amended in CS/SB 700.

CS by Judiciary on March 4, 2014:
The committee substitute:

- Makes three technical corrections which do not change the substance of the bill.

Provides legislative intent that the purpose of the juvenile justice system is to increase public safety and to place low and moderate-risk children in nonresidential programs.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senators Bradley and Detert

590-02104-14 2014700c1

A bill to be entitled

An act relating to the Department of Juvenile Justice; amending s. 985.01, F.S.; revising the purposes of ch. 985, F.S., relating to juvenile justice; amending s. 985.02, F.S.; revising the legislative intent and findings relating to the juvenile justice system; amending s. 985.03, F.S.; defining and redefining terms; amending s. 985.0301, F.S.; allowing a child who has been detained to be transferred to the detention center or facility in the circuit in which the child resides or will reside at the time of detention; deleting provisions relating to the retention of jurisdiction by the court of a child under certain circumstances; conforming provisions to changes made by the act; amending s. 985.037, F.S.; requiring the court to hold a hearing if a child is charged with direct contempt of court and to afford the child due process at such hearing; requiring the court to review the placement of a child in a secure detention facility upon motion by the defense or state attorney; conforming provisions to changes made by the act; repealing s. 985.105, F.S., relating to youth custody officers; amending s. 985.11, F.S.; providing that a child's fingerprints do not need to be submitted to the Department of Law Enforcement under certain circumstances; amending s. 985.14, F.S.; authorizing juvenile assessment center personnel to perform the intake process for children in custody of the Department of Juvenile Justice; providing

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

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requirements for the intake process; amending s. 985.145, F.S.; transferring responsibilities relating to the intake process from the juvenile probation officer to the department; creating s. 985.17, F.S.; providing goals for the department's prevention services; requiring the department to engage with certain faith-based and community-based organizations; requiring the department to establish volunteer coordinators; requiring the department to promote a specified license plate; providing for the use of funds related to prevention services; amending s. 985.24, F.S.; requiring that a determination or court order regarding the use of detention care include any findings that the child illegally possessed a firearm; authorizing the department to develop evening-reporting centers; providing requirements for such centers; conforming provisions to changes made by the act; amending s. 985.245, F.S.; conforming provisions to changes made by the act; amending s. 985.25, F.S.; transferring the responsibility for detention intake from the juvenile probation officer to the department; requiring that a child be placed in secure detention care until the child's detention hearing under certain circumstances; conforming provisions to changes made by the act; amending s. 985.255, F.S.; requiring that a child taken into custody and placed into secure or nonsecure detention care be given a hearing within a certain timeframe; authorizing the court to order continued detention under certain circumstances;

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

requiring that, if the initial order placing the youth on detention care does not include a release date, a release date be requested of the court on the same date the youth is placed on detention care; requiring that, if a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order reflect the date of the next detention review hearing, which must be within 3 calendar days after the child's initial detention placement; conforming provisions to changes made by the act; amending s. 985.26, F.S.; conforming provisions to changes made by the act; amending s. 985.265, F.S.; requiring that detention staff immediately notify law enforcement, school personnel, and the victim, when a juvenile charged with a specified crime is released from secure detention or transferred to nonsecure detention; conforming provisions to changes made by the act; amending s. 985.27, F.S.; conforming provisions to changes made by the act; amending s. 985.275, F.S.; requiring an authorized agent of the department to notify law enforcement and attempt to locate a child who has escaped from a residential commitment facility; requiring that the victim be notified under certain circumstances; amending s. 985.433, F.S.; revising provisions relating to educational goals of a child in a predisposition report; requiring the department, rather than the juvenile probation officer, to recommend to the court the most appropriate treatment

and placement plan; amending s. 985.435, F.S.; authorizing a probation program to include an alternative consequence component; providing requirements for such component; requiring that the department provide an evaluation of the youth's risk to reoffend; conforming provisions to changes made by the act; amending s. 985.439, F.S.; providing that the section applies to children on probation or postcommitment probation, regardless of adjudication; authorizing the department to establish programs to provide alternative consequences for certain probation violations; providing requirements for such programs; conforming provisions to changes made by the act; amending s. 985.441, F.S.; providing that the court may commit a child who is on probation for a misdemeanor or a certain probation violation only at a specified restrictiveness level; authorizing the court to commit such child to a nonsecure residential placement in certain circumstances; conforming provisions to changes made by the act; amending s. 985.46, F.S.; providing that conditional release includes transition-to-adulthood services; requiring certain students to participate in an educational or career education program; amending s. 985.461, F.S.; authorizing the department to provide transition-to-adulthood services under certain circumstances; authorizing the department to use community reentry teams composed of certain individuals and entities for certain purposes; removing age restrictions for youth

who receive transition-to-adulthood services; requiring the department to assist youth in developing a portfolio of certain accomplishments and to collaborate with school districts to facilitate certain educational services; amending ss. 985.481 and 985.4815, F.S.; deleting obsolete provisions; amending s. 985.601, F.S.; providing legislative intent; requiring the department to contract for programs to provide trauma-informed care, family engagement resources, and gender-specific programming; authorizing the department to pay expenses in support of certain programs; repealing s. 985.605, F.S., relating to prevention service programs, monitoring, and uniform performance measures; repealing s. 985.606, F.S., relating to prevention services providers, performance data collection, and reporting; repealing s. 985.61, F.S., relating to early delinquency intervention programs; amending s. 985.632, F.S.; revising legislative intent to include that the department establish a performance accountability system for certain providers that contract with the department; providing requirements for such contracts; requiring that the department's Bureau of Research and Planning submit a report to the Legislature; providing requirements for the report; defining terms; requiring that the department develop, in consultation with specified entities, a standard methodology for measuring, evaluating, and reporting; providing requirements for the methodology; deleting

reporting requirements related to cost data; revising the requirements of the department's cost-effectiveness model; requiring the department to establish a quality improvement system rather than a quality assurance system; conforming provisions to changes made by the act; amending s. 985.644, F.S.; providing that specified individuals are not required to submit to certain screenings under certain circumstances; creating s. 985.6441, F.S.; defining the terms "hospital" and "health care provider"; limiting the department's compensation of health care providers; amending s. 985.66, F.S.; revising the purpose of juvenile justice programs and courses; revising the duties of the department for staff development and training; providing that employees of certain contract providers may participate in the training program; amending s. 985.664, F.S.; requiring the juvenile justice circuit advisory board, rather than the secretary of the department, to appoint a new chair to that board; providing that the chair serves at the pleasure of the secretary; amending s. 985.672, F.S.; redefining the term "direct-support organization"; authorizing the department to allow the use of personnel services of the juvenile justice system by a direct-support organization; amending s. 985.682, F.S.; deleting provisions relating to a statewide study; conforming provisions to changes made by the act; amending s. 985.69, F.S.; providing for repair and maintenance funding for juvenile justice

purposes; repealing s. 985.694, F.S., relating to the Juvenile Care and Maintenance Trust Fund; amending s. 985.701, F.S.; defining the term "juvenile offender"; removing the requirement that the juvenile be detained by, supervised by, or committed to the custody of the department for the purposes of charging sexual misconduct by an employee of the department; creating s. 985.702, F.S.; defining terms; prohibiting an employee from willfully and maliciously neglecting a juvenile offender; providing criminal penalties; providing for dismissal from employment with the department; requiring an employee to report certain information; requiring the department's inspector general to conduct an appropriate administrative investigation; requiring that the inspector general notify the state attorney under certain circumstances; amending s. 943.0582, F.S.; requiring that the department expunge the nonjudicial arrest record of certain minors under certain circumstances; repealing s. 945.75, F.S., relating to tours of state correctional facilities for juveniles; amending s. 121.0515, F.S.; conforming provisions to changes made by the act; amending ss. 985.045 and 985.721, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 985.01, Florida Statutes, is amended to

read:

985.01 Purposes and intent.—

(1) The purposes of this chapter are:

(a) To increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children.

(b) ~~(a)~~ To provide judicial and other procedures to assure due process through which children, victims, and other interested parties are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.

(c) ~~(b)~~ To provide ~~for the care, safety, and protection of children in~~ an environment that fosters healthy social, emotional, intellectual, educational, and physical development; to ensure secure and safe custody; and to promote the health and well-being of all children under the state's care.

(d) ~~(c)~~ To ensure the protection of society, by providing for a comprehensive standardized assessment of the child's needs so that the most appropriate control, discipline, punishment, and treatment can be administered consistent with the seriousness of the act committed, the community's long-term need for public safety, the prior record of the child, and the specific rehabilitation needs of the child, while also providing, whenever possible, restitution to the victim of the offense.

(e) ~~(d)~~ To preserve and strengthen the child's family ties, whenever possible, by providing for removal of the child from the physical custody of a parent ~~parental custody~~ only when his or her welfare or the safety and protection of the public cannot be adequately safeguarded without such removal; and, when the child is removed from his or her own family, to secure custody, care, and discipline for the child as nearly as possible equivalent to that which should have been given by the parents~~;~~ ~~and to assure, in all cases in which a child must be permanently removed from parental custody, that the child be placed in an approved family home, adoptive home, independent living program, or other placement that provides the most stable and permanent living arrangement for the child, as determined by the court~~.

(f) ~~(e)~~ 1. To assure that the adjudication and disposition of a child alleged or found to have committed a violation of Florida law be exercised with appropriate discretion and in keeping with the seriousness of the offense and the need for treatment services, and that all findings made under this chapter be based upon facts presented at a hearing that meets the constitutional standards of fundamental fairness and due process.

2. To assure that the sentencing and placement of a child tried as an adult be appropriate and in keeping with the seriousness of the offense and the child's need for rehabilitative services, and that the proceedings and procedures applicable to such sentencing and placement be applied within the full framework of constitutional standards of fundamental fairness and due process.

(g) ~~(f)~~ To provide children committed to the department with

training in life skills, including career and technical education, if appropriate.

(h) To care for children in the least restrictive and most appropriate service environments.

(i) To allocate resources for the most effective programs, services, and treatments to ensure that children, their families, and their community support systems are connected with these programs, services, and treatments at the most impactful points along the juvenile justice continuum.

(2) It is the intent of the Legislature that this chapter be liberally interpreted and construed in conformity with its declared purposes.

Section 2. Section 985.02, Florida Statutes, is amended to read:

985.02 Legislative intent for the juvenile justice system.—

(1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with the following protections:

(a) Protection from abuse, neglect, and exploitation.

(b) A permanent and stable home.

(c) A safe and nurturing environment that ~~which~~ will preserve a sense of personal dignity and integrity.

(d) Adequate nutrition, shelter, and clothing.

(e) Effective treatment to address physical, social, and emotional needs, regardless of geographical location.

(f) Equal opportunity and access to quality and effective education, which will meet the individual needs of each child, and to recreation and other community resources to develop individual abilities.

(g) Access to preventive services.

~~(h) An independent, trained advocate when intervention is necessary, and a skilled guardian or caretaker in a safe environment when alternative placement is necessary.~~

(h) ~~(i)~~ Gender-specific programming and gender-specific program models and services that comprehensively address the needs of a targeted gender group.

(2) SUBSTANCE ABUSE SERVICES.—The Legislature finds that children in the care of the state's ~~dependency and~~ delinquency system ~~systems~~ need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's ~~dependency and~~ delinquency system ~~systems~~ must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems. It is therefore the purpose of the Legislature to provide authority for the state to contract with community substance abuse treatment providers for the development and operation of specialized support and overlay services for the ~~dependency and~~ delinquency system ~~systems~~, which will be fully implemented and used ~~utilized~~ as resources permit.

(3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—It is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

(a) Develop and implement effective methods of preventing and reducing acts of delinquency, with a focus on maintaining and strengthening the family as a whole so that children may remain in their homes or communities.

(b) Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.

(c) Provide well-trained personnel, high-quality services, and cost-effective programs within the juvenile justice system.

(d) Increase the capacity of local governments and public and private agencies to conduct rehabilitative treatment programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention.

~~The Legislature intends that detention care, in addition to providing secure and safe custody, will promote the health and well-being of the children committed thereto and provide an environment that fosters their social, emotional, intellectual, and physical development.~~

(4) DETENTION.—

(a) The Legislature finds that there is a need for a secure placement for certain children alleged to have committed a delinquent act. The Legislature finds that detention should be used only when less restrictive interim placement alternatives before ~~prior to~~ adjudication and disposition are not appropriate. The Legislature further finds that decisions to detain should be based in part on a prudent assessment of risk

and be limited to situations where there is clear and convincing evidence that a child presents a risk of failing to appear or presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior; presents a history of committing a serious property offense prior to adjudication, disposition, or placement; has acted in direct or indirect contempt of court; or requests protection from imminent bodily harm.

(b) The Legislature intends that a juvenile found to have committed a delinquent act understands the consequences and the serious nature of such behavior. Therefore, the Legislature finds that secure detention is appropriate to provide punishment for juveniles who pose a threat to public safety ~~that discourages further delinquent behavior~~. The Legislature also finds that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. It is the intent of the Legislature to establish clear criteria in order to identify these juveniles and remove them from the juvenile justice system.

(5) SITING OF FACILITIES.—

(a) The Legislature finds that timely siting and development of needed residential facilities for juvenile offenders is critical to the public safety of the citizens of this state and to the effective rehabilitation of juvenile offenders.

(b) It is the purpose of the Legislature to guarantee that such facilities are sited and developed within reasonable

timeframes after they are legislatively authorized and appropriated.

(c) The Legislature further finds that such facilities must be located in areas of the state close to the home communities of the children they house in order to ensure the most effective rehabilitation efforts, ~~and the most intensive~~ postrelease supervision, and case management. The placement of facilities close to the home communities of the children they house is also intended to facilitate family involvement in the treatment process. Residential facilities may not ~~shall~~ have ~~no~~ more than 90 ~~165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols~~,~~ and have facilities that coexist separately in distinct locations on the same property.

(d) It is the intent of the Legislature that all other departments and agencies of the state ~~shall~~ cooperate fully with the Department of Juvenile Justice to accomplish the siting of facilities for juvenile offenders.

The supervision, counseling, and rehabilitative treatment~~, and punitive~~ efforts of the juvenile justice system should avoid the inappropriate use of correctional programs and large institutions. ~~The Legislature finds that detention services should exceed the primary goal of providing safe and secure custody pending adjudication and disposition.~~

(6) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.—

Parents, custodians, and guardians are deemed by the state to be

responsible for providing their children with sufficient support, guidance, and supervision to deter their participation in delinquent acts. The state further recognizes that the ability of parents, custodians, and guardians to fulfill those responsibilities can be greatly impaired by economic, social, behavioral, emotional, and related problems. It is therefore the policy of the Legislature that it is the state's responsibility to ensure that factors impeding the ability of caretakers to fulfill their responsibilities are identified through the delinquency intake process and that appropriate recommendations to address those problems are considered in any judicial or nonjudicial proceeding. Nonetheless, as it is also the intent of the Legislature to preserve and strengthen the child's family ties, it is the policy of the Legislature that the emotional, legal, and financial responsibilities of the caretaker with regard to the care, custody, and support of the child continue while the child is in the physical or legal custody of the department.

(7) GENDER-SPECIFIC PROGRAMMING.—

(a) The Legislature finds that the prevention, treatment, and rehabilitation needs of children ~~youth~~ served by the juvenile justice system are gender specific ~~gender-specific~~.

(b) Gender-specific programming refers to unique program models and services that comprehensively address the needs of a targeted gender group. Gender-specific services require the adherence to the principle of equity to ensure that the different interests of young women and men are recognized and varying needs are met, with equality as the desired outcome. Gender-specific programming focuses on the differences between

young females' and young males' roles and responsibilities, positions in society, access to and use of resources, and social codes governing behavior. Gender-specific programs increase the effectiveness of programs by making interventions more appropriate to the specific needs of young women and men and ensuring that these programs do not unknowingly create, maintain, or reinforce gender roles or relations that may be damaging.

(8) TRAUMA-INFORMED CARE.—The Legislature finds that the department should use trauma-informed care as an approach to treating children with histories of trauma. Trauma-informed care assists service providers in recognizing the symptoms of trauma and acknowledges the role trauma has played in the child's life. Services for children should be based on an understanding of the vulnerabilities and triggers of trauma survivors which traditional service delivery approaches may exacerbate so that these services and programs can be more supportive and avoid re-traumatization. The department should use trauma-specific interventions that are designed to address the consequences of trauma in the child and to facilitate healing.

(9) FAMILY AND COMMUNITY ENGAGEMENT.—The Legislature finds that families and community support systems are critical to the success of children and to ensure that they are nondelinquent. Therefore, if appropriate, children who can be held accountable safely through serving and treating them in their homes and communities should be diverted from more restrictive placements within the juvenile justice system. The Legislature also finds that there should be an emphasis on strengthening the family and immersing them in their community support system. The department

should develop customized plans that acknowledge the importance of family and community support systems. The customized plans should recognize a child's individual needs, capitalize on his or her strengths, reduce risk to the child, and prepare the child for a successful transition to, and unification with, his or her family and community support system. The child's family shall be included in the department's process of assessing the needs, services and treatment, and community connections of the children who are involved with the juvenile justice system or in danger of becoming so involved.

Section 3. Section 985.03, Florida Statutes, is reordered and amended to read:

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

(1) "Abscond" means to hide, conceal, or absent oneself from the jurisdiction of the court or supervision of the department to avoid prosecution or supervision.

(2) ~~(1)~~ "Addictions receiving facility" means a substance abuse service provider as defined in chapter 397.

(3) ~~(2)~~ "Adjudicatory hearing" means a hearing for the court to determine whether or not the facts support the allegations stated in the petition, as is provided for under s. 985.35 in delinquency cases.

(4) ~~(3)~~ "Adult" means any natural person other than a child.

(5) ~~(4)~~ "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision, which may be binding or nonbinding.

(6) ~~(5)~~ "Authorized agent" or "designee" of the department

means a person or agency assigned or designated by the department ~~or the Department of Children and Family Services, as appropriate,~~ to perform duties or exercise powers under this chapter. The term ~~and~~ includes contract providers and their employees ~~for purposes of providing services to and managing cases of children in need of services and families in need of services~~.

(7) ~~(6)~~ "Child," ~~or~~ "juvenile," or "youth" means any unmarried person younger than ~~under the age of~~ 18 years of age ~~who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services;~~ or any ~~married or unmarried~~ person who is alleged to have committed ~~charged with~~ a violation of law occurring before ~~prior to~~ the ~~time that~~ person reaches ~~reached the age of~~ 18 years of age.

(8) ~~(7)~~ "Child in need of services" has the same meaning as provided in s. 984.03 ~~means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the department or the Department of Children and Family Services for an adjudication of dependency or delinquency~~. ~~The child must also, under this chapter, be found by the court:~~

~~(a) To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services,~~

~~and treatment offered by the department or the Department of Children and Family Services;~~

~~(b) To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation under ss. 1003.26 and 1003.27 and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; or~~

~~(c) To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.~~

(9) ~~(8)~~ "Child who has been found to have committed a delinquent act" means a child who, under this chapter, is found by a court to have committed a violation of law or to be in direct or indirect contempt of court. The term~~, except that this definition~~ does not include a child who commits an act constituting contempt of court arising out of a dependency proceeding or a proceeding concerning a child or family in need of services.

~~(9) "Child support" means a court-ordered obligation, enforced under chapter 61 and ss. 409.2551-409.2597, for monetary support for the care, maintenance, training, and education of a child.~~

(10) "Circuit" means any of the 20 judicial circuits as set

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forth in s. 26.021.

(11) "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a juvenile offender's or a child's physical, psychological, educational, career and technical educational ~~vocational~~, and social condition and family environment as they relate to the child's need for rehabilitative and treatment services, including substance abuse treatment ~~services~~, mental health ~~services~~, developmental ~~services~~, literacy ~~services~~, medical ~~services~~, family ~~services~~, and other specialized services, as appropriate.

(12) "Conditional release" means the care, treatment, help, transition-to-adulthood services, and supervision provided to a juvenile released from a residential commitment program which is intended to promote rehabilitation and prevent recidivism. The purpose of conditional release is to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the department to his or her ~~the~~ family. Conditional release includes, but is not limited to, nonresidential community-based programs.

(13) "Court~~,~~" ~~unless otherwise expressly stated,~~ means the circuit court assigned to exercise jurisdiction under this chapter, unless otherwise expressly stated.

(14) "Day treatment" means a nonresidential, community-based program designed to provide therapeutic intervention to youth served by the department or who are placed on probation or conditional release or are committed to the minimum-risk nonresidential level. A day-treatment ~~day treatment~~ program may provide educational and career and technical educational

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~~vocational~~ services and shall provide case management services; individual, group, and family counseling; training designed to address delinquency risk factors; and monitoring of a youth's compliance with, and facilitation of a youth's completion of, sanctions if ordered by the court. Program types may include, but are not limited to, career programs, marine programs, juvenile justice alternative schools, training and rehabilitation programs, and gender-specific programs.

(15)(a) "Delinquency program" means any intake, probation, or similar program; regional detention center or facility; or community-based program, whether owned and operated by or contracted by the department, or institution-owned ~~institution owned~~ and operated by or contracted by the department, which provides intake, supervision, or custody and care of children who are alleged to be or who have been found to be delinquent under this chapter.

(b) "Delinquency program staff" means supervisory and direct care staff of a delinquency program as well as support staff who have direct contact with children in a delinquency program.

~~(c) "Delinquency prevention programs" means programs designed for the purpose of reducing the occurrence of delinquency, including criminal gang activity, and juvenile arrests. The term excludes arbitration, diversionary or mediation programs, and community service work or other treatment available subsequent to a child committing a delinquent act.~~

(16) "Department" means the Department of Juvenile Justice.

(17) "Designated facility" or "designated treatment

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facility" means any facility designated by the department to provide treatment to juvenile offenders.

(18) "Detention care" means the temporary care of a child in secure or~~,~~ nonsecure~~, or home~~ detention, pending a court adjudication or disposition or execution of a court order. There are two ~~three~~ types of detention care, as follows:

(a) "Secure detention" means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.

(b) "Nonsecure detention" ~~means temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement.~~

~~(c) "Home detention"~~ means temporary nonsecure detention custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of ~~the~~ department staff pending adjudication, disposition, or placement. Forms of nonsecure detention include, but are not limited to, home detention, electronic monitoring, day-reporting centers, evening-reporting centers, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the court.

(19) "Detention center or facility" means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility

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provides ~~may provide~~ secure ~~or nonsecure~~ custody. A facility used for the commitment of adjudicated delinquents is ~~shall~~ not ~~be~~ considered a detention center or facility.

(20) "Detention hearing" means a hearing for the court to determine if a child should be placed in temporary custody, as provided for under part V in delinquency cases.

(21) "Disposition hearing" means a hearing in which the court determines the most appropriate dispositional services in the least restrictive available setting provided for under part VII, in delinquency cases.

(22) "Family" means a collective of persons, consisting of a child and a parent, guardian, adult custodian, or adult relative, in which:

(a) The persons reside in the same house or living unit; or

(b) The parent, guardian, adult custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(23) "Family in need of services" has the same meaning as provided in s. 984.03 ~~means a family that has a child for whom there is no pending investigation into an allegation of abuse, neglect, or abandonment or no current supervision by the department or the Department of Children and Family Services for an adjudication of dependency or delinquency~~. ~~The child must also have been referred to a law enforcement agency or the department for:~~

~~(a) Running away from parents or legal custodians;~~

~~(b) Persistently disobeying reasonable and lawful demands of parents or legal custodians, and being beyond their control;~~ ~~or~~

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~~(c) Habitual truancy from school.~~

~~(24) "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.~~

~~(25) "Habitually truant" means that:~~

~~(a) The child has 15 unexcused absences within 90 calendar days with or without the knowledge or justifiable consent of the child's parent or legal guardian, is subject to compulsory school attendance under s. 1003.21(1) and (2)(a), and is not exempt under s. 1003.21(3), s. 1003.24, or any other exemptions specified by law or the rules of the State Board of Education.~~

~~(b) Escalating activities to determine the cause, and to attempt the remediation, of the child's truant behavior under ss. 1003.26 and 1003.27 have been completed.~~

~~If a child who is subject to compulsory school attendance is responsive to the interventions described in ss. 1003.26 and 1003.27 and has completed the necessary requirements to pass the current grade as indicated in the district pupil progression plan, the child shall not be determined to be habitually truant and shall be passed. If a child within the compulsory school attendance age has 15 unexcused absences within 90 calendar days or fails to enroll in school, the state attorney may file a child-in-need-of-services petition. Before filing a petition, the child must be referred to the appropriate agency for evaluation. After consulting with the evaluating agency, the state attorney may elect to file a child in need of services petition.~~

~~(c) A school representative, designated according to school~~

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~~board policy, and a juvenile probation officer of the department have jointly investigated the truancy problem or, if that was not feasible, have performed separate investigations to identify conditions that could be contributing to the truant behavior; and if, after a joint staffing of the case to determine the necessity for services, such services were determined to be needed, the persons who performed the investigations met jointly with the family and child to discuss any referral to appropriate community agencies for economic services, family or individual counseling, or other services required to remedy the conditions that are contributing to the truant behavior.~~

~~(d) The failure or refusal of the parent or legal guardian or the child to participate, or make a good faith effort to participate, in the activities prescribed to remedy the truant behavior, or the failure or refusal of the child to return to school after participation in activities required by this subsection, or the failure of the child to stop the truant behavior after the school administration and the department have worked with the child as described in s. 1003.27(3) shall be handled as prescribed in s. 1003.27.~~

~~(26) "Halfway house" means a community-based residential program for 10 or more committed delinquents at the moderate-risk commitment level which is operated or contracted by the department.~~

(24)~~(27)~~ "Intake" means the initial acceptance and screening by the department or juvenile assessment center personnel of a complaint or a law enforcement report or probable cause affidavit of delinquency~~, family in need of services, or child in need of services~~ to determine the recommendation to be

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taken in the best interests of the child, the family, and the community. The emphasis of intake is on diversion and the least restrictive available services and~~. Consequently, intake~~ includes ~~such~~ alternatives such as:

(a) The disposition of the complaint, report, or probable cause affidavit without court or public agency action or judicial handling, if ~~when~~ appropriate.

(b) The referral of the child to another public or private agency, if ~~when~~ appropriate.

(c) The recommendation by the department ~~juvenile probation officer~~ of judicial handling, if ~~when~~ appropriate and warranted.

(25)~~(28)~~ "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

(26)~~(29)~~ "Juvenile justice continuum" includes, but is not limited to, ~~delinquency~~ prevention programs and services designed for the purpose of preventing or reducing delinquent acts, including criminal activity by criminal gangs, and juvenile arrests, as well as programs and services targeted at children who have committed delinquent acts~~,~~ and ~~children~~ who have previously been committed to residential treatment programs for delinquents. The term includes children-in-need-of-services and families-in-need-of-services programs under chapter 984; conditional release; substance abuse and mental health programs; educational and career programs; recreational programs; community services programs; community service work programs; mother-infant programs; and alternative dispute resolution programs serving children at risk of delinquency and their families, whether offered or delivered by state or local governmental entities, public or private for-profit or not-for-

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profit organizations, or religious or charitable organizations.

(27) ~~(30)~~ "Juvenile probation officer" means the authorized agent of the department who performs ~~the~~ intake, case management, or supervision functions.

(28) ~~(31)~~ "Legal custody or guardian" means a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(29) ~~(32)~~ "Licensed child-caring agency" means a person, society, association, or agency licensed by the Department of Children and Families ~~Family Services~~ to care for, receive, and board children.

(30) ~~(33)~~ "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

(31) ~~(34)~~ "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.

(32) ~~(35)~~ "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

(33) ~~(36)~~ "Mediation" means a process whereby a neutral

third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(34) ~~(37)~~ "Mother-infant program" means a residential program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents~~,~~ which is operated or contracted by the department. A mother-infant program facility must be licensed as a child care facility under s. 402.308 and must provide the services and support necessary to enable each juvenile mother committed to the facility to provide for the needs of her infant ~~infants~~ who, upon agreement of the mother, may accompany her in the program.

(35) ~~(38)~~ "Necessary medical treatment" means care that ~~which~~ is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.

(36) ~~(39)~~ "Next of kin" means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.

(37) ~~(40)~~ "Ordinary medical care" means medical procedures that are administered or performed on a routine basis and includes, but is ~~include, but are~~ not limited to, inoculations, physical examinations, remedial treatment for minor illnesses

and injuries, preventive services, medication management, chronic disease detection and treatment, and other medical procedures that are administered or performed on a routine basis and that do not involve hospitalization, surgery, the use of general anesthesia, or the provision of psychotropic medications.

(38) ~~(41)~~ "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1). If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to a ~~the~~ child has been legally terminated~~,~~ or an alleged or prospective parent~~,~~ unless the parental status falls within the terms of ~~either~~ s. 39.503(1) or s. 63.062(1).

(39) ~~(42)~~ "Preliminary screening" means the gathering of preliminary information to be used in determining a child's need for further evaluation or assessment or for referral for other substance abuse services through means such as psychosocial interviews~~,~~ urine and breathalyzer screenings~~,~~ and reviews of available educational, delinquency, and dependency records of the child.

(40) "Prevention" means programs, strategies, initiatives, and networks designed to keep children from making initial or further contact with the juvenile justice system.

~~(43) "Preventive services" means social services and other supportive and rehabilitative services provided to the parent of the child, the legal guardian of the child, or the custodian of the child and to the child for the purpose of averting the~~

~~removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's need for a safe, continuous, stable living environment and shall promote family autonomy and shall strengthen family life as the first priority whenever possible.~~

(41) ~~(44)~~ "Probation" means the legal status of probation created by law and court order in cases involving a child who has been found to have committed a delinquent act. Probation is an individualized program in which the freedom of the child is limited and the child is restricted to noninstitutional quarters or restricted to the child's home in lieu of commitment to the custody of the department. Youth on probation may be assessed and classified for placement in day-treatment probation programs designed for youth who represent a minimum risk to themselves and public safety and who do not require placement and services in a residential setting.

(42) ~~(45)~~ "Relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by ~~the~~ whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

(43) ~~(46)~~ "Restrictiveness level" means the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children. Sections 985.601(10) and 985.721 apply to children placed in programs at any residential commitment level. The restrictiveness levels of commitment are as follows:

(a) *Minimum-risk nonresidential.*—Programs or program models at this commitment level work with youth who remain in the community and participate at least 5 days per week in a day-treatment ~~day treatment~~ program. Youth assessed and classified for programs at this commitment level represent a minimum risk to themselves and public safety and do not require placement and services in residential settings. Youth in this level have full access to, and reside in, the community. Youth who have been found to have committed delinquent acts that involve firearms, that are sexual offenses, or that would be life felonies or first-degree ~~first degree~~ felonies if committed by an adult may not be committed to a program at this level.

~~(b) *Low risk residential.* Programs or program models at this commitment level are residential but may allow youth to have unsupervised access to the community. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Youth assessed and classified for placement in programs at this commitment level represent a low risk to themselves and public safety but do require placement and services in residential settings. Children who have been found to have committed delinquent acts that involve firearms, delinquent acts that are sexual offenses, or delinquent acts that would be life felonies or first degree felonies if committed by an adult shall not be committed to a program at this level.~~

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(b) ~~(c)~~ *Nonsecure* ~~*Moderate-risk*~~ *residential.*—Programs or program models at this commitment level are residential but may allow youth to have supervised access to the community. Facilities at this commitment level are either environmentally secure or~~,~~ staff secure, or are hardware secure ~~hardware secure~~ with walls, fencing, or locking doors. Residential facilities at this commitment level may ~~shall~~ have up to 90 ~~no more than 165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols~~,~~ and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for placement in programs at this commitment level represent a low or moderate risk to public safety and require close supervision. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself, ~~or~~ herself, or others. Mechanical restraint may also be used when necessary.

(c) ~~(d)~~ *High-risk residential.*—Programs or program models at this commitment level are residential and do not allow youth to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be approved by a court for a youth who has made successful progress in his or her program so that ~~in order for~~ the youth may respond to ~~attend~~ a family emergency or, during the final 60 days of his or her placement, ~~to~~ visit his or her home, enroll in school or a career and technical education ~~vocational~~ program, complete a

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job interview, or participate in a community service project. High-risk residential facilities are hardware secure ~~hardware-secure~~ with perimeter fencing and locking doors. Residential facilities at this commitment level may ~~shall~~ have up to 90 ~~no more than 165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols~~,~~ and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety which ~~that~~ outweighs placement in programs at lower commitment levels. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself, ~~or~~ herself, or others. Mechanical restraint may also be used when necessary. The facility shall ~~may~~ provide for single cell occupancy, except that youth may be housed together during prerelease transition.

(d) ~~(c)~~ *Maximum-risk residential.*—Programs or program models at this commitment level include juvenile correctional facilities and juvenile prisons. The programs at this commitment level are long-term residential and do not allow youth to have access to the community. Facilities at this commitment level are maximum-custody and hardware secure~~, hardware secure~~ with perimeter security fencing and locking doors. Residential facilities at this commitment level may ~~shall~~ have up to 90 ~~no more than 165~~ beds each, including campus-style programs, unless those campus-style programs include more than one ~~level of restrictiveness, provide multilevel education and~~ treatment program ~~programs~~ using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself, ~~or~~ herself, or others. Mechanical restraint may also be used when necessary. Facilities at this commitment level ~~The facility~~ shall provide for single cell occupancy, except that youth may be housed together during prerelease transition. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

(44) ~~(47)~~ "Respite" means a placement that is available for the care, custody, and placement of a youth charged with domestic violence as an alternative to secure detention or for placement of a youth when a shelter bed for a child in need of services or a family in need of services is unavailable.

(45) ~~(48)~~ "Secure detention center or facility" means a physically restricting facility for the temporary care of children, pending adjudication, disposition, or placement.

(46) ~~(49)~~ "Shelter" means a place for the temporary care of a child who is alleged to be or who has been found to be delinquent.

~~(50) "Shelter hearing" means a hearing provided for under~~

~~s. 984.14 in family-in-need-of-services cases or child-in-need-of-services cases.~~

~~(51) "Staff-secure shelter" means a facility in which a child is supervised 24 hours a day by staff members who are awake while on duty. The facility is for the temporary care and assessment of a child who has been found to be dependent, who has violated a court order and been found in contempt of court, or whom the Department of Children and Family Services is unable to properly assess or place for assistance within the continuum of services provided for dependent children.~~

(47)~~(52)~~ "Substance abuse" means using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(48)~~(53)~~ "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law.

(49)~~(54)~~ "Temporary legal custody" means the relationship that a juvenile court creates between a child and an adult relative of the child, adult nonrelative approved by the court, or other person until a more permanent arrangement is ordered. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the

court order establishing the temporary legal custody relationship.

(50)~~(55)~~ "Temporary release" means the terms and conditions under which a child is temporarily released from a residential commitment facility or allowed home visits. If the temporary release is from a nonsecure ~~moderate-risk~~ residential facility, a high-risk residential facility, or a maximum-risk residential facility, the terms and conditions of the temporary release must be approved by the child, the court, and the facility. ~~The term includes periods during which the child is supervised pursuant to a conditional release program or a period during which the child is supervised by a juvenile probation officer or other nonresidential staff of the department or staff employed by an entity under contract with the department.~~

(51)~~(56)~~ "Transition-to-adulthood services" means services that are provided for youth in the custody of the department or under the supervision of the department and that have the objective of instilling the knowledge, skills, and aptitudes essential to a socially integrated, self-supporting adult life. The services may include, but are not limited to:

(a) Assessment of the youth's ability and readiness for adult life.

(b) A plan for the youth to acquire the knowledge, information, and counseling necessary to make a successful transition to adulthood.

(c) Services that have proven effective toward achieving the transition to adulthood.

(52) "Trauma-informed care" means the provision of services to children with a history of trauma in a manner that recognizes

the symptoms and acknowledges the role the trauma has played in the child's life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

(53)~~(57)~~ "Violation of law" or "delinquent act" means a violation of any law of this state, the United States, or any other state which is a misdemeanor or a felony or a violation of a county or municipal ordinance which would be punishable by incarceration if the violation were committed by an adult.

(54)~~(58)~~ "Waiver hearing" means a hearing provided for under s. 985.556(4).

Section 4. Subsections (4) and (5) of section 985.0301, Florida Statutes, are amended to read:

985.0301 Jurisdiction.—

(4)(a) Petitions alleging delinquency shall be filed in the county where the delinquent act or violation of law occurred.~~,~~ ~~but~~ The circuit court for that county may transfer the case to the circuit court of the circuit in which the child resides or will reside at the time of detention or placement for dispositional purposes. A child who has been detained may ~~shall~~ be transferred to the ~~appropriate~~ detention center or facility in the circuit in which the child resides or will reside at the time of detention ~~or other placement directed by the receiving court~~.

(b) The jurisdiction to be exercised by the court when a child is taken into custody before the filing of a petition under subsection (2) shall be exercised by the circuit court for the county in which the child is taken into custody, and such court has ~~which court shall have~~ personal jurisdiction of the

child and the child's parent or legal guardian. If the child has been detained, upon the filing of a petition in the appropriate circuit court, the court that is exercising initial personal jurisdiction ~~of the person~~ of the child shall~~, if the child has been detained,~~ immediately order the child to be transferred to the detention center or facility or other placement as ordered by the court having subject matter jurisdiction of the case.

(5)(a) Notwithstanding s. 743.07, ~~ss. 743.07, 985.43, 985.433, 985.435, 985.439, and 985.441,~~ and except as provided in paragraphs (b) and (c) ~~ss. 985.461 and 985.465 and paragraph (f)~~, when the jurisdiction of a ~~any~~ child who is alleged to have committed a delinquent act or violation of law is obtained, the court retains ~~shall retain~~ jurisdiction to dispose the case, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child which the court had before the child became an adult. ~~For the purposes of s. 985.461, the court may retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services. The additional services do not extend involuntary court-sanctioned residential commitment and therefore require voluntary participation by the affected youth.~~

(b) Unless relinquished by its own order, the court retains jurisdiction over a child on probation until the child reaches 19 years of age ~~Notwithstanding ss. 743.07 and 985.455(3), the term of any order placing a child in a probation program must be until the child's 19th birthday unless he or she is released by the court on the motion of an interested party or on his or her own motion~~.

(c) Unless relinquished by its own order, the court retains jurisdiction over a child committed to the department until the child reaches 21 years of age, specifically for the purpose of allowing the child to complete the department's commitment program, including conditional release supervision.

(d) The court retains jurisdiction over a juvenile sex offender as defined in s. 985.475 who has been placed in a community-based treatment alternative program with supervision or in a program or facility for juvenile sex offenders pursuant to s. 985.48 until the juvenile sex offender reaches 21 years of age, specifically for the purpose of completing the program.

~~(c) Notwithstanding ss. 743.07 and 985.455(3), the term of the commitment must be until the child is discharged by the department or until he or she reaches the age of 21 years. Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441, 985.455, and 985.513, and except as provided in this section, a child may not be held under a commitment from a court under s. 985.439, s. 985.441(1)(a) or (b), or s. 985.455 after becoming 21 years of age.~~

~~(d) The court may retain jurisdiction over a child committed to the department for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program to allow the child to participate in a juvenile conditional release program pursuant to s. 985.46. The jurisdiction of the court may not be retained after the child's 22nd birthday. However, if the child is not successful in the conditional release program, the department may use the transfer procedure under s. 985.441(4).~~

~~(e) The court may retain jurisdiction over a child committed to the department for placement in an intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program until the child reaches the age of 21. If the court exercises this jurisdiction retention, it shall do so solely for the purpose of the child completing the intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, or in a residential sex offender program. Such jurisdiction retention does not apply for other programs, other purposes, or new offenses.~~

~~(f) The court may retain jurisdiction over a child committed to a juvenile correctional facility or a juvenile prison until the child reaches the age of 21 years, specifically for the purpose of allowing the child to complete such program.~~

~~(g) The court may retain jurisdiction over a juvenile sexual offender who has been placed in a program or facility for juvenile sexual offenders until the juvenile sexual offender reaches the age of 21, specifically for the purpose of completing the program.~~

(e) ~~(h)~~ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied. To retain jurisdiction, the court shall enter a restitution order, which is separate from any disposition or order of commitment, on or before ~~prior to~~ the date that the court's jurisdiction would cease under this section. The contents of the restitution order are ~~shall be~~ limited to the child's name and address, the name and address of the parent or legal guardian, the name and

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address of the payee, the case number, the date and amount of restitution ordered, any amount of restitution paid, the amount of restitution due and owing, and a notation that costs, interest, penalties, and attorney fees may also be due and owing. The terms of the restitution order are subject to s. 775.089(5).

(f) ~~(i)~~ This subsection does not prevent the exercise of jurisdiction by any court having jurisdiction of the child if the child, after becoming an adult, commits a violation of law.

Section 5. Subsections (2) and (4) of section 985.037, Florida Statutes, are amended to read:

985.037 Punishment for contempt of court; alternative sanctions.—

(2) PLACEMENT IN A SECURE DETENTION FACILITY.—A child may be placed in a secure detention facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate~~,~~ or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction. A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility for up to ~~not to exceed~~ 5 days for a first offense and up to ~~not to exceed~~ 15 days for a second or subsequent offense.

(4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE PROCESS.—

(a) If a child is charged with direct contempt of court, including traffic court, the court may impose an authorized sanction immediately. The court must hold a hearing to determine if the child committed direct contempt. Due process must be afforded to the child during such hearing.

(b) If a child is charged with indirect contempt of court, the court must hold a hearing within 24 hours to determine whether the child committed indirect contempt of a valid court order. At the hearing, the following due process rights must be provided to the child:

1. Right to a copy of the order to show cause alleging facts supporting the contempt charge.

2. Right to an explanation of the nature and the consequences of the proceedings.

3. Right to legal counsel and the right to have legal counsel appointed by the court if the juvenile is indigent, under s. 985.033.

4. Right to confront witnesses.

5. Right to present witnesses.

6. Right to have a transcript or record of the proceeding.

7. Right to appeal to an appropriate court.

The child's parent or guardian may address the court regarding the due process rights of the child. Upon motion by the defense or state attorney, the court shall review the placement of the child ~~every 72 hours~~ to determine whether it is appropriate for the child to remain in the facility.

(c) The court may not order that a child be placed in a secure detention facility as ~~for~~ punishment for contempt unless the court determines that an alternative sanction is inappropriate or unavailable or that the child was initially ordered to an alternative sanction and did not comply with the alternative sanction. The court is encouraged to order a child to perform community service, up to the maximum number of hours,

if ~~where~~ appropriate before ordering that the child be placed in a secure detention facility as punishment for contempt of court.

(d) In addition to any other sanction imposed under this section, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend, a child's driver ~~driver's~~ license or driving privilege. The court may order that a child's driver ~~driver's~~ license or driving privilege be withheld or suspended for up to 1 year for a first offense of contempt and up to 2 years for a second or subsequent offense. If the child's driver ~~driver's~~ license or driving privilege is suspended or revoked for any reason at the time the sanction for contempt is imposed, the court shall extend the period of suspension or revocation by the additional period ordered under this paragraph. If the child's driver ~~driver's~~ license is being withheld at the time the sanction for contempt is imposed, the period of suspension or revocation ordered under this paragraph shall begin on the date on which the child is otherwise eligible to drive.

Section 6. Section 985.105, Florida Statutes, is repealed.

Section 7. Subsection (1) of section 985.11, Florida Statutes, is amended to read:

985.11 Fingerprinting and photographing.—

(1)(a) A child who is charged with or found to have committed an offense that would be a felony if committed by an adult shall be fingerprinted, and the fingerprints shall ~~must~~ be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(a).

(b) Unless the child is issued a civil citation or participating in a similar diversion program pursuant to s.

985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault~~,~~ as defined in s. 784.011.

2. Battery~~,~~ as defined in s. 784.03.

3. Carrying a concealed weapon~~,~~ as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs~~,~~ as defined in s. 790.1615(1).

5. Neglect of a child~~,~~ as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers~~,~~ as defined in s. 784.07(2)(a).

7. Open carrying of a weapon~~,~~ as defined in s. 790.053.

8. Exposure of sexual organs~~,~~ as defined in s. 800.03.

9. Unlawful possession of a firearm~~,~~ as defined in s. 790.22(5).

10. Petit theft~~,~~ as defined in s. 812.014.

11. Cruelty to animals~~,~~ as defined in s. 828.12(1).

12. Arson~~,~~ resulting in bodily harm to a firefighter~~,~~ as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and

these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but are ~~shall be~~ available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

(c) The court is ~~shall be~~ responsible for the fingerprinting of a ~~any~~ child at the disposition hearing if the child has been adjudicated or had adjudication withheld for any felony in the case currently before the court.

Section 8. Subsection (2) of section 985.14, Florida Statutes, is amended to read:

985.14 Intake and case management system.—

(2) The intake process shall be performed by the department or juvenile assessment center personnel through a case management system. The purpose of the intake process is to assess the child's needs and risks and to determine the most

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appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process consists of an initial assessment and may be followed by a full mental health, substance abuse, or psychosexual evaluation. The intake process shall result in choosing the most appropriate services through a balancing of the interests and needs of the child with those of the family and the community ~~public~~. The juvenile probation officer shall make ~~be responsible for making~~ informed decisions and recommendations to other agencies, the state attorney, and the courts so that the child and family may receive the least intrusive service alternative throughout the judicial process. The department shall establish uniform procedures through which ~~for~~ the juvenile probation officer may ~~to~~ provide a preliminary screening of the child and family for substance abuse and mental health services before ~~prior to~~ the filing of a petition or as soon as possible thereafter and before ~~prior to~~ a disposition hearing.

Section 9. Section 985.145, Florida Statutes, is amended to read:

985.145 Responsibilities of the department ~~juvenile probation officer~~ during intake; screenings and assessments.—

(1) The department ~~juvenile probation officer~~ shall serve as the primary case manager for the purpose of managing, coordinating, and monitoring the services provided to the child. Each program administrator within the Department of Children and Families ~~Family Services~~ shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the department

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~~assigned juvenile probation officer~~ shall be responsible for the following:

(a) *Reviewing probable cause affidavit.*—The department ~~juvenile probation officer~~ shall make a preliminary determination as to whether the report, affidavit, or complaint is complete, consulting with the state attorney as ~~may be~~ necessary. A report, affidavit, or complaint alleging that a child has committed a delinquent act or violation of law shall be made to the intake office operating in the county in which the child is found or in which the delinquent act or violation of law occurred. Any person or agency having knowledge of the facts may make such a written report, affidavit, or complaint and shall furnish to the intake office facts sufficient to establish the jurisdiction of the court and to support a finding by the court that the child has committed a delinquent act or violation of law.

(b) *Notification concerning apparent insufficiencies in probable cause affidavit.*—In any case where the department ~~juvenile probation officer~~ or the state attorney finds that the report, affidavit, or complaint is insufficient by the standards for a probable cause affidavit, the department ~~juvenile probation officer~~ or state attorney shall return the report, affidavit, or complaint, without delay, to the person or agency originating the report, affidavit, or complaint or having knowledge of the facts or to the appropriate law enforcement agency having investigative jurisdiction of the offense, and shall request, and the person or agency shall promptly furnish, additional information in order to comply with the standards for a probable cause affidavit.

(c) *Screening.*—During the intake process, the department ~~juvenile probation officer~~ shall screen each child or shall cause each child to be screened in order to determine:

1. Appropriateness for release; referral to a diversionary program, including, but not limited to, a teen court program; referral for community arbitration; or referral to some other program or agency for the purpose of nonofficial or nonjudicial handling.

2. The presence of medical, psychiatric, psychological, substance abuse, educational, or career and technical education ~~vocational~~ problems, or other conditions that may have caused the child to come to the attention of law enforcement or the department. The child shall also be screened to determine whether the child poses a danger to himself or herself or others in the community. The results of this screening shall be made available to the court and to court officers. In cases where such conditions are identified and a nonjudicial handling of the case is chosen, the department ~~juvenile probation officer~~ shall attempt to refer the child to a program or agency, together with all available and relevant assessment information concerning the child's precipitating condition.

(d) *Completing risk assessment instrument.*—The department ~~juvenile probation officer~~ shall ensure that a risk assessment instrument establishing the child's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court.

(e) *Rights.*—The department ~~juvenile probation officer~~ shall inquire as to whether the child understands his or her rights to counsel and against self-incrimination.

(f) *Multidisciplinary assessment.*—The department ~~juvenile probation officer~~ shall coordinate the multidisciplinary assessment when required, which includes the classification and placement process that determines the child's priority needs, risk classification, and treatment plan. If ~~When~~ sufficient evidence exists to warrant a comprehensive assessment and the child fails to voluntarily participate in the assessment efforts, the department ~~juvenile probation officer~~ shall inform the court of the need for the assessment and the refusal of the child to participate in such assessment. This assessment, classification, and placement process shall develop into the predisposition report.

(g) *Comprehensive assessment.* ~~The juvenile probation officer,~~ Pursuant to uniform procedures established by the department and upon determining that the report, affidavit, or complaint is complete, the department shall:

1. Perform the preliminary screening and make referrals for a comprehensive assessment regarding the child's need for substance abuse treatment services, mental health services, intellectual disability services, literacy services, or other educational or treatment services.

2. If indicated by the preliminary screening, provide for a comprehensive assessment of the child and family for substance abuse problems, using community-based licensed programs with clinical expertise and experience in the assessment of substance abuse problems.

3. If indicated by the preliminary screening, provide for a comprehensive assessment of the child and family for mental health problems, using community-based psychologists,

psychiatrists, or other licensed mental health professionals who have clinical expertise and experience in the assessment of mental health problems.

(h) *Referrals for services.*—The department ~~juvenile probation officer~~ shall make recommendations for services and facilitate the delivery of those services to the child, including any mental health services, educational services, family counseling services, family assistance services, and substance abuse services.

(i) *Recommendation concerning a petition.*—Upon determining that the report, affidavit, or complaint complies with the standards of a probable cause affidavit and that the interests of the child and the public will be best served, the department ~~juvenile probation officer~~ may recommend that a delinquency petition not be filed. If such a recommendation is made, the department ~~juvenile probation officer~~ shall advise in writing the person or agency making the report, affidavit, or complaint, the victim, if any, and the law enforcement agency having investigative jurisdiction over the offense of the recommendation; the reasons therefor; and that the person or agency may submit, within 10 days after the receipt of such notice, the report, affidavit, or complaint to the state attorney for special review. The state attorney, upon receiving a request for special review, shall consider the facts presented by the report, affidavit, or complaint~~,~~ and by the department ~~juvenile probation officer who made the recommendation that no petition be filed,~~ before making a final decision as to whether a petition or information should or should not be filed.

(j) *Completing intake report.*—Subject to the interagency

agreement authorized under this paragraph, the department ~~the juvenile probation officer for each case in which a child is alleged to have committed a violation of law or delinquent act and is not detained~~ shall submit a written report to the state attorney for each case in which a child is alleged to have committed a violation of law or delinquent act and is not detained. The report shall be submitted within 20 days after the date the child is taken into custody and must include~~, including~~ the original police report, complaint, or affidavit, or a copy thereof, and ~~including~~ a copy of the child's prior juvenile record~~, within 20 days after the date the child is taken into custody~~. In cases in which the child is in detention, the intake office report must be submitted within 24 hours after the child is placed into detention. The intake office report may include a recommendation that a petition or information be filed or that no petition or information be filed and may set forth reasons for the recommendation. The state attorney and the department may, on a district-by-district basis, enter into interagency agreements denoting the cases that will require a recommendation and those for which a recommendation is unnecessary.

(2) Before ~~Prior to~~ requesting that a delinquency petition be filed or before ~~prior to~~ filing a dependency petition, the department ~~juvenile probation officer~~ may request the parent or legal guardian of the child to attend a course of instruction in parenting skills, training in conflict resolution, and the practice of nonviolence; to accept counseling; or to receive other assistance from any agency in the community which notifies the clerk of the court of the availability of its services. If ~~Where~~ appropriate, the department ~~juvenile probation officer~~

shall request both parents or guardians to receive such parental assistance. The department ~~juvenile probation officer~~ may, in determining whether to request that a delinquency petition be filed, take into consideration the willingness of the parent or legal guardian to comply with such request. The parent or guardian must provide the department ~~juvenile probation officer~~ with identifying information, including the parent's or guardian's name, address, date of birth, social security number, and driver ~~driver's~~ license number or identification card number in order to comply with s. 985.039.

(3) If ~~When~~ indicated by the comprehensive assessment, the department is authorized to contract within appropriated funds for services with a local nonprofit community mental health or substance abuse agency licensed or authorized under chapter 394 or chapter 397 or other authorized nonprofit social service agency providing related services. The determination of mental health or substance abuse services shall be conducted in coordination with existing programs providing mental health or substance abuse services in conjunction with the intake office.

(4) Client information resulting from the screening and evaluation shall be documented under rules of the department and shall serve to assist the department ~~juvenile probation officer~~ in providing the most appropriate services and recommendations in the least intrusive manner. Such client information shall be used in the multidisciplinary assessment and classification of the child, but such information, and any information obtained directly or indirectly through the assessment process, is inadmissible in court before ~~prior to~~ the disposition hearing, unless the child's written consent is obtained. At the

disposition hearing, documented client information shall serve to assist the court in making the most appropriate custody, adjudicatory, and dispositional decision.

(5) If the screening and assessment indicate that the interests of the child and the public will be best served, the department ~~juvenile probation officer~~, with the approval of the state attorney, may refer the child for care, diagnostic, and evaluation services; substance abuse treatment services; mental health services; intellectual disability services; a diversionary, arbitration, or mediation program; community service work; or other programs or treatment services voluntarily accepted by the child and the child's parents or legal guardian. If a child volunteers to participate in any work program under this chapter or volunteers to work in a specified state, county, municipal, or community service organization supervised work program or to work for the victim, the child is considered an employee of the state for the purposes of liability. In determining the child's average weekly wage, unless otherwise determined by a specific funding program, all remuneration received from the employer is considered a gratuity, and the child is not entitled to any benefits otherwise payable under s. 440.15 regardless of whether the child may be receiving wages and remuneration from other employment with another employer and regardless of the child's future wage-earning capacity.

(6) The victim, if any, and the law enforcement agency that investigated the offense shall be notified immediately by the state attorney of the action taken under subsection (5).

Section 10. Section 985.17, Florida Statutes, is created to

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read:

985.17 Prevention services.—

(1) Prevention services decrease recidivism by addressing the needs of at-risk youth and their families, preventing further involvement in the juvenile justice system, protecting public safety, and facilitating successful reentry into the community. To assist in decreasing recidivism, the department's prevention services should strengthen protective factors, reduce risk factors, and use tested and effective approaches.

(2) A primary focus of the department's prevention services is to develop capacity for local communities to serve their youth.

(a) The department shall engage faith-based and community-based organizations to provide a full range of voluntary programs and services to prevent and reduce juvenile delinquency, including, but not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

(b) The department shall establish volunteer coordinators in each circuit and encourage the recruitment of volunteers to serve as mentors for youth in department services.

(c) The department shall promote the Invest In Children license plate developed pursuant to s. 320.08058(11) to help fund programs and services to prevent juvenile delinquency. The department shall allocate moneys for programs and services within each county based on that county's proportionate share of the license plate annual use fee collected by the county pursuant to s. 320.08058(11).

(3) The department's prevention services for youth at risk of becoming delinquent should focus on preventing initial or

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further involvement in the juvenile justice system by including services such as literacy services, gender-specific programming, and recreational and after-school services and should include targeted services to troubled, truant, ungovernable, abused, trafficked, or runaway youth. To decrease the likelihood that a youth will commit a delinquent act, the department may provide specialized services addressing the strengthening of families, job training, and substance abuse.

(4) In an effort to decrease the prevalence of disproportionate minority representation in the juvenile justice system, the department's prevention services should address the multiple needs of minority youth at risk of becoming delinquent.

(5) The department shall expend funds related to prevention services in a manner consistent with the policies expressed in ss. 984.02 and 985.01. The department shall expend such funds in a manner that maximizes accountability to the public and ensures the documentation of outcomes.

(a) As a condition of the receipt of state funds, entities that receive or use state moneys to fund prevention services through contracts with the department or grants from any entity dispersed by the department shall:

1. Design the programs providing such services to further one or more of the following strategies:

a. Encouraging youth to attend and succeed in school, which may include special assistance and tutoring to address deficiencies in academic performance and collecting outcome data to reveal the number of days youth attended school while participating in the program.

b. Engaging youth in productive and wholesome activities

during nonschool hours which build positive character, instill positive values, and enhance educational experiences.

c. Encouraging youth to avoid the use of violence.

d. Assisting youth in acquiring the skills needed to find meaningful employment, which may include assistance in finding a suitable employer for the youth.

2. Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

(b) The department shall monitor output and outcome measures for each program strategy in paragraph (a) and include them in the annual Comprehensive Accountability Report published pursuant to s. 985.632.

(c) The department shall monitor all programs that receive or use state moneys to fund juvenile delinquency prevention services through contracts or grants with the department for compliance with all provisions in the contracts or grants.

Section 11. Section 985.24, Florida Statutes, is amended to read:

985.24 Use of detention; prohibitions.—

(1) All determinations and court orders regarding the use of ~~secure, nonsecure, or home~~ detention care must ~~shall~~ be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;

(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;

(c) Presents a history of committing a property offense

before ~~prior to~~ adjudication, disposition, or placement;

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(e) Requests protection from imminent bodily harm.

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into secure or~~,~~ nonsecure~~, or home~~ detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

(3) A child alleged to be dependent under chapter 39 may not, under any circumstances, be placed into secure detention care.

(4) The department may develop nonsecure, nonresidential evening-reporting centers as an alternative to placing a child in secure detention to serve children and families while awaiting court hearings. Evening-reporting centers may be collocated with the juvenile assessment center. At a minimum, evening-reporting centers shall be operated during the afternoon and evening hours and provide a highly structured program of supervision. Evening-reporting centers may also provide academic

tutoring, counseling, family engagement programs, and other activities.

(5)~~(4)~~ The department shall continue to identify alternatives to secure detention care and shall develop such alternatives and annually submit them to the Legislature for authorization and appropriation.

Section 12. Paragraph (b) of subsection (2) and subsection (4) of section 985.245, Florida Statutes, are amended to read:

985.245 Risk assessment instrument.—

(2)

(b) The risk assessment instrument, at a minimum, shall consider ~~take into consideration, but need not be limited to,~~ prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also consider ~~take into consideration~~ appropriate aggravating and mitigating circumstances, ~~and~~ shall be designed to target a narrower population of children than s. 985.255, and~~. The risk assessment instrument~~ shall ~~also~~ include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted~~,~~ and, if detention care is warranted, whether the child should be placed into secure or~~,~~ nonsecure~~, or home~~ detention care.

(4) If ~~For~~ a child who is under the supervision of the department through probation, ~~home detention,~~ nonsecure detention, conditional release, postcommitment probation, or commitment ~~and who~~ is charged with committing a new offense, the

risk assessment instrument may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department and the new offense.

Section 13. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

(1) The department ~~juvenile probation officer~~ shall receive custody of a child who has been taken into custody from the law enforcement agency or court and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is appropriate ~~required~~.

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into secure detention care or~~,~~ nonsecure detention care~~, or home detention care~~ shall be made by the department ~~juvenile probation officer~~ under ss. 985.24 and 985.245(1).

(b) The department ~~juvenile probation officer~~ shall base its ~~the~~ decision as to whether ~~or not~~ to place the child into secure ~~detention care, home detention care,~~ or nonsecure detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245. However, a child charged with possessing or discharging a firearm on school property in violation of s. 790.115 shall be placed in secure detention care. A child who has been taken into custody on three or more separate occasions within a 60-day period shall be placed in secure detention care until the child's detention hearing.

(c) If the child's final score on the risk assessment instrument indicates that ~~juvenile probation officer determines that a child who is eligible for~~ detention care is appropriate, but the department otherwise determines he or she ~~based upon the results of the risk assessment instrument~~ should be released, the department ~~juvenile probation officer~~ shall contact the state attorney, who may authorize release.

(d) If the child's final score on the risk assessment instrument indicates that detention is not appropriate ~~authorized~~, the child may be released by the department ~~juvenile probation officer~~ in accordance with ss. 985.115 and 985.13.

~~Under no circumstances shall~~ The department, ~~juvenile probation officer or~~ the state attorney, or a law enforcement officer may not authorize the detention of any child in a jail or other facility intended or used for the detention of adults~~,~~ without an order of the court.

Section 14. Section 985.255, Florida Statutes, is amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into nonsecure or secure ~~home~~ detention care shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order continued detention ~~or detained in secure detention care prior to a detention hearing may continue to be detained by the court~~ if:

(a) The child is alleged to be an escapee from a residential commitment program~~,~~ or an absconder from a nonresidential commitment program, a probation program, or

conditional release supervision~~;~~ or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense that ~~which~~, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession or discharging a firearm on school property in violation of s. 790.115 or the illegal possession of a firearm.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree which ~~that~~ does not involve a violation of chapter 893, or a felony of the third degree which ~~that~~ is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with a felony of the ~~any~~ second degree or a felony of the third degree ~~felony~~ involving a violation of chapter 893 or a felony of the ~~any~~ third degree which ~~felony that~~ is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations before ~~prior to~~ court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on nonsecure ~~home~~ detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:~~,~~

1. For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or

2. At two or more court hearings of any nature on the same case, regardless of the results of the risk assessment instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

~~(j) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.~~

(2) A child who is charged with committing an offense classified as ~~of~~ domestic violence as defined in s. 741.28 and whose risk assessment indicates secure detention is not appropriate ~~who does not meet detention criteria~~ may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available; or~~.~~

(b) It is necessary to place the child in secure detention in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that respite care is unavailable or it ~~detention care~~ is necessary to protect the victim from injury. However, the child may not be held in

detention care beyond the time limits provided ~~set forth~~ in this section or s. 985.26.

(3)(a) ~~A child who meets any of the criteria in subsection (1) and who is ordered to be detained under that subsection shall be given a hearing within 24 hours after being taken into custody.~~ The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the department ~~juvenile probation officer~~ and, based on the criteria in subsection (1), shall determine the need for continued detention. ~~A child placed into secure, nonsecure, or home detention care may continue to be so detained by the court.~~

(b) If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in s. 790.22(8) or ~~in~~ s. 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement by ~~no later than~~ 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been

granted under s. 985.26(4). If the court order does not include a date of release, the release date must be requested of the court on the same date the youth was placed on detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the youth on detention care must reflect the next detention review hearing, which should be held within 3 calendar days after the child's initial detention placement.

Section 15. Subsections (1) through (3) of section 985.26, Florida Statutes, are amended to read:

985.26 Length of detention.—

(1) A child may not be placed into or held in secure or~~,~~ nonsecure~~, or home~~ detention care for more ~~longer~~ than 24 hours unless the court orders such detention care~~,~~ and the order includes specific instructions that direct the release of the child from such detention care~~,~~ in accordance with s. 985.255. The order shall be a final order, reviewable by appeal under s. 985.534 and the Florida Rules of Appellate Procedure. Appeals of such orders ~~shall~~ take precedence over other appeals and other pending matters.

(2) A child may not be held in secure or~~,~~ nonsecure~~, or home~~ detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court. However, upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony

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of the first degree, or a felony of the second degree involving violence against any individual.

(3) Except as provided in subsection (2), a child may not be held in secure or~~,~~ nonsecure~~, or home~~ detention care for more than 15 days following the entry of an order of adjudication.

Section 16. Section 985.265, Florida Statutes, is amended to read:

985.265 Detention transfer and release; education; adult jails.—

(1) If a child is detained under this part, the department may transfer the child from nonsecure ~~or home~~ detention care to secure detention care only if significantly changed circumstances warrant such transfer.

(2) If a child is on release status and not detained under this part, the child may be placed into secure or~~,~~ nonsecure~~, or home~~ detention care only pursuant to a court hearing in which the original risk assessment instrument and the~~, rescored based on~~ newly discovered evidence or changed circumstances are introduced into evidence with a rescored risk assessment instrument ~~with the results recommending detention, is introduced into evidence~~.

(3)(a) If ~~When~~ a juvenile sexual offender is placed in detention, detention staff shall provide appropriate monitoring and supervision to ensure the safety of other children in the facility.

(b) If ~~When~~ a juvenile charged with murder under s. 782.04, sexual battery under chapter 794, stalking under s. 784.048, or domestic violence as defined in s. 741.28, or an attempt to commit any of these offenses ~~sexual offender~~, ~~under this~~

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~~subsection,~~ is released from secure detention or transferred to ~~home detention or~~ nonsecure detention, detention staff shall immediately notify the appropriate law enforcement agency, ~~and~~ school personnel, and the victim.

(4)(a) While a child who is currently enrolled in school is in nonsecure ~~or home~~ detention care, the child shall continue to attend school unless otherwise ordered by the court.

(b) While a child is in secure detention care, the child shall receive education commensurate with his or her grade level and educational ability.

(5) The court shall order the delivery of a child to a jail or other facility intended or used for the detention of adults:

(a) If ~~When~~ the child has been transferred or indicted for criminal prosecution as an adult under part X., ~~except that~~ The court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility; or

(b) If ~~When~~ a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.

A ~~The~~ child shall be housed separately from adult inmates to prohibit the ~~a~~ child from having regular contact with incarcerated adults, including trustees. As used in this subsection, the term "regular contact" means sight and sound contact. Separation of children from adults may not allow ~~shall permit no~~ more than haphazard or accidental contact. The

receiving jail or other facility shall provide ~~contain~~ a separate section for children and shall have ~~an adequate~~ staff adequate to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 ~~15~~ minutes. This subsection does not prohibit placing two or more children in the same cell. ~~Under no circumstances shall~~ A child may not be placed in a ~~the same~~ cell with an adult.

Section 17. Section 985.27, Florida Statutes, is amended to read:

985.27 Postadjudication ~~Postcommitment~~ detention while awaiting commitment placement.—

(1) The court must place all children who are adjudicated and awaiting placement in a commitment program in detention care. Children who are in ~~home detention care or~~ nonsecure detention care may be placed on electronic monitoring.

(a) ~~A child who is awaiting placement in a low-risk residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. A child who is placed in home detention care, nonsecure detention care, or home or nonsecure detention care with electronic monitoring, while awaiting placement in a minimum-risk or low-risk program, may be held in secure detention care for 5 days, if the child violates the conditions of the home detention care, the nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days~~

~~in secure detention care.~~

~~(b)~~ A child who is awaiting placement in a nonsecure ~~moderate-risk~~ residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. A ~~Any~~ child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and legal holidays, and except as otherwise provided in this section. A child who is placed in ~~home detention care,~~ nonsecure detention care~~,~~ or ~~home or~~ nonsecure detention care with electronic monitoring~~,~~ while awaiting placement in a nonsecure residential ~~moderate-risk~~ program~~,~~ may be held in secure detention care for 5 days~~,~~ if the child violates the conditions of ~~the home detention care,~~ the nonsecure detention care~~,~~ or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.

(b) ~~(c)~~ If the child is committed to a high-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.

(c) ~~(d)~~ If the child is committed to a maximum-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.

(2) Regardless of detention status, a child being transported by the department to a residential commitment

facility of the department may be placed in secure detention for up to 24 hours ~~overnight, not to exceed a 24-hour period,~~ for the specific purpose of ensuring the safe delivery of the child to his or her residential commitment program, court, appointment, transfer, or release.

Section 18. Subsection (1) of section 985.275, Florida Statutes, is amended to read:

985.275 Detention of escapee or absconder on authority of the department.—

(1) If an authorized agent of the department has reasonable grounds to believe that a ~~any~~ delinquent child committed to the department has escaped from a residential commitment facility or in the course of lawful transportation to or from such facility ~~from being lawfully transported thereto or therefrom,~~ or has absconded from a nonresidential commitment facility, the agent shall notify law enforcement and, if the offense qualifies under chapter 960, notify the victim, and make every reasonable effort to locate the delinquent child. The child may be returned ~~take the child into active custody and may deliver the child~~ to the facility or, if it is closer, to a detention center for return to the facility. However, a child may not be held in detention more ~~longer~~ than 24 hours, excluding Saturdays, Sundays, and legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that detention is required based on the criteria in s. 985.255. The order must ~~shall~~ state the reasons for such finding. The reasons are ~~shall be~~ reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

Section 19. Paragraph (b) of subsection (4), paragraph (h)

of subsection (6), and paragraph (a) of subsection (7) of section 985.433, Florida Statutes, are amended to read:

985.433 Disposition hearings in delinquency cases.—When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

(4) Before the court determines and announces the disposition to be imposed, it shall:

(b) Discuss with the child his or her compliance with any predisposition ~~home release~~ plan or other plan imposed since the date of the offense.

(6) The first determination to be made by the court is a determination of the suitability or nonsuitability for adjudication and commitment of the child to the department. This determination shall include consideration of the recommendations of the department, which may include a predisposition report. The predisposition report shall include, whether as part of the child's multidisciplinary assessment, classification, and placement process components or separately, evaluation of the following criteria:

(h) The child's educational status, including, but not limited to, the child's strengths, abilities, and unmet and special educational needs. The report must ~~shall~~ identify appropriate educational and career ~~vocational~~ goals for the child. Examples of appropriate goals include:

1. Attainment of a high school diploma or its equivalent.

2. Successful completion of literacy course(s).

3. Successful completion of career and technical educational ~~vocational~~ course(s).

4. Successful attendance and completion of the child's current grade, or recovery of credits of classes the child previously failed, if enrolled in school.

5. Enrollment in an apprenticeship or a similar program.

It is the intent of the Legislature that the criteria set forth in this subsection are general guidelines to be followed at the discretion of the court and not mandatory requirements of procedure. It is not the intent of the Legislature to provide for the appeal of the disposition made under this section.

(7) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing. The determination shall include a specific finding of the reasons for the decision to adjudicate and to commit the child to the department, including any determination that the child was a member of a criminal gang.

(a) The department ~~juvenile probation officer~~ shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child if commitment is recommended. If the court has determined that the child was a member of a criminal gang, that determination shall be given great weight in identifying the most appropriate restrictiveness level for the child. The court shall consider the department's recommendation in making its commitment decision.

Section 20. Present subsections (4) through (6) of section 985.435, Florida Statutes, are redesignated as subsections (5)

through (7), respectively, a new subsection (4) is added to that section, and subsection (3) and present subsection (4) of that section are amended, to read:

985.435 Probation and postcommitment probation; community service.—

(3) A probation program must also include a rehabilitative program component such as a requirement of participation in substance abuse treatment or in a school or career and technical ~~other~~ educational program. The nonconsent of the child to treatment in a substance abuse treatment program does not preclude ~~in no way precludes~~ the court from ordering such treatment. Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of postcommitment probation, the court may order the child to submit to random testing for the purpose of detecting and monitoring the use of alcohol or controlled substances.

(4) A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation, but has not committed any new violations of law. The alternative consequence component shall be designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation must be detailed in the disposition order.

(5) ~~(4)~~ An evaluation of the youth's risk to reoffend ~~A classification scale for levels of supervision~~ shall be provided

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by the department, taking into account the child's needs and risks relative to probation supervision requirements to reasonably ensure the public safety. Probation programs for children shall be supervised by the department or by any other person or agency specifically authorized by the court. These programs must include, but are not limited to, structured or restricted activities as described in this section and s. 985.439, and shall be designed to encourage the child toward acceptable and functional social behavior.

Section 21. Paragraph (a) of subsection (1) and subsection (4) of section 985.439, Florida Statutes, are amended to read:

985.439 Violation of probation or postcommitment probation.—

(1)(a) This section is applicable when the court has jurisdiction over a child on probation or postcommitment probation, regardless of adjudication ~~an adjudicated delinquent child~~.

(4) Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of probation or postcommitment probation, the court shall enter an order revoking, modifying, or continuing probation or postcommitment probation. In each such case, the court shall enter a new disposition order and, in addition to the sanctions set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. If the child is found to have violated the conditions of probation or postcommitment probation, the court may:

(a) Place the child in a consequence unit in that judicial circuit, if available, for up to 5 days for a first violation

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and up to 15 days for a second or subsequent violation.

(b) Place the child on nonsecure ~~home~~ detention with electronic monitoring. However, this sanction may be used only if a residential consequence unit is not available.

(c) Modify or continue the child's probation program or postcommitment probation program.

(d) Revoke probation or postcommitment probation and commit the child to the department.

(e) If the violation of probation is technical in nature and not a new violation of law, place the child in an alternative consequence program designed to provide swift and appropriate consequences for any further violations of probation.

1. Alternative consequence programs shall be established at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.

2. Alternative consequence programs may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, a county or municipality, or another entity selected by the department.

3. Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.

Section 22. Subsection (2) of section 985.441, Florida Statutes, is amended to read:

985.441 Commitment.—

(2) Notwithstanding subsection (1), the court having jurisdiction over an adjudicated delinquent child whose

~~underlying~~ offense is ~~was~~ a misdemeanor, or a child who is currently on probation for a misdemeanor, may not commit the child for any misdemeanor offense or any probation violation that is technical in nature and not a new violation of law at a restrictiveness level other than minimum-risk nonresidential ~~unless the probation violation is a new violation of law constituting a felony~~. However, the court may commit such child to a nonsecure ~~low-risk or moderate-risk~~ residential placement if:

(a) The child has previously been adjudicated or had adjudication withheld for a felony offense;

(b) The child has previously been adjudicated or had adjudication withheld for three or more misdemeanor offenses within the preceding 18 months;

(c) The child is before the court for disposition for a violation of s. 800.03, s. 806.031, or s. 828.12; or

(d) The court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. Such finding must be in writing.

Section 23. Paragraph (a) of subsection (1) and subsection (5) of section 985.46, Florida Statutes, are amended to read:

985.46 Conditional release.—

(1) The Legislature finds that:

(a) Conditional release is the care, treatment, help, provision of transition-to-adulthood services, and supervision provided to juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.

(5) Participation in the educational program by students of

compulsory school attendance age pursuant to s. 1003.21(1) and (2)(a) is mandatory for juvenile justice youth on conditional release or postcommitment probation status. A student of noncompulsory school-attendance age who has not received a high school diploma or its equivalent must participate in an ~~the~~ educational or career and technical educational program. A youth who has received a high school diploma or its equivalent and is not employed must participate in workforce development or other career or technical education or attend a community college or a university while in the program, subject to available funding.

Section 24. Subsections (1) through (5) of section 985.461, Florida Statutes, are amended to read:

985.461 Transition to adulthood.—

(1) The Legislature finds that ~~older~~ youth are faced with the need to learn how to support themselves within legal means and overcome the stigma of being delinquent. In most cases, parents expedite this transition. It is the intent of the Legislature that the department provide ~~older~~ youth in its custody or under its supervision with opportunities for participating in transition-to-adulthood services while in the department's commitment programs or in probation or conditional release programs in the community. These services should be reasonable and appropriate for the youths' respective ages or special needs and provide activities that build life skills and increase the ability to live independently and become self-sufficient.

(2) Youth served by the department who are in the custody of the Department of Children and Families ~~Family Services~~ and who entered juvenile justice placement from a foster care

placement, if otherwise eligible, may receive independent living transition services pursuant to s. 409.1451. Court-ordered commitment or probation with the department is not a barrier to eligibility for the array of services available to a youth who is in the dependency foster care system only.

(3) For a dependent child in the foster care system, adjudication for delinquency does not, by itself, disqualify such child for eligibility in the Department of Children and Families' ~~Family Services'~~ independent living program.

(4) As part of the child's treatment plan, the department may provide transition-to-adulthood services to children released from residential commitment. To support participation in transition-to-adulthood services and subject to appropriation, the department may:

(a) Assess the child's skills and abilities to live independently and become self-sufficient. The specific services ~~to be~~ provided shall be determined using an assessment of his or her readiness for adult life.

(b) Use community reentry teams to assist in the development of ~~Develop~~ a list of age-appropriate activities and responsibilities to be incorporated in the child's written case plan for any youth ~~17 years of age or older~~ who is under the custody or supervision of the department. Community reentry teams may include representation from school districts, law enforcement, workforce development services, community-based service providers, and the youth's family. Activities may include, but are not limited to, life skills training, including training to develop banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health

management, and time management or organizational skills; educational support; employment training; and counseling.

(c) Provide information related to social security insurance benefits and public assistance.

(d) Request parental or guardian permission for the youth to participate in transition-to-adulthood services. Upon such consent, age-appropriate activities shall be incorporated into the youth's written case plan. This plan may include specific goals and objectives and shall be reviewed and updated at least quarterly. If the parent or guardian is cooperative, the plan may not interfere with the parent's or guardian's rights to nurture and train his or her child in ways that are otherwise in compliance with the law and court order.

(e) Contract for transition-to-adulthood services that include residential services and assistance and allow the child to live independently of the daily care and supervision of an adult in a setting that is not licensed under s. 409.175. A child under the care or supervision of the department ~~who has reached 17 years of age but is not yet 19 years of age~~ is eligible for such services if he or she does not pose a danger to the public and is able to demonstrate minimally sufficient skills and aptitude for living under decreased adult supervision, as determined by the department, using established procedures and assessments.

(f) Assist the youth in building a portfolio of educational and vocational accomplishments, necessary identification, resumes, and cover letters in an effort to enhance the youth's employability.

(g) Collaborate with school district contacts to facilitate

appropriate educational services based on the youth's identified needs.

(5) For a child ~~who is 17 years of age or older,~~ under the department's care or supervision, and without benefit of parents or legal guardians capable of assisting the child in the transition to adult life, the department may provide an assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the assessment and within existing resources, services and training may be provided in order to develop the necessary skills and abilities ~~before the child's 18th birthday~~.

Section 25. Paragraph (b) of subsection (3) of section 985.481, Florida Statutes, is amended to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(3)

(b) ~~No later than November 1, 2007,~~ The department shall ~~must~~ make the information described in subparagraph (a)1. available electronically to the Department of Law Enforcement in its database and in a format that is compatible with the requirements of the Florida Crime Information Center.

Section 26. Subsection (5) of section 985.4815, Florida Statutes, is amended to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

(5) In addition to notification and transmittal requirements imposed by any other ~~provision of~~ law, the department shall compile information on any sexual offender and provide the information to the Department of Law Enforcement. ~~No~~

~~later than November 1, 2007,~~ The department shall ~~must~~ make the information available electronically to the Department of Law Enforcement in its database in a format that is compatible with the requirements of the Florida Crime Information Center.

Section 27. Subsection (2), paragraph (a) of subsection (3), and paragraph (a) of subsection (9) of section 985.601, Florida Statutes, are amended to read:

985.601 Administering the juvenile justice continuum.—

(2) The department shall develop and implement an appropriate continuum of care that provides individualized, multidisciplinary assessments, objective evaluations of relative risks, and the matching of needs with placements for all children under its care, and that uses a system of case management to facilitate each child being appropriately assessed, provided with services, and placed in a program that meets the child's needs. The Legislature recognizes that the purpose of the juvenile justice system is to increase public safety by reducing juvenile delinquency and recognizes the importance of ensuring that children who are assessed as low and moderate risk to reoffend are considered for placement in a nonresidential program.

(3)(a) The department shall develop or contract for diversified and innovative programs to provide rehabilitative treatment, including early intervention and prevention, diversion, comprehensive intake, case management, diagnostic and classification assessments, trauma-informed care, individual and family counseling, family engagement resources and programs, gender-specific programming, shelter care, diversified detention care emphasizing alternatives to secure detention, diversified

probation, halfway houses, foster homes, community-based substance abuse treatment services, community-based mental health treatment services, community-based residential and nonresidential programs, mother-infant programs, and environmental programs. The department may pay expenses in support of innovative programs and activities that address the identified needs and well-being of children in the department's care or under its supervision. Each program shall place particular emphasis on reintegration and conditional release for all children in the program.

(9)(a) The department shall operate a statewide, regionally administered system of detention services for children, in accordance with a comprehensive plan for the regional administration of all detention services in the state. The plan must provide for the maintenance of adequate availability of detention services for all counties. The plan must cover all the department's operating circuits, with each operating circuit having access to a secure facility and nonsecure ~~and home~~ detention programs.~~, and~~ The plan may be altered or modified by the department ~~of Juvenile Justice~~ as necessary.

Section 28. Section 985.605, Florida Statutes, is repealed.

Section 29. Section 985.606, Florida Statutes, is repealed.

Section 30. Section 985.61, Florida Statutes, is repealed.

Section 31. Section 985.632, Florida Statutes, is reordered and amended to read:

985.632 Quality improvement ~~assurance~~ and cost-effectiveness.—

(2)~~(1)~~ PERFORMANCE ACCOUNTABILITY.—It is the intent of the Legislature that the department establish a performance

accountability system for each provider who contracts with the department for the delivery of services to children. The contract must include both output measures, such as the number of children served, and outcome measures, such as program completion and postcompletion recidivism. Each contractor shall report performance results to the department annually. The department's Bureau of Research and Planning shall summarize performance results from all contracts and report the information annually to the President of the Senate and the Speaker of the House of Representatives in the Comprehensive Accountability Report. The report must:

(a) Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs that ~~of the department which~~ achieve desired performance levels.

(b) Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.

(c) Provide information to aid in developing related policy issues and concerns.

(d) Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.

(e) Provide a basis for a system of accountability so that each child ~~client~~ is afforded the best programs to meet his or her needs.

(f) Improve service delivery to children through the use of technical assistance ~~clients~~.

(g) Modify or eliminate activities or programs that are not effective.

(h) Collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

(1) ~~(2)~~ DEFINITIONS.—As used in this section, the term:

(a) "Program" means any facility, service, or program for children which is operated by the department or by a provider under contract with the department.

~~(a) "Client" means any person who is being provided treatment or services by the department or by a provider under contract with the department.~~

(b) "Program component" means an aggregation of generally related objectives which, because of their special character, related workload, and interrelated output, can logically be considered an entity for purposes of organization, management, accounting, reporting, and budgeting.

(c) "Program group" means a collection of programs with sufficient similarity of functions, services, and children to permit appropriate comparison among programs within the group.

~~(c) "Program effectiveness" means the ability of the program to achieve desired client outcomes, goals, and objectives.~~

(3) COMPREHENSIVE ACCOUNTABILITY REPORT.—The department, in consultation with the Office of Economic and Demographic Research, the Office of Program Policy Analysis and Government Accountability, and contract service providers, shall develop and use a standard methodology for annually measuring, evaluating, and reporting program outputs and child outcomes for each program and program group. The standard methodology must:

(a) Include common terminology and operational definitions for measuring the performance of system and program

administration, program outputs, and program outcomes.

(b) Specify program outputs for each program and for each program group within the juvenile justice continuum.

(c) Specify desired child outcomes and methods by which child outcomes may be measured for each program and program group.

~~(3) The department shall annually collect and report cost data for every program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~

(4)~~(a)~~ COST-EFFECTIVENESS MODEL.—The department, in

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consultation with the Office of Economic and Demographic Research and contract service providers, shall develop a cost-effectiveness model and apply the model to each commitment program. ~~Program recidivism rates shall be a component of the model.~~

(a) The cost-effectiveness model must ~~shall~~ compare program costs to expected and actual child recidivism rates ~~client outcomes and program outputs~~. It is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the cost-effectiveness model.

(b) The department shall rank commitment programs based on the cost-effectiveness model, performance measures, and adherence to quality improvement standards and shall ~~submit a~~ report this data in the annual Comprehensive Accountability Report ~~to the appropriate substantive and fiscal committees of each house of the Legislature by December 31 of each year~~.

(c) Based on reports of the department on child ~~client~~ outcomes and program outputs and on the department's most recent cost-effectiveness rankings, the department may terminate a program operated by the department or a provider if the program has failed to achieve a minimum standard ~~threshold~~ of program effectiveness. This paragraph does not preclude the department from terminating a contract as provided under this section or as otherwise provided by law or contract, and does not limit the department's authority to enter into or terminate a contract.

(d) In collaboration with the Office of Economic and Demographic Research~~,~~ and contract service providers, the department shall develop a work plan to refine the cost-

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effectiveness model so that the model is consistent with the performance-based program budgeting measures approved by the Legislature to the extent the department deems appropriate. The department shall notify the Office of Program Policy Analysis and Government Accountability of any meetings to refine the model.

(e) Contingent upon specific appropriation, the department, in consultation with the Office of Economic and Demographic Research~~,~~ and contract service providers, shall:

1. Construct a profile of each commitment program that uses the results of the quality improvement ~~assurance~~ report required by this section, the cost-effectiveness report required in this subsection, and other reports available to the department.

2. Target, for a more comprehensive evaluation, any commitment program that has achieved consistently high, low, or disparate ratings in the reports required under subparagraph 1. and target, for technical assistance, any commitment program that has achieved low or disparate ratings in the reports required under subparagraph 1.

3. Identify the essential factors that contribute to the high, low, or disparate program ratings.

4. Use the results of these evaluations in developing or refining juvenile justice programs or program models, child ~~client~~ outcomes and program outputs, provider contracts, quality improvement ~~assurance~~ standards, and the cost-effectiveness model.

(5) QUALITY IMPROVEMENT; MINIMUM STANDARDS.—The department shall:

(a) Establish a comprehensive quality improvement ~~assurance~~

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system for each program operated by the department or operated by a provider under contract with the department. Each contract entered into by the department must provide for quality improvement ~~assurance~~.

(b) Provide operational definitions of and criteria for quality improvement ~~assurance~~ for each specific program component.

(c) Establish quality improvement ~~assurance~~ goals and objectives for each specific program component.

(d) Establish the information and specific data elements required for the quality improvement ~~assurance~~ program.

(e) Develop a quality improvement ~~assurance~~ manual of specific, standardized terminology and procedures to be followed by each program.

(f) Evaluate each program operated by the department or a provider under a contract with the department annually and establish minimum standards ~~thresholds~~ for each program component. If a provider fails to meet the established minimum standards ~~thresholds~~, ~~such failure shall cause~~ the department shall ~~to~~ cancel the provider's contract unless the provider complies ~~achieves compliance~~ with minimum standards ~~thresholds~~ within 6 months or unless there are documented extenuating circumstances. In addition, the department may not contract with the same provider for the canceled service for ~~a period of~~ 12 months. If a department-operated program fails to meet the established minimum standards ~~thresholds~~, the department must take necessary and sufficient steps to ensure, and document program changes to achieve, compliance with the established minimum standards ~~thresholds~~. If the department-operated program

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fails to achieve compliance with the established minimum standards ~~thresholds~~ within 6 months and ~~if~~ there are no documented extenuating circumstances, the department shall ~~must~~ notify the Executive Office of the Governor and the Legislature of the corrective action taken. Appropriate corrective action may include, but is not limited to:

1. Contracting out for the services provided in the program;

2. Initiating appropriate disciplinary action against all employees whose conduct or performance is deemed to have materially contributed to the program's failure to meet established minimum thresholds;

3. Redesigning the program; or

4. Realigning the program.

(6) COMPREHENSIVE ACCOUNTABILITY REPORT; SUBMITTAL.—No later than February 1 of each year, the department shall submit the Comprehensive Accountability ~~an annual~~ Report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, and the appropriate substantive and fiscal committees of each house of the Legislature~~, and the Governor, no later than February 1 of each year~~. The Comprehensive Accountability ~~annual~~ Report must contain, at a minimum, for each specific program component: a comprehensive description of the population served by the program; a specific description of the services provided by the program; cost; a comparison of expenditures to federal and state funding; immediate and long-range concerns; and recommendations to maintain, expand, improve, modify, or eliminate each program component so that

changes in services lead to enhancement in program quality. The department shall ensure the reliability and validity of the information contained in the report.

(7) ~~(6)~~ ONGOING EVALUATION.—The department shall collect and analyze available statistical data for the purpose of ongoing evaluation of all programs. The department shall provide the Legislature with necessary information and reports to enable the Legislature to make informed decisions regarding the effectiveness of, and any needed changes in, services, programs, policies, and laws.

Section 32. Paragraph (a) of subsection (1) and paragraph (b) of subsection (3) of section 985.644, Florida Statutes, are amended to read:

985.644 Departmental contracting powers; personnel standards and screening.—

(1) The department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(a) Each contract entered into by the department for services delivered on an appointment or intermittent basis by a provider that does not have regular custodial responsibility for children, and each contract with a school for ~~before or aftercare~~ services, must ensure that all owners, operators, and personnel who have direct contact with children are subject to level 2 background screening pursuant to chapter 435.

(3)

(b) Certified ~~Except for~~ law enforcement, correctional, and correctional probation officers, pursuant to s. 943.13, are not required to submit to level 2 screenings while employed by a law enforcement agency or correctional facility. ~~to whom s. 943.13(5) applies,~~ The department shall electronically submit to the Department of Law Enforcement:

1. Fingerprint information obtained during the employment screening required by subparagraph (a)1.

2. Fingerprint information for all persons employed by the department, or by a provider under contract with the department, in delinquency facilities, services, or programs if such fingerprint information has not ~~previously~~ been previously ~~electronically~~ submitted pursuant to this section ~~to the Department of Law Enforcement under this paragraph~~.

Section 33. Section 985.6441, Florida Statutes, is created to read:

985.6441 Health care services.—

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

(a) "Hospital" means a hospital licensed under chapter 395.

(b) "Health care provider" has the same meaning as provided in s. 766.105.

(2) The following reimbursement limitations apply to the compensation of health care providers by the department:

(a) If there is no contract between the department and a hospital or a health care provider providing services at a hospital, payments to such hospital or such health care provider may not exceed 110 percent of the Medicare allowable rate for any health care service provided.

(b) If a contract has been executed between the department

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and a hospital or a health care provider providing services at a hospital, the department may continue to make payments for health care services at the currently contracted rates through the current term of the contract; however, payments may not exceed 110 percent of the Medicare allowable rate after the current term of the contract expires or after the contract is renewed during the 2013-2014 fiscal year.

(c) Payments may not exceed 110 percent of the Medicare allowable rate under a contract executed on or after July 1, 2014, between the department and a hospital or a health care provider providing services at a hospital.

(d) Notwithstanding paragraphs (a)-(c), the department may pay up to 125 percent of the Medicare allowable rate for health care services at a hospital that demonstrates or has demonstrated through hospital-audited financial data a negative operating margin for the previous fiscal year to the Agency for Health Care Administration.

(e) The department may execute a contract for health care services at a hospital for rates other than rates based on a percentage of the Medicare allowable rate.

Section 34. Section 985.66, Florida Statutes, is amended to read:

985.66 Juvenile justice training ~~academies~~; staff development and training; Juvenile Justice Training Trust Fund.—

(1) LEGISLATIVE PURPOSE.—In order to enable the state to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff which meets ~~that will meet~~ the needs of such

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persons in the ~~their~~ discharge of their duties while at the same time meeting the requirements for the American Correction Association accreditation by the Commission on Accreditation for Corrections, it is the purpose of the Legislature to require the department to establish, maintain, and oversee the operation of juvenile justice training programs and courses ~~academies~~ in the state. The purpose of the Legislature in establishing staff development and training programs is to provide employees of the department or any private or public entity or contract providers who provide services or care for youth under the responsibility of the department with the knowledge and skills to appropriately interact with youth and provide such care ~~foster better staff morale and reduce mistreatment and aggressive and abusive behavior in delinquency programs~~; to positively impact the recidivism of children in the juvenile justice system; and to afford greater protection of the public through an improved level of services delivered by a professionally trained juvenile justice program staff to children who are alleged to be or who have been found to be delinquent.

(2) STAFF DEVELOPMENT AND TRAINING.—The department shall:

(a) Designate the number and location of the training programs and courses ~~academies~~; assess, design, develop, implement, evaluate, maintain, and update the curriculum to be used in the training of juvenile justice ~~program~~ staff; establish timeframes for participation in and completion of training by juvenile justice ~~program~~ staff; develop, implement, score, analyze, maintain, and update job-related examinations; develop, implement, analyze, and update the types and frequencies of evaluations of the training programs, courses,

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and instructors ~~academies~~; and manage ~~approve, modify, or disapprove~~ the budget and contracts for all the training deliverables ~~academies, and the contractor to be selected to organize and operate the training academies and to provide the training curriculum~~.

(b) Establish uniform minimum job-related preservice and inservice training courses and examinations for juvenile justice ~~program~~ staff.

(c) Consult and cooperate with the state or any political subdivision; any private entity or contractor; and with private and public universities, colleges, community colleges, and other educational institutions concerning the development of juvenile justice training and programs or courses of instruction, including, but not limited to, education and training in the areas of juvenile justice.

(d) Enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as necessary in the execution of the powers of the department or the performance of its duties.

(3) JUVENILE JUSTICE TRAINING PROGRAM.—The department shall establish a certifiable program for juvenile justice training pursuant to this section~~,~~ and all department program staff. ~~and~~ Providers who deliver direct care services pursuant to contract with the department shall ~~be required to~~ participate in and successfully complete the department-approved program of training pertinent to their areas of responsibility. Judges, state attorneys, ~~and~~ public defenders, law enforcement officers, ~~and~~ school district personnel, and employees of contract

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providers who provide services or care for youth under the responsibility of the department may participate in such a training program. For ~~the~~ juvenile justice ~~program~~ staff, ~~the department shall,~~ based on a job-task analysis:

(a) The department shall design, implement, maintain, evaluate, and revise a basic training program, including a competency-based examination, for the purpose of providing minimum employment training qualifications for all juvenile justice personnel. All program staff of the department and providers who deliver direct-care services who are hired after October 1, 1999, shall, at a ~~must meet the following~~ minimum ~~requirements~~:

1. Be at least 19 years of age.

2. Be a high school graduate or its equivalent, as determined by the department.

3. Not have been convicted of any felony or a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. A ~~Any~~ person who, after September 30, 1999, pleads guilty or nolo contendere to or is found guilty of any felony or a misdemeanor involving perjury or false statement is not eligible for employment, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subparagraph, a ~~any~~ person who pled nolo contendere to a misdemeanor involving a false statement before October 1, 1999, and ~~who~~ has had such record of that plea sealed or expunged is not ineligible for employment for that reason.

4. Abide by ~~all the provisions of~~ s. 985.644(1) regarding fingerprinting, ~~and~~ background investigations, and other

screening requirements ~~for personnel~~.

5. Execute and submit to the department an affidavit-of-application form, approved ~~adopted~~ by the department, attesting to his or her compliance with subparagraphs 1.-4. The affidavit must be executed under oath and constitutes an official statement under s. 837.06. The affidavit must include a conspicuous statement ~~language~~ that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The employing agency shall retain the affidavit.

(b) The department shall design, implement, maintain, evaluate, and revise an advanced training program, including a competency-based examination for each training course, which is intended to enhance knowledge, skills, and abilities related to job performance.

(c) The department shall design, implement, maintain, evaluate, and revise a career development training program, including a competency-based examination for each training course. Career development courses are intended to prepare personnel for promotion.

(d) The department is encouraged to design, implement, maintain, evaluate, and revise juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders.

(4) JUVENILE JUSTICE TRAINING TRUST FUND.—

(a) There is created within the State Treasury a Juvenile Justice Training Trust Fund to be used by the department for the purpose of funding the development and updating of a job-task analysis of juvenile justice personnel; the development,

implementation, and updating of job-related training courses and examinations; and the cost of juvenile justice training courses.

(b) One dollar from every noncriminal traffic infraction collected pursuant to ss. 318.14(10)(b) and 318.18 shall be deposited into the Juvenile Justice Training Trust Fund.

(c) In addition to the funds generated by paragraph (b), the trust fund may receive funds from any other public or private source.

(d) Funds that are not expended by the end of the budget cycle or through a supplemental budget approved by the department shall revert to the trust fund.

~~(5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES.—The number, location, and establishment of juvenile justice training academies shall be determined by the department.~~

(5)~~(6)~~ SCHOLARSHIPS AND STIPENDS.—The department shall establish criteria to award scholarships or stipends to qualified juvenile justice personnel who are residents of the state and ~~who~~ want to pursue a bachelor's or associate in arts degree in juvenile justice or a related field. The department shall administer ~~handle the administration of~~ the scholarship or stipend. The Department of Education shall manage ~~handle~~ the notes issued for the payment of the scholarships or stipends. All scholarship and stipend awards shall be paid from the Juvenile Justice Training Trust Fund upon vouchers approved by the Department of Education and properly certified by the Chief Financial Officer. Before ~~Prior to~~ the award of a scholarship or stipend, the juvenile justice employee must agree in writing to practice her or his profession in juvenile justice or a related field for 1 month for each month of grant or to repay the full

amount of the scholarship or stipend together with interest at the rate of 5 percent per annum over a period of up to ~~not to exceed~~ 10 years. Repayment is ~~shall be made~~ payable to the state for deposit into the Juvenile Justice Training Trust Fund.

(6)~~(7)~~ PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of Risk Management of the Department of Financial Services is authorized to insure a private agency, individual, or corporation operating a state-owned training school under a contract to carry out the purposes and responsibilities of any program of the department. The coverage authorized under this subsection is subject to ~~herein shall be under~~ the same general terms and conditions as the coverage afforded the department ~~is insured for its responsibilities~~ under chapter 284.

Section 35. Subsection (5) of section 985.664, Florida Statutes, is amended to read:

985.664 Juvenile justice circuit advisory boards.—

(5)~~(a) To form the initial juvenile justice circuit advisory board, the Secretary of Juvenile Justice, in consultation with the juvenile justice county councils in existence on October 1, 2013, shall appoint the chair of the board, who must meet the board membership requirements in subsection (4). Within 45 days after being appointed, the chair shall appoint the remaining members to the juvenile justice circuit advisory board and submit the appointments to the department for approval.~~

~~(b) Thereafter,~~ When a vacancy in the office of the chair occurs, ~~the Secretary of Juvenile Justice, in consultation with~~ the juvenile justice circuit advisory board~~,~~ shall appoint a new

chair, who must meet the board membership requirements in subsection (4). The chair shall appoint members to vacant seats within 45 days after the vacancy and submit the appointments to the department for approval. The chair serves at the pleasure of the Secretary of Juvenile Justice.

Section 36. Subsections (1) and (4) of section 985.672, Florida Statutes, are amended to read:

985.672 Direct-support organization; definition; use of property; board of directors; audit.—

(1) DEFINITION.—As used in this section, the term "direct-support organization" means an organization whose sole purpose is to support the juvenile justice system and which is:

(a) A corporation not-for-profit incorporated under chapter 617 and ~~which is~~ approved by the Department of State;

(b) Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other ~~property,~~ real or personal property; and to make expenditures to or for the direct or indirect benefit of the Department of Juvenile Justice or the juvenile justice system operated by a county commission or a circuit board;

(c) Determined by the Department of Juvenile Justice to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the Department of Juvenile Justice.

Expenditures of the organization shall be ~~expressly~~ used for the

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prevention and amelioration of ~~to prevent and ameliorate~~ juvenile delinquency. Such funds ~~The expenditures of the direct-support organization~~ may not be used for the purpose of lobbying as defined in s. 11.045.

(4) USE OF PROPERTY.—The department may allow ~~permit~~, without charge, appropriate use of fixed property, ~~and~~ facilities, and personnel services of the juvenile justice system by the direct-support organization, subject to the provisions of this section. For the purposes of this subsection, the term "personnel services" includes full-time or part-time personnel as well as payroll processing services.

(a) The department may prescribe any condition with which the direct-support organization must comply in order to use fixed property or facilities of the juvenile justice system.

(b) The department may not permit the use of any fixed property or facilities of the juvenile justice system by the direct-support organization if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

(c) The department shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which a direct-support organization must comply to use property or facilities of the department.

Section 37. Section 985.682, Florida Statutes, is amended to read:

985.682 Siting of facilities~~; study; criteria~~.—

~~(1) The department is directed to conduct or contract for a statewide comprehensive study to determine current and future~~

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~~needs for all types of facilities for children committed to the custody, care, or supervision of the department under this chapter.~~

~~(2) The study shall assess, rank, and designate appropriate sites, and shall be reflective of the different purposes and uses for all facilities, based upon the following criteria:~~

~~(a) Current and future estimates of children originating from each county;~~

~~(b) Current and future estimates of types of delinquent acts committed in each county;~~

~~(c) Geographic location of existing facilities;~~

~~(d) Availability of personnel within the local labor market;~~

~~(e) Current capacity of facilities in the area;~~

~~(f) Total usable and developable acreage of various sites based upon the use and purpose of the facility;~~

~~(g) Accessibility of each site to existing utility, transportation, law enforcement, health care, fire protection, refuse collection, water, and sewage disposal services;~~

~~(h) Susceptibility of each site to flooding hazards or other adverse natural environmental consequences;~~

~~(i) Site location in relation to desirable and undesirable proximity to other public facilities, including schools;~~

~~(j) Patterns of residential growth and projected population growth; and~~

~~(k) Such other criteria as the department, in conjunction with local governments, deems appropriate.~~

~~(3) The department shall recommend certification of the study by the Governor and Cabinet within 2 months after its~~

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~~receipt.~~

~~(4) Upon certification of the study by the Governor and Cabinet, the department shall notify those counties designated as being in need of a facility.~~

(1) ~~(5)~~ When the department or a contracted provider proposes a site for a juvenile justice facility, the department or provider shall request that the local government having jurisdiction over such proposed site determine whether ~~or not~~ the proposed site is appropriate for public use under local government comprehensive plans, local land use ordinances, local zoning ordinances or regulations, and other local ordinances in effect at the time of such request. If no such determination is made within 90 days after the request, it is ~~shall be~~ presumed that the proposed site is in compliance with such plans, ordinances, or regulations.

(2) ~~(6)~~ If the local government determines within 90 days after the request that construction of a facility on the proposed site does not comply with any such plan, ordinance, or regulation, the department may request a modification of such plan, ordinance, or regulation without having an ownership interest in such property. For the purposes of this section, modification includes, but is not limited to, a variance, rezoning, special exception, or any other action of the local government having jurisdiction over the proposed site which would authorize siting of a facility.

(3) ~~(7)~~ Upon receipt of a request for modification from the department, the local government may recommend and hold a public hearing on the request for modification in the same manner as for a rezoning as provided under the appropriate special or

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local law or ordinance, except that such proceeding shall be recorded by tape or by a certified court reporter and made available for transcription at the expense of any interested party.

(4) ~~(8)~~ If ~~When~~ the department requests such a modification and it is denied by the local government, the local government or the department shall initiate the dispute resolution process established under s. 186.509 to reconcile differences on the siting of correctional facilities between the department, local governments, and private citizens. If the regional planning council has not established a dispute resolution process pursuant to s. 186.509, the department shall establish, by rule, procedures for dispute resolution. The dispute resolution process must ~~shall~~ require the parties to commence meetings to reconcile their differences. If the parties fail to resolve their differences within 30 days after the denial, they ~~the parties~~ shall engage in voluntary mediation or a similar process. If the parties fail to resolve their differences by mediation within 60 days after the denial, or if no action is taken on the department's request within 90 days after the request, the department must appeal the decision of the local government on the requested modification of local plans, ordinances, or regulations to the Governor and Cabinet. A ~~Any~~ dispute resolution process initiated under this section must conform to the time limitations set forth in this subsection ~~herein~~. However, upon agreement of all parties, the time limits may be extended, but ~~in no event may~~ the dispute resolution process may not extend beyond ~~over~~ 180 days.

(5) ~~(9)~~ The Governor and Cabinet shall consider the

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following when determining whether to grant the appeal from the decision of the local government on the requested modification:

(a) The record of the proceedings before the local government.

(b) Reports and studies by any other agency relating to matters within the jurisdiction of such agency which may be potentially affected by the proposed site.

(c) ~~The statewide study, as established in subsection (1); other~~ Existing studies; reports and information maintained by the department as the Governor and Cabinet may request addressing the feasibility and availability of alternative sites in the general area; and the need for a facility in the area based on the average number of petitions, commitments, and transfers into the criminal court from the county to state facilities for the 3 most recent ~~3~~ calendar years.

(6) ~~(10)~~ The Governor and Cabinet, upon determining that the local government has not recommended a ~~no~~ feasible alternative site and that the interests of the state in providing facilities outweigh the concerns of the local government, shall authorize construction and operation of a facility on the proposed site notwithstanding any local plan, ordinance, or regulation.

(7) ~~(11)~~ The Governor and Cabinet may adopt rules ~~of procedure~~ to govern these proceedings in accordance with ~~the provisions of~~ s. 120.54.

(8) ~~(12)~~ Actions taken by the department or the Governor and Cabinet pursuant to this section are not ~~shall not be~~ subject to ~~the provisions of~~ ss. 120.56, 120.569, and 120.57. The decision by the Governor and Cabinet is ~~shall be~~ subject to judicial review pursuant to s. 120.68 in the District Court of Appeal,

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First District.

(9) ~~(13)~~ All other departments and agencies of the state shall cooperate fully with the department to accomplish the siting of facilities for juvenile offenders.

(10) ~~(14)~~ It is the intent of the Legislature to expedite the siting of, acquisition of land for, and construction by the Department of Juvenile Justice of state juvenile justice facilities operated by the department or a private vendor under contract with the department. Other agencies shall cooperate with the department and expeditiously fulfill their responsibilities to avoid unnecessary delay in the siting of, acquisition of land for, and construction of state juvenile justice facilities. This section and all other laws of the state shall be construed to accomplish this intent. This section takes ~~shall take~~ precedence over any other law ~~to the contrary~~.

(11) ~~(15)~~ (a) The department shall acquire land and erect juvenile justice facilities necessary to accommodate children committed to the custody, care, or supervision of the department, and shall make additional alterations to facilities to accommodate any increase in the number of children. The department shall establish adequate accommodations for staff of the department who are required to reside continuously within the facilities.

(b) Notwithstanding s. 255.25(1) and contingent upon available funds, the department may enter into lease-purchase agreements to provide juvenile justice facilities for housing committed youths~~, contingent upon available funds~~. The facilities provided through such agreements must meet the program plan and specifications of the department. The

department may enter into such lease agreements with private corporations and other governmental entities. However, with the exception of contracts entered into with other governmental entities, and notwithstanding s. 255.25(3)(a), a lease agreement may not be entered into except upon advertisement for the receipt of competitive bids and award to the lowest and best bidder ~~except if contracting with other governmental entities~~.

(c) A lease-purchase agreement that is for a term extending beyond the end of a fiscal year is subject to ~~the provisions of~~ s. 216.311.

(12) ~~(16)~~ (a) Notwithstanding s. 253.025 or s. 287.057, if ~~when~~ the department finds it necessary for timely site acquisition, it may contract, without using the competitive selection procedure, with an appraiser whose name is on the list of approved appraisers maintained by the Division of State Lands of the Department of Environmental Protection under s. 253.025(6)(b). If ~~When~~ the department directly contracts for appraisal services, it must contract with an approved appraiser who is not employed by the same appraisal firm for review services.

(b) Notwithstanding s. 253.025(6), the department may negotiate and enter into an option contract before an appraisal is obtained. The option contract must state that the final purchase price may not exceed the maximum value allowed by law. The consideration for such an option contract may not exceed 10 percent of the estimate obtained by the department or 10 percent of the value of the parcel, whichever amount is greater.

(c) This subsection applies only to a purchase or acquisition of land for juvenile justice facilities. This

subsection does not modify the authority of the Board of Trustees of the Internal Improvement Trust Fund or the Division of State Lands of the Department of Environmental Protection to approve any contract for purchase of state lands as provided by law or to require policies and procedures to obtain clear legal title to parcels purchased for state purposes.

(13) ~~(17)~~ The department may sell, to the best possible advantage, any detached parcels of land belonging to the bodies of land purchased for the state juvenile justice facilities. The department may purchase any parcel of land contiguous with the lands purchased for state juvenile justice facilities.

(14) ~~(18)~~ The department may begin preliminary site preparation and obtain the appropriate permits for the construction of a juvenile justice facility after approval of the lease-purchase agreement or option contract by the Board of Trustees of the Internal Improvement Trust Fund ~~of the lease purchase agreement or option contract~~ if~~, in~~ the department determines that ~~department's discretion,~~ commencing construction is in the best interests of the state.

(15) ~~(19)~~ If ~~Insofar as the provisions of~~ this section is ~~are~~ inconsistent with ~~the provisions of~~ any other general, special, or local law, ~~general, special, or local, the provisions of~~ this section is ~~are~~ controlling. Additionally, the criteria and procedures established under ~~set forth in~~ this section supersede and are in lieu of any review and approval required by s. 380.06.

Section 38. Section 985.69, Florida Statutes, is amended to read:

985.69 Repair and maintenance ~~One-time startup~~ funding for

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juvenile justice purposes.—Funds from juvenile justice appropriations may be used ~~utilized as one-time startup funding~~ for juvenile justice purposes that include, but are not limited to, remodeling or renovation of existing facilities, construction costs, leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the repair and maintenance ~~startup~~ of facilities or programs.

Section 39. Section 985.694, Florida Statutes, is repealed.

Section 40. Paragraph (a) of subsection (1) of section 985.701, Florida Statutes, is reordered and amended to read:

985.701 Sexual misconduct prohibited; reporting required; penalties.—

(1)(a)1. As used in this section ~~subsection~~, the term:

c.~~a.~~ "Sexual misconduct" means fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

a.~~b.~~ "Employee" means a ~~includes~~ paid staff member ~~members~~, a volunteer ~~volunteers~~, or an intern ~~and interns~~ who works ~~work~~ in a department program or a program operated by a provider under a contract.

b. "Juvenile offender" means a person of any age who is detained or supervised by, or committed to the custody of, the department.

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2. An employee who engages in sexual misconduct with a juvenile offender ~~detained or supervised by, or committed to the custody of, the department~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

3. The consent of the juvenile offender to any act of sexual misconduct is not a defense to prosecution under this subsection.

4. This subsection does not apply to an employee of the department~~,~~ or ~~an employee~~ of a provider under contract with the department, who:

a. Is legally married to a juvenile offender who is detained or supervised by, or committed to the custody of, the department.

b. Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a juvenile offender ~~detained or supervised by, or committed to the custody of, the department~~.

Section 41. Section 985.702, Florida Statutes, is created to read:

985.702 Willful and malicious neglect of a juvenile offender prohibited; reporting required; penalties.—

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

(a) "Employee" means a paid staff member, volunteer, or intern who works in a department program or a program operated by a provider under a contract with the department.

(b) "Juvenile offender" means a person of any age who is detained by, or committed to the custody of, the department.

(c) "Neglect" means:

1. An employee's failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or

2. An employee's failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

(2)(a) An employee who willfully and maliciously neglects a juvenile offender without causing great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) An employee who willfully and maliciously neglects a juvenile offender and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to a juvenile offender, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Notwithstanding prosecution, any violation of paragraph (a) or paragraph (b), as determined by the Public Employees Relations Commission, constitutes sufficient cause under s. 110.227 for dismissal from employment with the department, and a person who commits such violation may not again be employed in any capacity in connection with the juvenile justice system.

(3) An employee who witnesses the neglect of a juvenile offender shall immediately report the incident to the department's incident hotline and prepare, date, and sign an

independent report that specifically describes the nature of the incident, the location and time of the incident, and the persons involved. The employee shall deliver the report to the employee's supervisor or program director, who must provide copies to the department's inspector general and the circuit juvenile justice manager. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that a violation of subsection (2) has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

(4)(a) A person who is required to prepare a report under this section and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding the neglect of a juvenile offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 42. Paragraphs (c) and (f) of subsection (3) of section 943.0582, Florida Statutes, are amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

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(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if that minor:

(c) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent misdemeanor, and that he or she has not otherwise been charged by the state attorney with or found to have committed any criminal offense or comparable ordinance violation.

(f) Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable ordinance violation.

Section 43. Section 945.75, Florida Statutes, is repealed.

Section 44. Paragraphs (e) through (i) of subsection (2), paragraphs (g) and (k) of subsection (3), paragraph (b) of subsection (5), paragraph (d) of subsection (8), and paragraph (c) of subsection (10) of section 121.0515, Florida Statutes, are amended to read:

121.0515 Special Risk Class.—

(2) MEMBERSHIP.—

~~(e) Effective July 1, 2001, "special risk member" includes any member who is employed as a youth custody officer by the Department of Juvenile Justice and meets the special criteria set forth in paragraph (3)(g).~~

(e)~~(f)~~ Effective October 1, 2005, through June 30, 2008,

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the member must be employed by a law enforcement agency or medical examiner's office in a forensic discipline and meet the special criteria set forth in paragraph (3)(g) ~~(3)(h)~~.

(f)~~(g)~~ Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory and meet the special criteria set forth in paragraph (3)(h) ~~(3)(i)~~.

(g)~~(h)~~ Effective July 1, 2008, the member must be employed by a local government law enforcement agency or medical examiner's office and meet the special criteria set forth in paragraph (3)(i) ~~(3)(j)~~.

(h)~~(i)~~ Effective August 1, 2008, "special risk member" includes any member who meets the special criteria for continued membership set forth in paragraph (3)(j) ~~(3)(k)~~.

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

~~(g) Effective July 1, 2001, the member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community;~~

(j)~~(k)~~ The member must have already qualified for and be actively participating in special risk membership under paragraph (a), paragraph (b), or paragraph (c), must have suffered a qualifying injury as defined in this paragraph, must not be receiving disability retirement benefits as provided in

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s. 121.091(4), and must satisfy the requirements of this paragraph.

1. The ability to qualify for the class of membership defined in paragraph (2)(h) ~~(2)(i)~~ occurs when two licensed medical physicians, one of whom is a primary treating physician of the member, certify the existence of the physical injury and medical condition that constitute a qualifying injury as defined in this paragraph and that the member has reached maximum medical improvement after August 1, 2008. The certifications from the licensed medical physicians must include, at a minimum, that the injury to the special risk member has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and:

a. That this physical loss or loss of use is total and permanent, except if the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.

b. That this physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.

c. That, notwithstanding this physical loss or loss of use, the individual can perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. That use of artificial limbs is not possible or does not alter the member's ability to perform the essential job functions of the member's position.

e. That the physical loss or loss of use is a direct result of a physical injury and not a result of any mental,

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psychological, or emotional injury.

2. For the purposes of this paragraph, "qualifying injury" means an injury sustained in the line of duty, as certified by the member's employing agency, by a special risk member that does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

3. The new position, as described in sub-subparagraph 1.c., that is required for qualification as a special risk member under this paragraph is not required to be a position with essential job functions that entitle an individual to special risk membership. Whether a new position as described in sub-subparagraph 1.c. exists and is available to the special risk member is a decision to be made solely by the employer in accordance with its hiring practices and applicable law.

4. This paragraph does not grant or create additional rights for any individual to continued employment or to be hired or rehired by his or her employer that are not already provided within the Florida Statutes, the State Constitution, the Americans with Disabilities Act, if applicable, or any other applicable state or federal law.

(5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

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(b) Any member who is a special risk member on July 1, 2008, and who became eligible to participate under paragraph (3)(g) ~~(3)(h)~~ but fails to meet the criteria for Special Risk Class membership established by paragraph (3)(h) ~~(3)(i)~~ or paragraph (3)(i) ~~(3)(j)~~ shall have his or her special risk designation removed and thereafter shall be a Regular Class member and earn only Regular Class membership credit. The department may review the special risk designation of members to determine whether or not those members continue to meet the criteria for Special Risk Class membership.

(8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

(d) Notwithstanding any other provision of this subsection, this subsection does not apply to any special risk member who qualifies for continued membership pursuant to paragraph (3)(j) ~~(3)(k)~~.

(10) CREDIT FOR UPGRADED SERVICE.—

(c) Any member of the Special Risk Class who has earned creditable service through June 30, 2008, in another membership class of the Florida Retirement System in a position with the Department of Law Enforcement or the Division of State Fire Marshal and became covered by the Special Risk Class as described in paragraph (3)(h) ~~(3)(i)~~, or with a local government law enforcement agency or medical examiner's office and became covered by the Special Risk Class as described in paragraph (3)(i) ~~(3)(j)~~, which service is within the purview of the Special Risk Class, and is employed in such position on or after July 1, 2008, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final

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compensation provided in s. 121.091(1)(a)2. The cost for such credit must be an amount representing the actuarial accrued liability for the difference in accrual value during the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. The cost must be paid immediately upon notification by the division. The local government employer may purchase the upgraded service credit on behalf of the member if the member has been employed by that employer for at least 3 years.

Section 45. Subsection (5) of section 985.045, Florida Statutes, is amended to read:

985.045 Court records.—

(5) This chapter does not prohibit a circuit court from providing a restitution order containing the information prescribed in s. 985.0301(5)(e) ~~s. 985.0301(5)(h)~~ to a collection court or a private collection agency for the sole purpose of collecting unpaid restitution ordered in a case in which the circuit court has retained jurisdiction over the child and the child's parent or legal guardian. The collection court or private collection agency shall maintain the confidential status of the information to the extent such confidentiality is provided by law.

Section 46. Section 985.721, Florida Statutes, is amended to read:

985.721 Escapes from secure detention or residential

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commitment facility.—An escape from:

(1) Any secure detention facility maintained for the temporary detention of children, pending adjudication, disposition, or placement;

(2) Any residential commitment facility described in s. 985.03(41) ~~s. 985.03(46)~~, maintained for the custody, treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or

(3) Lawful transportation to or from any such secure detention facility or residential commitment facility,

constitutes escape within the intent and meaning of s. 944.40 and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 47. This act shall take effect July 1, 2014.

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The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 21, 2014

I respectfully request that **Senate Bill # 700**, relating to Department of Juvenile Justice, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic D.J.J

Bill Number SB 700 *(if applicable)*

Name Greg Pound

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 9166 Sunrise Dr.
Street

Largo FL. 33773
City *State* *Zip*

Phone _____

E-mail _____

Speaking: ☐ For ☐ Against ☒ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Juvenile Justice

Bill Number 700 *(if applicable)*

Name Chris Dawson

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 301 E Pine St Suite 1400
Street
Orlando FL 32801
City *State* *Zip*

Phone 850.449.0066

E-mail chris.dawson@gray-robinson.com

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

Representing FL Smart Justice Alliance

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/12
Meeting Date

Topic Sen. Approps

Bill Number SB 700 *(if applicable)*

Name Jon Menendez

Amendment Barcode *(if applicable)*

Job Title Legislative Affairs Director

Address 2737 Centerview Dr

Phone 322-9572

Street

TLH FL 32399

E-mail Jon.Menendez@djj.state.fl.us

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FL. Dept. of Juvenile Justice

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 700 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 712
INTRODUCER:	Senator Galvano and others
SUBJECT:	Taxes on Prepaid Calling Arrangements
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Favorable**
2.	Cote	Diez-Arguelles	AFT	**Favorable**
3.	Cote	Kynoch	AP	**Favorable**

I. Summary:

SB 712 revises the definition of "prepaid calling arrangement" in chapter 202, F.S., relating to the Communication Services Tax and chapter 212. F.S., relating to the sales tax, to include mobile communications services that meet specified conditions. The bill expands the definition of "prepaid calling arrangement" to include prepaid communication services other than those that consist exclusively of telephone calls, and provides that the purchaser of prepaid units may use the units to purchase communication services other than mobile communication services, if the other services are provided to or through the same handset or other electronic device the purchaser uses to access mobile communication services.

The changes made by the bill are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date, July 1, 2014.

The Revenue Estimating Conference estimated that this bill will have a zero cash impact in Fiscal Year 2014-2015, with the following recurring, negative impacts: General Revenue Fund ($1.4 million), Public Education Capital Outlay Trust Fund ($5.7 million), and local governments ($11.2 million). Additional losses of an indeterminate amount may occur due to the purchase, on a prepaid basis, of other communication services through the same handset or other electronic device that is used by the purchaser to access mobile communication services. See Section V. of this analysis for additional information regarding the fiscal impact of the bill.

The mandates constitutional provision may apply to this bill, requiring a two-thirds vote of the membership of each house for passage. See Section IV.A. of the analysis.

II. Present Situation:

Communications Services Tax

Chapter 202, F.S., provides for a tax on communication services, including telecommunications, cable, direct-to-home satellite and related services. The communications services tax includes a state tax rate of 6.65 percent and a state gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent.[1] In addition, local governments may impose a local tax rate of up to 7.12 percent.[2] The statewide, total average tax rate is approximately 14.21 percent.

A portion of the state taxes collected – including taxes collected on direct-to-home satellite service – are deposited into the General Revenue Fund and a portion is distributed to local governments.[3] Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used to fund public schools', community colleges', and universities' capital projects.

Prepaid Calling Arrangement

The communication services tax (CST) is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.[4] However, the definition of the term "sales price" expressly excludes the "sale or recharge of a prepaid calling arrangement," so CST is not collected on the sale of a prepaid calling arrangement. [5]

The term "prepaid calling arrangement" is defined to mean "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount."[6]

Chapter 212, F.S., provides for the application of the sales tax to the sale of tangible personal property and some services. The sales tax rate of 6 percent is applicable to charges for prepaid calling arrangements.[7] The term "prepaid calling arrangement" as defined in ch. 212, F.S., means "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount."[8] The

[1] See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services. Direct-to-home satellite is taxed at a rate of 10.8 percent and is also subject to the 2.37 percent gross receipts tax. The local tax does not apply to these services.
[2] Section 202.19, F.S.
[3] Section 202.18, F.S.
[4] Section 202.12, F.S.
[5] Section 202.11(13)(b)4., F.S.
[6] Section 202.11(9), F.S.
[7] Section 212.05(1)(e)1., F.S.
[8] *Id*.

definition of "prepaid calling arrangement" in ch. 202, F.S. is virtually identical to the definition in ch. 212, F.S.

When the definition of prepaid calling arrangement was placed in the statute[9], prepaid calling arrangements typically consisted of prepaid calling cards purchased in advance and limited to telephone calls. However, since then the telecommunications industry has developed to offer more prepaid plans compatible with the texting, data, video, and other capabilities of today's modern smartphones. This has led to increased utilization of prepaid mobile services. As markets and technology have evolved, the statutory definition has become increasingly incompatible and inconsistent with industry practice and the ability to collect communication services taxes.

As technology evolved, most communications service providers and other prepaid phone retailers continued to apply the sales tax to all prepaid mobile phone plans, even though the plans did not meet the strict definition of a "prepaid calling arrangement." This practice continues today for all prepaid plans.

DOR Tax Information Publication on Prepaid Communications Services

In March of 2012, DOR issued Tax Information Publication (TIP) No. 12ADM-02 to provide clarification regarding the application of Florida taxes to sales of certain prepaid communications plans and services.[10] The TIP stated that certain prepaid communications plans or services are not "prepaid calling arrangements." It continued:

> Examples of such plans that do not fall under this definition include, but are not limited to:
> - service that includes text messaging, multimedia messaging, web, e-mail, etc.;
> - unlimited calling plans that do *not* decline with usage;
> - services or plans that are *not* sold in predetermined units or dollars; or
> - services or plans that are *not* originated using an access number or authorization code.[11]

The TIP concluded that a "sale of a prepaid card or prepaid arrangement that does not fall under the strict definition of a "prepaid calling arrangement" is not subject to sales tax. Instead, sales of such plans are subject to CST.[12]

The TIP was retracted on July 29, 2013, after DOR received a notice contesting the TIP as an un-promulgated rule. Currently, DOR is in the rule development process.

In summary, the current statutory provisions seem to require the conclusion that sales of prepaid calling plans or services that meet the **strict** definition of a "prepaid calling arrangement" are

[9] Chapter 2000-260, Laws of Florida.
[10] Florida Department of Revenue, *Prepaid Communications Services*, TIP No. 12ADM-02 (March 27, 2012) *available at* http://dor.myflorida.com/dor/tips/tip12adm-02.html.
[11] *Id*. Emphasis in the original.
[12] *Id*.

subject to the state sales tax (6 percent) and local discretionary sales surtaxes, and that sales of plans that do not meet the strict definition are subject to the state CST (6.65 percent), gross receipts tax (2.52) and the local CST (variable rate) applicable to other communication services.

Communications service providers do not agree with this conclusion and argue that the prepaid mobile phone plans being sold today are subject only to the state sales tax and local discretionary sales surtaxes.

III. Effect of Proposed Changes:

Section 1 amends subsection 202.11(9), F.S., to revise the definition of the term "prepaid calling arrangement." For other than mobile communications services, the term includes a right to use communications services "for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which consists exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered."

For mobile communications services, the term includes "a right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;
2. The purchaser is not required to purchase additional units; and
3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services."

Predetermined units may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

The bill expands the definition of "prepaid calling arrangement" to include prepaid communication services other than those that consist exclusively of telephone calls. The changes recognize that under current industry practices prepaid services may include services other than telephone calls, such as text messaging, web access, and email.

In addition, the bill provides that the purchaser of prepaid units may use the units to purchase other communication services other than mobile communication services if the other services are provided to or through the same handset or other electronic device the purchaser uses to access mobile communication services. This provision may result in communication services currently subject to CST tax rates being subject to only sales tax in the future if they are sold as part of a prepaid calling arrangement.

Section 2 amends paragraph 212.05(1)(e), F.S., to define the term "prepaid calling arrangement" to have the same meaning as provided for in s. 202.11, F.S.

The bill also provides that if a purchaser of a prepaid calling arrangement has paid sales tax on the sale or recharge of such arrangement, no additional sales tax or CST tax is due or payable if the purchaser applies one or more units of the prepaid calling arrangement to obtain communications services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services, other services that are not communications services, or products.

Section 3 provides that the amendments made by the bill are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 4 provides that, except as otherwise expressly provided in section 3, the bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The mandates provision may apply because the bill redefines the types of services to which local Communication Services tax rates apply, thereby potentially reducing the authority of municipalities to raise revenue.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimated that SB 712 will have a zero cash impact in Fiscal Year 2014-2015, with the following recurring, negative impacts: General Revenue ($1.4 million), PECO Trust ($5.7 million), and Local ($11.2 million). Additional losses of an indeterminate amount may occur due to the purchase, on a prepaid basis, of other communication services through the same handset or other electronic device that is used by the purchaser to access mobile communication services.

In addition, a loss of up to $600 million in audit recoveries may occur if the Department of Revenue were to successfully enforce the strict definition of "prepaid calling arrangement," with a potential loss of up to $200 million annually on a going-forward basis. These amounts reflect the estimate of what CST tax collections would have been in the past and would be in the future if CST tax, instead of sales tax, were collected on prepaid calling arrangements. However, because current industry practice is to collect sales tax on prepaid mobile communications services, and the timing of any successful Department of Revenue action is unknown, it is uncertain if and when these losses would be realized.

B. Private Sector Impact:

Communications service providers can continue to offer a prepaid plan consisting of a flat-rate charge for a predetermined number of units that can be used to purchase mobile communications services, including services such as texting, without the sale being subject to the higher CST rate. Purchasers of these plans will continue to pay the sales tax rate instead of the higher CST tax rate.

C. Government Sector Impact:

The bill may require that the Department of Revenue (DOR) notify all businesses that sell prepaid wireless telecommunication services of the changes made by the bill. This would require mailing a Tax Information Publication to 262,200 businesses. The estimated nonrecurring cost to DOR is $125,646.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 202.11 and 212.05.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senators Galvano, Gibson, Stargel, Abruzzo, Soto, Altman, and Garcia

26-00835C-14 2014712__

A bill to be entitled

An act relating to taxes on prepaid calling arrangements; amending ss. 202.11 and 212.05, F.S.; revising the definition of "prepaid calling arrangement" to clarify and update which services are included under that definition and subject to a sales tax; providing for retroactive application; providing an effective date.

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

Section 1. Subsection (9) of section 202.11, Florida Statutes, is amended to read:

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

(9) "Prepaid calling arrangement" means: ~~the separately stated retail sale by advance payment of~~

(a) A right to use communications services, other than mobile communications services, for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which ~~that~~ consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered; or ~~and that are sold in predetermined units or dollars of which the number declines with use in a known amount.~~

(b) A right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis

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

Florida Senate - 2014 **SB 712**

26-00835C-14 2014712__

if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;

2. The purchaser is not required to purchase additional units; and

3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services.

Predetermined units described in this subsection may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

Section 2. Paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

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

(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" has the same meaning as provided in s. 202.11 ~~means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount~~.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to have taken ~~take~~ place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

(IV) No additional tax under this chapter or chapter 202 is due or payable if a purchaser of a prepaid calling arrangement, who has paid tax under this chapter on the sale or recharge of such arrangement, applies one or more units of the prepaid calling arrangement to obtain communications services as

described in s. 202.11(9)(b)3., other services that are not communications services, or products.

b. The installation of telecommunication and telegraphic equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 7 percent.

2. The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, are ~~shall be~~ equally applicable to any tax paid under ~~the provisions of~~ this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. The term ~~word~~ "charges" under ~~in~~ this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of this ~~the~~ state, or any municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

Section 3. The amendments made by this act are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 4. Except as otherwise expressly provided in section 3 of this act, this act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 2, 2014

Senator Joe Negron
201 Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that SB 712, Taxes on Prepaid Calling Arrangements, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Cindy Kynoch
Alicia Weiss

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Prepaid Calling Arrangements

Bill Number 712 *(if applicable)*

Name JC Flores

Amendment Barcode *(if applicable)*

Job Title Regional Director - External Affairs

Address 150 W. FLAGLER St. *Street*

Phone 305-347-5406

City Miami State FL Zip 33130

E-mail JF3230@att.com

Speaking: ☑ For ☐ Against ☐ Information

Representing AT&T waive in support.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22
Meeting Date

Topic CST on Prepaid

Bill Number SB 712 *(if applicable)*

Name Woody Simmons

Amendment Barcode *(if applicable)*

Job Title VP Govt Affairs

Address 106 E College Ave Suite 710
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 222-6300

E-mail Woodrow.Simmons@Verizon.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Verizon

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number 712 *(if applicable)*

Name Diana Ferguson Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 119 S Monroe St Ste 202 Phone 850-681-6788
Street

Tallahassee FL 32301 E-mail dferguson@reedsmith.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing T-Mobile

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Prepaid — Bill Number 712 *(if applicable)*

Name Melissa Joiner Ramba — Amendment Barcode _____ *(if applicable)*

Job Title Director of Government Affairs

Address 227 S Adams St *Street* — Phone _____

Tallahassee *City* *State* *Zip* — E-mail melissa@FRF.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Retail Federation

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Bill

Bill Number 712 *(if applicable)*

Name Frank Meiners

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO Box 1622
Street
Tall 32302
City *State* *Zip*

Phone 591-0177

E-mail frank@chgmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 734 (951274)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senators Sobel and Abruzzo
SUBJECT:	Cancer Control and Research
DATE:	April 21, 2014 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 734 reduces the number of members of the Cancer Control and Research Advisory Council (CCRAB) from 35 to 15 and revises which organizations are represented on the CCRAB, as well as how CCRAB members and the chairperson of the CCRAB are appointed. The bill also revises the duties of the CCRAB by eliminating the CCRAB's responsibility for recommending the awarding of grants and contracts to private entities and government agencies for cancer control, prevention, education, or research. The bill requires the CCRAB to recommend to the state surgeon general a statewide research plan.

The bill has no fiscal impact.

II. Present Situation:

The Florida Cancer Control and Research Advisory Council was established by the Legislature in 1979 to advise the Legislature, governor, and state surgeon general on how to reduce the cancer burden in Florida.[1] The CCRAB is housed within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (Moffitt).[2] The CCRAB:

[1] Florida Cancer Control and Research Advisory Council, *What is CCRAB?*, found at http://www.ccrab.org/, last visited on March 7, 2014.
[2] *See* s. 1004.435(4), F.S.

- Advises the Board of Governors, the state surgeon general, and the Legislature on cancer control and research in Florida;
- Annually approves the Florida Cancer Plan;
- Provides recommendations for the Florida Cancer Plan to include the coordination and integration of plans concerned with cancer control and research provided by other stakeholders;
- Formulates and recommends to the state surgeon general:
  - A plan for the care and treatment of persons suffering from cancer,
  - Standard requirements for organization, equipment, and conduct of cancer units or departments in hospitals and clinics, and
  - The designation of cancer units following a survey of needs and facilities for treatment of cancer throughout the state;
- Recommends grant awards and contracts to qualified recipients;[3]
- Develops educational materials and programs; and
- Recommends rules and methods of implementing or enforcing laws concerned with cancer control, research, and education.

The CCRAB consists of 35 members, including appointees by the speaker of the House of Representatives, the president of the Senate, the governor, and other persons. Members represent:

- American Cancer Society,
- Florida Tumor Registrars Association,
- Sylvester Comprehensive Cancer Center of the University of Miami,
- Department of Health (DOH),
- University of Florida Shands Cancer Center,
- Agency for Health Care Administration,
- Florida Nurses Association,
- Florida Osteopathic Medical Association,
- American College of Surgeons,
- School of Medicine of the University of Miami,
- College of Medicine of the University of Florida,
- Nova Southeastern University College of Osteopathic Medicine,
- College of Medicine of the University of South Florida,
- College of Public Health of the University of South Florida,
- Florida Society of Clinical Oncology,
- Florida Obstetric and Gynecologic Society,
- Florida Ovarian Cancer Alliance Speaks,
- Florida Medical Association,
- Florida Pediatric Society,
- Florida Radiological Society,
- Florida Society of Pathologists,
- Moffitt,

[3] According to a phone conversation with Susan Fleming at the DOH on Mar. 10, 2014, the Florida Cancer Control Research Fund, from which the council was supposed to grant the awards and contracts, was never implemented or funded.

- Florida Dental Association,
- Florida Hospital Association,
- Association of Community Cancer Centers,
- Statutory teaching hospitals,[4]
- Florida Association of Pediatric Tumor Programs, Inc.,
- Cancer Information Services,
- Florida Agricultural and Mechanical University Institute of Public Health,
- Florida Society of Oncology Social Workers, and
- Consumer advocates from the general public.

In 2013, the Legislature passed 2013-50, L.O.F., which created the Cancer Center of Excellence Award and amended s. 1004.435(4), F.S., to require the CCRAB, along with the Biomedical Research Advisory Council (BRAC), to develop performance measures, a rating system, a rating standard, and an application for the Cancer Center of Excellence Award. The CCRAB is required to select by majority vote seven members to form a joint committee with six members of the BRAC in order to implement the Cancer Center of Excellence Award.

The Florida Cancer Control and Research Fund

The Florida Cancer Control and Research Fund is not an official trust fund of the state of Florida. The fund was created by ch. 2002-387, L.O.F., and is authorized to consist of appropriations from the General Revenue Fund and any gifts, grants, or funds received from other sources. The fund is statutorily required to be used exclusively for grants and contracts to qualified non-profit associations of governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of s. 1004.435, F.S., and programs funded through grants and contracts authorized by the Board of Education or the state surgeon general.[5]

The General Appropriations Act has never contained an appropriation for the Florida Cancer Control and Research Fund since the fund was created in 2002.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 1004.435, F.S., to revise the membership of the CCRAB and reduce its membership from 35 to 15 members[6] consisting of:

[4] *See* s. 408.07(45), F.S. "Teaching hospital" means any Florida hospital officially affiliated with an accredited Florida medical school which participates in graduate medical education as reflected by at least seven different graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education or the Council on Postdoctoral Training of the American Osteopathic Association and the presence of 100 or more full-time equivalent resident physicians.
[5] *See* s. 1004.435(6), F.S.
[6] Organizations that are no longer included in council membership include: The Florida Tumor Registration Association, the Agency for Health Care Administration, the American College of Surgeons, the University of Miami College of Medicine, the University of Florida College of Medicine, the NOVA Southeastern College of Osteopathic Medicine, the University of South Florida College of Public Health, the Florida Society of Clinical Oncology, the Florida Obstetric and Gynecologic Society, the Florida Ovarian Cancer Alliance Speaks organization, the Florida Pediatric Society, the Florida Radiological Society, the Florida Society of Pathologists, the Florida Dental Association, the Association of Community Cancer Centers, the Florida Association of Pediatric Tumor Programs, Inc., a statutory teaching hospital affiliated with a community-based

- One member appointed by the state surgeon general;
- One member appointed by the chief executive officer (CEO), or the CEO's designee, from each of the following institutions:
  - The American Cancer Society;
  - The Sylvester Comprehensive Cancer Center of the University of Miami;
  - The University of Florida Shands Cancer Center;
  - The Florida Nurses Association who specializes in the field of oncology and is not from an institution or organization already represented on the CCRAB;
  - The Florida Osteopathic Medical Association who specializes in the field of oncology;
  - The Florida Medical Association (FMA) who is a member of the FMA, specializes in the field of oncology, and represents a cancer center not already represented on the CCRAB;
  - The H. Lee Moffitt Cancer Center and Research Institute;
  - The Florida Hospital Association (FHA) who specializes in the field of oncology, is a member of the FHA, and represents a comprehensive cancer center not already represented on the CCRAB; and
  - The Association of Community Cancer Centers.
- One member, appointed by the governor, who specializes in pediatric oncology;
- One member, appointed by the president of the Senate, who specializes in oncology clinical care and research;
- One member, appointed by the speaker of the House of Representatives, who is a current or former cancer patient or caregiver;
- One member of the House of Representatives appointed by the speaker of the House of Representatives; and,
- One member of the Senate, appointed by the president of the Senate.

Regarding CCRAB membership, the bill also provides that:
- At least four members must be minority persons;[7]
- A member's term is four years with the option of reappointment;
- Members of the CCRAB select the chairperson;
- Eight members constitute a quorum; and
- The institution that a member represents may reimburse that member for travel expenses, or if a member does not represent an institution, then Moffitt is required to reimburse that member for travel expenses.

The bill renames the "Florida Cancer Plan" that the CCRAB is required to approve each year, consisting of a program for cancer control and research, as the "Florida Cancer Control and Research Plan."

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cancer center, the Cancer Information Service, the Florida Agricultural and Mechanical University Institute of Public Health, and the Florida Society of Oncology Social Workers.

[7] Defined in s. 288.703, F.S., to mean a lawful, permanent resident of Florida who is an African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin; a Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; an Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778; a Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services; or, an American woman.

The bill requires that the CCRAB must collaborate with the Florida Biomedical Research Advisory Council to annually recommend to the state surgeon general a statewide research plan, in addition to the plan for the care and treatment of persons suffering from cancer that is required of the CCRAB under current law. The latter plan is named the "Florida Cancer Treatment Plan" under the bill.

The bill removes from statute:

- Requirements for the CCRAB to recommend the awarding of grants and contracts to qualified associations or government agencies;
- The CCRAB's duty to create summaries of the treatment options available to persons suffering from breast and prostate cancer;
- The authorization for the DOH to furnish financial aid to Florida citizens who are afflicted with cancer; and
- The Florida Cancer Control and Research Fund.

Sections 2 and 3 of the bill amend ss. 458.324 and 459.0125, F.S., to conform those sections to the changes made in Section 1 of the bill relating to summaries of treatment alternatives and to make other technical revisions.

Section 4 of the bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/SB 734, organizations represented on the CCRAB may be required to pay their representative's travel expenses under the provisions of ss. 1004.435(4)(e) and 112.061, F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In delineating the membership of the CCRAB, the bill indicates one member must be a member of the Florida Medical Association who represents a cancer center not already represented on the CCRAB. The bill also indicates one member must be a member of the Florida Hospital Association who represents a comprehensive cancer center not already represented on the CCRAB. The bill does not specify what differentiates a "cancer center" from a "comprehensive cancer center," and that differentiation is also not found under current law in s. 1004.435, F.S.

The bill's intent is not clear regarding the requirement that one CCRAB member be a "member of the Florida Hospital Association" (FHA). The FHA's membership is not composed of individual persons. Organizations such as hospitals and health systems constitute the membership of the FHA.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.324, 459.0125, and 1004.435.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on April 2, 2014:
The CS:

- Provides additional requirements for members of the CCRAB who represent the Florida Nurses Association, the Florida Medical Association, and the Florida Hospital Association;
- Renames the Florida Cancer Plan as the Florida Cancer Control and Research Plan;
- Requires the CCRAB to collaborate with the Florida Biomedical Research Advisory Council to recommend to the state surgeon general a statewide research plan; and
- Requires that the statewide research plan must be reviewed and recommended annually.

B. Amendments:

None.

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

951274

576-03667-14

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

A bill to be entitled

An act relating to cancer control and research; amending s. 1004.435, F.S.; revising definitions; revising the membership of the Florida Cancer Control and Research Advisory Council and selection of the council chairperson; authorizing renewal of member terms; revising compensation of council members; renaming the Florida Cancer Plan; requiring the council to collaborate with the Florida Biomedical Research Advisory Council to formulate and review a statewide research plan; requiring the council to develop and review a statewide treatment plan; deleting council, Board of Governors, and State Surgeon General duties relating to the awarding of grants and contracts for cancer-related programs; deleting council duties relating to the development of written summaries of treatment alternatives; deleting financial aid provisions and the Florida Cancer Control and Research Fund; amending ss. 458.324 and 459.0125, F.S.; conforming provisions; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (3) and subsections (4), (5), and (6) of section 1004.435, Florida Statutes, are amended to read:

951274

576-03667-14

1004.435 Cancer control and research.—

(3) DEFINITIONS.—The following words and phrases when used in this section have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

~~(d) "Fund" means the Florida Cancer Control and Research Fund established by this section.~~

~~(e) "Qualified nonprofit association" means any association, incorporated or unincorporated, that has received tax-exempt status from the Internal Revenue Service.~~

(4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL; CREATION; COMPOSITION.—

(a) There is created within the H. Lee Moffitt Cancer Center and Research Institute, Inc., the Florida Cancer Control and Research Advisory Council. The council shall consist of 15 ~~35~~ members, which includes the chairperson, all of whom must be residents of this state. The State Surgeon General or his or her designee within the Department of Health shall be one of the 15 members. ~~All~~ Members, except those appointed by the Governor, the Speaker of the House of Representatives, or ~~and~~ the President of the Senate, must be appointed by the chief executive officer of the institution or organization represented, or his or her designee ~~Governor~~. ~~At least one of the members appointed by the Governor must be 60 years of age or older.~~ One member must be a representative of the American Cancer Society; ~~one member must be a representative of the Florida Tumor Registrars Association;~~ one member must be a representative of the Sylvester Comprehensive Cancer Center of the University of Miami; ~~one member must be a representative of the Department of Health;~~ one member must be a representative of

the University of Florida Shands Cancer Center; ~~one member must be a representative of the Agency for Health Care Administration;~~ one member must be a representative of the Florida Nurses Association who specializes in the field of oncology and is not from an institution or organization already represented on the council; one member must be a representative of the Florida Osteopathic Medical Association who specializes in the field of oncology; ~~one member must be a representative of the American College of Surgeons; one member must be a representative of the School of Medicine of the University of Miami; one member must be a representative of the College of Medicine of the University of Florida; one member must be a representative of NOVA Southeastern College of Osteopathic Medicine; one member must be a representative of the College of Medicine of the University of South Florida; one member must be a representative of the College of Public Health of the University of South Florida; one member must be a representative of the Florida Society of Clinical Oncology; one member must be a representative of the Florida Obstetric and Gynecologic Society who has had training in the specialty of gynecologic oncology; one member must be a representative of the Florida Ovarian Cancer Alliance Speaks (FOCAS) organization;~~ one member must be a member ~~representative~~ of the Florida Medical Association who specializes in the field of oncology and who represents a cancer center not already represented on the council; ~~one member must be a member of the Florida Pediatric Society; one member must be a representative of the Florida Radiological Society; one member must be a representative of the Florida Society of Pathologists;~~ one member must be a

representative of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; one member must be a member of the Florida Hospital Association who specializes in the field of oncology and who represents a comprehensive cancer center not already represented on the council; one member must be a representative of the Association of Community Cancer Centers; one member must specialize in pediatric oncology research or clinical care appointed by the Governor; one member must specialize in oncology clinical care or research appointed by the President of the Senate; one member must be a current or former cancer patient or a current or former caregiver to a cancer patient appointed by the Speaker of the House of Representatives ~~three members must be representatives of the general public acting as consumer advocates~~; one member must be a member of the House of Representatives appointed by the Speaker of the House of Representatives; and one member must be a member of the Senate appointed by the President of the Senate~~; one member must be a representative of the Florida Dental Association; one member must be a representative of the Florida Hospital Association; one member must be a representative of the Association of Community Cancer Centers; one member shall be a representative from a statutory teaching hospital affiliated with a community-based cancer center; one member must be a representative of the Florida Association of Pediatric Tumor Programs, Inc.; one member must be a representative of the Cancer Information Service; one member must be a representative of the Florida Agricultural and Mechanical University Institute of Public Health; and one member must be a representative of the Florida Society of Oncology Social Workers~~. ~~Of the members of the~~

~~council appointed by the Governor,~~ At least four of the members ~~10~~ must be individuals who are minority persons as defined by s. 288.703.

(b) The terms of the members shall be 4 years from their respective dates of appointment with the option of renewal.

(c) A chairperson shall be selected by the council ~~appointed by the Governor~~ for a term of 2 years. The chairperson shall appoint an executive committee of no fewer than three persons to serve at the pleasure of the chairperson. This committee will prepare material for the council but make no final decisions.

(d) The council shall meet no less than semiannually at the call of the chairperson or, in his or her absence or incapacity, at the call of the State Surgeon General. Eight ~~Sixteen~~ members constitute a quorum for the purpose of exercising all of the powers of the council. A vote of the majority of the members present is sufficient for all actions of the council.

(e) The council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members may be entitled to be reimbursed for ~~per diem and~~ travel expenses by the institution or organization the member represents. If a member is not affiliated with an institution or organization, the member shall be reimbursed for travel expenses by the H. Lee Moffitt Cancer Center and Research Institute, Inc.

~~(f) No member of the council shall participate in any discussion or decision to recommend grants or contracts to any qualified nonprofit association or to any agency of this state or its political subdivisions with which the member is associated as a member of the governing body or as an employee~~

~~or with which the member has entered into a contractual arrangement.~~

(f) ~~(g)~~ The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.

(g) ~~(h)~~ The council shall advise the Board of Governors, the State Surgeon General, and the Legislature with respect to cancer control and research in this state.

(h) ~~(i)~~ The council shall approve each year a program for cancer control and research to be known as the "Florida Cancer Control and Research Plan" which shall be consistent with the State Health Plan and integrated and coordinated with existing programs in this state.

(i) ~~(j)~~ The council shall collaborate with the Florida Biomedical Research Advisory Council to formulate and annually review and recommend to the State Surgeon General a statewide research plan. Additionally, the council shall develop and annually review a statewide "Florida Cancer Treatment Plan" ~~plan~~ for the care and treatment of persons suffering from cancer. The council shall ~~and~~ recommend the establishment of standard requirements for the organization, equipment, and conduct of cancer units or departments in hospitals and clinics in this state. The council may recommend to the State Surgeon General the designation of cancer units following a survey of the needs and facilities for treatment of cancer in the various localities throughout the state. The State Surgeon General shall consider the plans ~~plan~~ in developing departmental priorities and funding priorities and standards under chapter 395.

(j) ~~(k)~~ The council is responsible for including in the

Florida Cancer Control and Research Plan recommendations for the coordination and integration of medical, nursing, paramedical, lay, and other plans concerned with cancer control and research. Committees shall be formed by the council so that the following areas will be established as entities for actions:

1. Cancer plan evaluation: tumor registry, data retrieval systems, and epidemiology of cancer in the state and its relation to other areas.

2. Cancer prevention.

3. Cancer detection.

4. Cancer patient management: treatment, rehabilitation, terminal care, and other patient-oriented activities.

5. Cancer education: lay and professional.

6. Unproven methods of cancer therapy: quackery and unorthodox therapies.

7. Investigator-initiated project research.

~~(l) In order to implement in whole or in part the Florida Cancer Plan, the council shall recommend to the Board of Governors or the State Surgeon General the awarding of grants and contracts to qualified profit or nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.~~

~~(m) If funds are specifically appropriated by the Legislature, the council shall develop or purchase standardized written summaries, written in layperson's terms and in language easily understood by the average adult patient, informing actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of the~~

~~medically viable treatment alternatives available to them in the effective management of breast cancer and prostate cancer; describing such treatment alternatives; and explaining the relative advantages, disadvantages, and risks associated therewith. The breast cancer summary, upon its completion, shall be printed in the form of a pamphlet or booklet and made continuously available to physicians and surgeons in this state for their use in accordance with s. 458.324 and to osteopathic physicians in this state for their use in accordance with s. 459.0125. The council shall periodically update both summaries to reflect current standards of medical practice in the treatment of breast cancer and prostate cancer. The council shall develop and implement educational programs, including distribution of the summaries developed or purchased under this paragraph, to inform citizen groups, associations, and voluntary organizations about early detection and treatment of breast cancer and prostate cancer.~~

(k) ~~(n)~~ The council shall have the responsibility to advise the Board of Governors and the State Surgeon General on methods of enforcing and implementing laws already enacted and concerned with cancer control, research, and education.

(l) ~~(o)~~ The council may recommend to the Board of Governors or the State Surgeon General rules not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of this section.

(m) ~~(p)~~ The council shall formulate and put into effect a continuing educational program for the prevention of cancer and its early diagnosis and disseminate to hospitals, cancer patients, and the public information concerning the proper

treatment of cancer.

(n) ~~(q)~~ The council shall be physically located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., at the University of South Florida.

(o) ~~(r)~~ The council shall select, by majority vote, seven members of the council who must combine with six members of the Biomedical Research Advisory Council to form a joint committee to develop performance measures, a rating system, a rating standard, and an application form for the Cancer Center of Excellence Award created in s. 381.925.

(p) ~~(s)~~ On February 15 of each year, the council shall report to the Governor and to the Legislature.

(5) RESPONSIBILITIES OF ~~THE BOARD OF GOVERNORS,~~ THE H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC.~~, AND THE STATE SURGEON GENERAL.~~

~~(a) The Board of Governors or the State Surgeon General, after consultation with the council, shall award grants and contracts to qualified nonprofit associations and governmental agencies in order to plan, establish, or conduct programs in cancer control and prevention, cancer education and training, and cancer research.~~

~~(b)~~ The H. Lee Moffitt Cancer Center and Research Institute, Inc., shall provide such staff, information, and other assistance as reasonably necessary for the completion of the responsibilities of the council.

~~(c) The department may furnish to citizens of this state who are afflicted with cancer financial aid to the extent of the appropriation provided for that purpose in a manner which in its opinion will afford the greatest benefit to those afflicted and~~

~~may make arrangements with hospitals, laboratories, or clinics to afford proper care and treatment for cancer patients in this state.~~

~~(6) FLORIDA CANCER CONTROL AND RESEARCH FUND.—~~

~~(a) There is created the Florida Cancer Control and Research Fund consisting of funds appropriated therefor from the General Revenue Fund and any gifts, grants, or funds received from other sources.~~

~~(b) The fund shall be used exclusively for grants and contracts to qualified nonprofit associations or governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of this section and the programs funded through the grants and contracts authorized by the State Board of Education or the State Surgeon General.~~

Section 2. Subsections (1) and (2) of section 458.324, Florida Statutes, are amended to read:

458.324 Breast cancer; information on treatment alternatives.—

(1) DEFINITION.—As used in this section, the term "medically viable," as applied to treatment alternatives, means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards~~, including treatment alternatives described in the written summary prepared by the Florida Cancer Control and Research Advisory Council in accordance with s. 1004.435(4)(m)~~.

(2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

(a) Each physician treating a patient who is, or in the

judgment of the physician is at high risk of being, diagnosed as having breast cancer shall inform such patient of the medically viable treatment alternatives available to such patient; shall describe such treatment alternatives; and shall explain the relative advantages, disadvantages, and risks associated with the treatment alternatives to the extent deemed necessary to allow the patient to make a prudent decision regarding such treatment options. In compliance with this subsection, ~~:~~

~~(a)~~ the physician may, in his or her discretion, ~~:~~

~~1.~~ orally communicate such information directly to the patient or the patient's legal representative~~;~~

~~2. Provide the patient or the patient's legal representative with a copy of the written summary prepared in accordance with s. 1004.435(4)(m) and express a willingness to discuss the summary with the patient or the patient's legal representative; or~~

~~3. Both communicate such information directly and provide a copy of the written summary to the patient or the patient's legal representative for further consideration and possible later discussion~~.

(b) In providing such information, the physician shall take into consideration the emotional state of the patient, the physical state of the patient, and the patient's ability to understand the information.

(c) The physician may, in his or her discretion and without restriction, recommend any mode of treatment which is in his or her judgment the best treatment for the patient.

Nothing in this subsection shall reduce other provisions of law

regarding informed consent.

Section 3. Subsections (1) and (2) of section 459.0125, Florida Statutes, are amended to read:

459.0125 Breast cancer; information on treatment alternatives.—

(1) DEFINITION.—As used in this section, the term "medically viable," as applied to treatment alternatives, means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards~~, including treatment alternatives described in the written summary prepared by the Florida Cancer Control and Research Advisory Council in accordance with s. 1004.435(4)(m)~~.

(2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

(a) It is the obligation of every physician treating a patient who is, or in the judgment of the physician is at high risk of being, diagnosed as having breast cancer to inform such patient of the medically viable treatment alternatives available to such patient; to describe such treatment alternatives; and to explain the relative advantages, disadvantages, and risks associated with the treatment alternatives to the extent deemed necessary to allow the patient to make a prudent decision regarding such treatment options. In compliance with this subsection, ~~:~~

~~(a)~~ the physician may, in her or his discretion, ~~:~~

~~1.~~ orally communicate such information directly to the patient or the patient's legal representative~~;~~

~~2. Provide the patient or the patient's legal representative with a copy of the written summary prepared in accordance with s. 1004.435(4)(m) and express her or his~~

~~willingness to discuss the summary with the patient or the patient's legal representative; or~~

~~3. Both communicate such information directly and provide a copy of the written summary to the patient or the patient's legal representative for further consideration and possible later discussion~~.

(b) In providing such information, the physician shall take into consideration the emotional state of the patient, the physical state of the patient, and the patient's ability to understand the information.

(c) The physician may, in her or his discretion and without restriction, recommend any mode of treatment which is in the physician's judgment the best treatment for the patient.

Nothing in this subsection shall reduce other provisions of law regarding informed consent.

Section 4. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 734
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senators Sobel and Abruzzo
SUBJECT:	Cancer Control and Research
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Brown/Loe	Pigott	AHS	**Fav/CS**
3.	Brown/Loe	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 734 reduces the number of members of the Cancer Control and Research Advisory Council (CCRAB) from 35 to 15 and revises which organizations are represented on the CCRAB, as well as how CCRAB members and the chairperson of the CCRAB are appointed. The bill also revises the duties of the CCRAB by eliminating the CCRAB's responsibility for recommending the awarding of grants and contracts to private entities and government agencies for cancer control, prevention, education, or research. The bill requires the CCRAB to recommend to the state surgeon general a statewide research plan.

The bill has no fiscal impact.

II. Present Situation:

The Florida Cancer Control and Research Advisory Council was established by the Legislature in 1979 to advise the Legislature, governor, and state surgeon general on how to reduce the cancer burden in Florida.[1] The CCRAB is housed within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (Moffitt).[2] The CCRAB:

[1] Florida Cancer Control and Research Advisory Council, *What is CCRAB?*, found at http://www.ccrab.org/, last visited on March 7, 2014.
[2] *See* s. 1004.435(4), F.S.

- Advises the Board of Governors, the state surgeon general, and the Legislature on cancer control and research in Florida;
- Annually approves the Florida Cancer Plan;
- Provides recommendations for the Florida Cancer Plan to include the coordination and integration of plans concerned with cancer control and research provided by other stakeholders;
- Formulates and recommends to the state surgeon general:
  - A plan for the care and treatment of persons suffering from cancer,
  - Standard requirements for organization, equipment, and conduct of cancer units or departments in hospitals and clinics, and
  - The designation of cancer units following a survey of needs and facilities for treatment of cancer throughout the state;
- Recommends grant awards and contracts to qualified recipients;[3]
- Develops educational materials and programs; and
- Recommends rules and methods of implementing or enforcing laws concerned with cancer control, research, and education.

The CCRAB consists of 35 members, including appointees by the speaker of the House of Representatives, the president of the Senate, the governor, and other persons. Members represent:

- American Cancer Society,
- Florida Tumor Registrars Association,
- Sylvester Comprehensive Cancer Center of the University of Miami,
- Department of Health (DOH),
- University of Florida Shands Cancer Center,
- Agency for Health Care Administration,
- Florida Nurses Association,
- Florida Osteopathic Medical Association,
- American College of Surgeons,
- School of Medicine of the University of Miami,
- College of Medicine of the University of Florida,
- Nova Southeastern University College of Osteopathic Medicine,
- College of Medicine of the University of South Florida,
- College of Public Health of the University of South Florida,
- Florida Society of Clinical Oncology,
- Florida Obstetric and Gynecologic Society,
- Florida Ovarian Cancer Alliance Speaks,
- Florida Medical Association,
- Florida Pediatric Society,
- Florida Radiological Society,
- Florida Society of Pathologists,
- Moffitt,

[3] According to a phone conversation with Susan Fleming at the DOH on Mar. 10, 2014, the Florida Cancer Control Research Fund, from which the council was supposed to grant the awards and contracts, was never implemented or funded.

- Florida Dental Association,
- Florida Hospital Association,
- Association of Community Cancer Centers,
- Statutory teaching hospitals,[4]
- Florida Association of Pediatric Tumor Programs, Inc.,
- Cancer Information Services,
- Florida Agricultural and Mechanical University Institute of Public Health,
- Florida Society of Oncology Social Workers, and
- Consumer advocates from the general public.

In 2013, the Legislature passed 2013-50, L.O.F., which created the Cancer Center of Excellence Award and amended s. 1004.435(4), F.S., to require the CCRAB, along with the Biomedical Research Advisory Council (BRAC), to develop performance measures, a rating system, a rating standard, and an application for the Cancer Center of Excellence Award. The CCRAB is required to select by majority vote seven members to form a joint committee with six members of the BRAC in order to implement the Cancer Center of Excellence Award.

The Florida Cancer Control and Research Fund

The Florida Cancer Control and Research Fund is not an official trust fund of the state of Florida. The fund was created by ch. 2002-387, L.O.F., and is authorized to consist of appropriations from the General Revenue Fund and any gifts, grants, or funds received from other sources. The fund is statutorily required to be used exclusively for grants and contracts to qualified non-profit associations of governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of s. 1004.435, F.S., and programs funded through grants and contracts authorized by the Board of Education or the state surgeon general.[5]

The General Appropriations Act has never contained an appropriation for the Florida Cancer Control and Research Fund since the fund was created in 2002.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 1004.435, F.S., to revise the membership of the CCRAB and reduce its membership from 35 to 15 members[6] consisting of:

[4] *See* s. 408.07(45), F.S. "Teaching hospital" means any Florida hospital officially affiliated with an accredited Florida medical school which participates in graduate medical education as reflected by at least seven different graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education or the Council on Postdoctoral Training of the American Osteopathic Association and the presence of 100 or more full-time equivalent resident physicians.
[5] *See* s. 1004.435(6), F.S.
[6] Organizations that are no longer included in council membership include: The Florida Tumor Registration Association, the Agency for Health Care Administration, the American College of Surgeons, the University of Miami College of Medicine, the University of Florida College of Medicine, the NOVA Southeastern College of Osteopathic Medicine, the University of South Florida College of Public Health, the Florida Society of Clinical Oncology, the Florida Obstetric and Gynecologic Society, the Florida Ovarian Cancer Alliance Speaks organization, the Florida Pediatric Society, the Florida Radiological Society, the Florida Society of Pathologists, the Florida Dental Association, the Association of Community Cancer Centers, the Florida Association of Pediatric Tumor Programs, Inc., a statutory teaching hospital affiliated with a community-based

- One member appointed by the state surgeon general;
- One member appointed by the chief executive officer (CEO), or the CEO's designee, from each of the following institutions:
  - The American Cancer Society;
  - The Sylvester Comprehensive Cancer Center of the University of Miami;
  - The University of Florida Shands Cancer Center;
  - The Florida Nurses Association who specializes in the field of oncology and is not from an institution or organization already represented on the CCRAB;
  - The Florida Osteopathic Medical Association who specializes in the field of oncology;
  - The Florida Medical Association (FMA) who is a member of the FMA, specializes in the field of oncology, and represents a cancer center not already represented on the CCRAB;
  - The H. Lee Moffitt Cancer Center and Research Institute;
  - The Florida Hospital Association (FHA) who specializes in the field of oncology, is a member of the FHA, and represents a comprehensive cancer center not already represented on the CCRAB; and
  - The Association of Community Cancer Centers.
- One member, appointed by the governor, who specializes in pediatric oncology;
- One member, appointed by the president of the Senate, who specializes in oncology clinical care and research;
- One member, appointed by the speaker of the House of Representatives, who is a current or former cancer patient or caregiver;
- One member of the House of Representatives appointed by the speaker of the House of Representatives; and,
- One member of the Senate, appointed by the president of the Senate.

Regarding CCRAB membership, the bill also provides that:
- At least four members must be minority persons;[7]
- A member's term is four years with the option of reappointment;
- Members of the CCRAB select the chairperson;
- Eight members constitute a quorum; and
- The institution that a member represents may reimburse that member for travel expenses, or if a member does not represent an institution, then Moffitt is required to reimburse that member for travel expenses.

The bill renames the "Florida Cancer Plan" that the CCRAB is required to approve each year, consisting of a program for cancer control and research, as the "Florida Cancer Control and Research Plan."

cancer center, the Cancer Information Service, the Florida Agricultural and Mechanical University Institute of Public Health, and the Florida Society of Oncology Social Workers.

[7] Defined in s. 288.703, F.S., to mean a lawful, permanent resident of Florida who is an African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin; a Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; an Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778; a Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services; or, an American woman.

The bill requires that the CCRAB must collaborate with the Florida Biomedical Research Advisory Council to annually recommend to the state surgeon general a statewide research plan, in addition to the plan for the care and treatment of persons suffering from cancer that is required of the CCRAB under current law. The latter plan is named the "Florida Cancer Treatment Plan" under the bill.

The bill removes from statute:

- Requirements for the CCRAB to recommend the awarding of grants and contracts to qualified associations or government agencies;
- The CCRAB's duty to create summaries of the treatment options available to persons suffering from breast and prostate cancer;
- The authorization for the DOH to furnish financial aid to Florida citizens who are afflicted with cancer; and
- The Florida Cancer Control and Research Fund.

Sections 2 and 3 of the bill amend ss. 458.324 and 459.0125, F.S., to conform those sections to the changes made in Section 1 of the bill relating to summaries of treatment alternatives and to make other technical revisions.

Section 4 of the bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 734, organizations represented on the CCRAB may be required to pay their representative's travel expenses under the provisions of ss. 1004.435(4)(e) and 112.061, F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In delineating the membership of the CCRAB, the bill indicates one member must be a member of the Florida Medical Association who represents a cancer center not already represented on the CCRAB. The bill also indicates one member must be a member of the Florida Hospital Association who represents a comprehensive cancer center not already represented on the CCRAB. The bill does not specify what differentiates a "cancer center" from a "comprehensive cancer center," and that differentiation is also not found under current law in s. 1004.435, F.S.

The bill's intent is not clear regarding the requirement that one CCRAB member be a "member of the Florida Hospital Association" (FHA). The FHA's membership is not composed of individual persons. Organizations such as hospitals and health systems constitute the membership of the FHA.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.324, 459.0125, and 1004.435.

IX. Additional Information:

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

CS by Appropriations on April 24, 2014:
The CS:

- Provides additional requirements for members of the CCRAB who represent the Florida Nurses Association, the Florida Medical Association, and the Florida Hospital Association;
- Renames the Florida Cancer Plan as the Florida Cancer Control and Research Plan;
- Requires the CCRAB to collaborate with the Florida Biomedical Research Advisory Council to recommend to the state surgeon general a statewide research plan; and
- Requires that the statewide research plan must be reviewed and recommended annually.

B. Amendments:

None.

By Senator Sobel

33-00984-14 2014734__

A bill to be entitled

An act relating to cancer control and research; amending s. 1004.435, F.S.; revising definitions; revising the membership of the Florida Cancer Control and Research Advisory Council; requiring that the council chairperson be selected by the council; authorizing renewal of member terms; revising the compensation of council members; requiring a statewide research plan; deleting the duties of the council, Board of Governors, and State Surgeon General relating to the awarding of grants and contracts for cancer-related programs; deleting council duties relating to the development of written summaries of treatment alternatives; deleting financial aid provisions and the Florida Cancer Control and Research Fund; amending ss. 458.324, and 459.0125, F.S.; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (3) and subsections (4) through (6) of section 1004.435, Florida Statutes, are amended to read:

1004.435 Cancer control and research.—

(3) DEFINITIONS.—The following words and phrases when used in this section have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

~~(d) "Fund" means the Florida Cancer Control and Research Fund established by this section.~~

~~(e) "Qualified nonprofit association" means any association, incorporated or unincorporated, that has received tax-exempt status from the Internal Revenue Service.~~

(4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL; CREATION; COMPOSITION.—

(a) There is created within the H. Lee Moffitt Cancer Center and Research Institute, Inc., the Florida Cancer Control and Research Advisory Council. The council shall consist of 15 ~~35~~ members, which includes the chairperson, all of whom must be residents of this state. The State Surgeon General or his or her designee within the Department of Health shall be one of the 15 members. ~~All~~ Members, except those appointed by the Governor, the Speaker of the House of Representatives, or ~~and~~ the President of the Senate, must be appointed by the chief executive officer of the institution or organization represented, or his or her designee ~~Governor~~. ~~At least one of the members appointed by the Governor must be 60 years of age or older.~~ One member must be a representative of the American Cancer Society; ~~one member must be a representative of the Florida Tumor Registrars Association;~~ one member must be a representative of the Sylvester Comprehensive Cancer Center of the University of Miami; ~~one member must be a representative of the Department of Health;~~ one member must be a representative of the University of Florida Shands Cancer Center; ~~one member must be a representative of the Agency for Health Care Administration;~~ one member must be a representative of the Florida Nurses Association who specializes in the field of oncology; one member must be a representative of the Florida

Osteopathic Medical Association who specializes in the field of oncology; ~~one member must be a representative of the American College of Surgeons; one member must be a representative of the School of Medicine of the University of Miami; one member must be a representative of the College of Medicine of the University of Florida; one member must be a representative of NOVA Southeastern College of Osteopathic Medicine; one member must be a representative of the College of Medicine of the University of South Florida; one member must be a representative of the College of Public Health of the University of South Florida; one member must be a representative of the Florida Society of Clinical Oncology; one member must be a representative of the Florida Obstetric and Gynecologic Society who has had training in the specialty of gynecologic oncology; one member must be a representative of the Florida Ovarian Cancer Alliance Speaks (FOCAS) organization;~~ one member must be a representative of the Florida Medical Association who specializes in the field of oncology; ~~one member must be a member of the Florida Pediatric Society; one member must be a representative of the Florida Radiological Society; one member must be a representative of the Florida Society of Pathologists;~~ one member must be a representative of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; one member must be a representative of the Florida Hospital Association who specializes in the field of oncology; one member must be a representative of the Association of Community Cancer Centers; one member, who shall be appointed by the Governor, must specialize in pediatric oncology research or clinical care; one member, who shall be appointed by the President of the Senate, must specialize in oncology clinical

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care or research; one member, who shall be appointed by the Speaker of the House of Representatives, must be a current or former cancer patient or a current or former caregiver to a cancer patient ~~three members must be representatives of the general public acting as consumer advocates~~; one member must be a member of the House of Representatives appointed by the Speaker of the House of Representatives; and one member must be a member of the Senate appointed by the President of the Senate~~;~~ ~~one member must be a representative of the Florida Dental Association; one member must be a representative of the Florida Hospital Association; one member must be a representative of the Association of Community Cancer Centers; one member shall be a representative from a statutory teaching hospital affiliated with a community-based cancer center; one member must be a representative of the Florida Association of Pediatric Tumor Programs, Inc.; one member must be a representative of the Cancer Information Service; one member must be a representative of the Florida Agricultural and Mechanical University Institute of Public Health; and one member must be a representative of the Florida Society of Oncology Social Workers. Of the members of the council appointed by the Governor,~~ At least four members ~~10~~ must be individuals who are minority persons as defined under ~~by~~ s. 288.703.

(b) The terms of the members shall be 4 years from their respective dates of appointment with the option of reappointment.

(c) A chairperson shall be selected by the council ~~appointed by the Governor~~ for a term of 2 years. The chairperson shall appoint an executive committee of at least ~~no fewer than~~

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three persons to serve at the pleasure of the chairperson. This committee shall ~~will~~ prepare material for the council but make no final decisions.

(d) The council shall meet at least ~~no less than~~ semiannually at the call of the chairperson or, in his or her absence or incapacity, at the call of the State Surgeon General. Eight ~~Sixteen~~ members constitute a quorum for the purpose of exercising ~~all of~~ the powers of the council. A vote of the majority of the members present is sufficient for all actions of the council.

(e) The council members ~~shall~~ serve without pay. Pursuant to ~~the provisions of~~ s. 112.061, a ~~the~~ council member ~~members~~ may be entitled to be reimbursed for ~~per diem and~~ travel expenses by the institution or organization he or she represents. A member who is not affiliated with an institution or organization shall be reimbursed for travel expenses by the H. Lee Moffitt Cancer Center and Research Institute, Inc.

~~(f) No member of the council shall participate in any discussion or decision to recommend grants or contracts to any qualified nonprofit association or to any agency of this state or its political subdivisions with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.~~

(f) ~~(g)~~ The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.

(g) ~~(h)~~ The council shall advise the Board of Governors, the State Surgeon General, and the Legislature with respect to

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cancer control and research in this state.

(h) ~~(i)~~ The council shall annually approve ~~each year~~ a program for cancer control and research to be known as the "Florida Cancer Plan," which shall be consistent with the State Health Plan and integrated and coordinated with existing programs in this state.

(i) ~~(j)~~ The council shall formulate and recommend to the State Surgeon General a statewide research plan and a plan for the care and treatment of persons suffering from cancer and shall recommend the establishment of standard requirements for the organization, equipment, and conduct of cancer units or departments in hospitals and clinics in this state. The council may recommend to the State Surgeon General the designation of cancer units following a survey of the needs and facilities for treatment of cancer in the various localities throughout the state. The State Surgeon General shall consider the plan in developing departmental priorities and funding priorities and standards under chapter 395.

(j) ~~(k)~~ The council shall include ~~is responsible for including~~ in the Florida Cancer Plan recommendations for the coordination and integration of medical, nursing, paramedical, lay, and other plans concerned with cancer control and research. The council shall form committees ~~shall be formed by the council~~ so that the following areas will be established as entities for actions:

1. Cancer plan evaluation: tumor registry, data retrieval systems, and epidemiology of cancer in the state and its relation to other areas.

2. Cancer prevention.

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3. Cancer detection.

4. Cancer patient management, including~~:~~ treatment, rehabilitation, terminal care, and other patient-oriented activities.

5. Lay and professional cancer education~~: lay and professional~~.

6. Unproven methods of cancer therapy, including~~:~~ quackery and unorthodox therapies.

7. Investigator-initiated project research.

~~(l) In order to implement in whole or in part the Florida Cancer Plan, the council shall recommend to the Board of Governors or the State Surgeon General the awarding of grants and contracts to qualified profit or nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.~~

~~(m) If funds are specifically appropriated by the Legislature, the council shall develop or purchase standardized written summaries, written in layperson's terms and in language easily understood by the average adult patient, informing actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of the medically viable treatment alternatives available to them in the effective management of breast cancer and prostate cancer; describing such treatment alternatives; and explaining the relative advantages, disadvantages, and risks associated therewith. The breast cancer summary, upon its completion, shall be printed in the form of a pamphlet or booklet and made continuously available to physicians and surgeons in this state for their use in accordance with s. 458.324 and to osteopathic physicians in this state for their use in accordance with s. 459.0125. The council shall periodically update both summaries to reflect current standards of medical practice in the treatment of breast cancer and prostate cancer. The council shall develop and implement educational programs, including distribution of the summaries developed or purchased under this paragraph, to inform citizen groups, associations, and voluntary organizations about early detection and treatment of breast cancer and prostate cancer.~~

(k) ~~(n)~~ The council shall ~~have the responsibility to~~ advise the Board of Governors and the State Surgeon General on methods of enforcing and implementing laws already enacted and concerned with cancer control, research, and education.

(l) ~~(o)~~ The council may recommend to the Board of Governors or the State Surgeon General rules not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of this section.

(m) ~~(p)~~ The council shall formulate and put into effect a continuing educational program for the prevention of cancer and its early diagnosis and disseminate to hospitals, cancer patients, and the public information concerning the proper treatment of cancer.

(n) ~~(q)~~ The council shall be physically located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., at the University of South Florida.

(o) ~~(r)~~ The council shall select, by majority vote, seven members of the council who, ~~must combine~~ with six members of the Biomedical Research Advisory Council, shall ~~to~~ form a joint

committee to develop performance measures, a rating system, a rating standard, and an application form for the Cancer Center of Excellence Award created in s. 381.925.

(p) ~~(s) On February 15 of each year,~~ The council shall report to the Governor and ~~to~~ the Legislature on February 15 of each year.

(5) RESPONSIBILITIES OF ~~THE BOARD OF GOVERNORS,~~ THE H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC.~~, AND THE STATE SURGEON GENERAL.~~

~~(a) The Board of Governors or the State Surgeon General, after consultation with the council, shall award grants and contracts to qualified nonprofit associations and governmental agencies in order to plan, establish, or conduct programs in cancer control and prevention, cancer education and training, and cancer research.~~

~~(b)~~ The H. Lee Moffitt Cancer Center and Research Institute, Inc., shall provide such staff, information, and other assistance as reasonably necessary for the completion of the responsibilities of the council.

~~(c) The department may furnish to citizens of this state who are afflicted with cancer financial aid to the extent of the appropriation provided for that purpose in a manner which in its opinion will afford the greatest benefit to those afflicted and may make arrangements with hospitals, laboratories, or clinics to afford proper care and treatment for cancer patients in this state.~~

~~(6) FLORIDA CANCER CONTROL AND RESEARCH FUND.~~

~~(a) There is created the Florida Cancer Control and Research Fund consisting of funds appropriated therefor from the~~

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~~General Revenue Fund and any gifts, grants, or funds received from other sources.~~

~~(b) The fund shall be used exclusively for grants and contracts to qualified nonprofit associations or governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of this section and the programs funded through the grants and contracts authorized by the State Board of Education or the State Surgeon General.~~

Section 2. Subsections (1) and (2) of section 458.324, Florida Statutes, are amended to read:

458.324 Breast cancer; information on treatment alternatives.—

(1) DEFINITION.—As used in this section, the term "medically viable," as applied to treatment alternatives, means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards~~, including treatment alternatives described in the written summary prepared by the Florida Cancer Control and Research Advisory Council in accordance with s. 1004.435(4)(m)~~.

(2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

(a) Each physician treating a patient who is, or in the judgment of the physician is at high risk of being, diagnosed as having breast cancer shall inform such patient of the medically viable treatment alternatives available to such patient; shall describe such treatment alternatives; and shall explain the relative advantages, disadvantages, and risks associated with the treatment alternatives to the extent deemed necessary to

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allow the patient to make a prudent decision regarding such treatment options. In compliance with this subsection, ~~:~~

~~(a)~~ the physician may~~, in his or her discretion:~~

~~1.~~ orally communicate such information directly to the patient or the patient's legal representative~~;~~

~~2. Provide the patient or the patient's legal representative with a copy of the written summary prepared in accordance with s. 1004.435(4)(m) and express a willingness to discuss the summary with the patient or the patient's legal representative; or~~

~~3. Both communicate such information directly and provide a copy of the written summary to the patient or the patient's legal representative for further consideration and possible later discussion~~.

(b) In providing such information, the physician shall consider ~~take into consideration~~ the emotional and physical state of the patient~~, the physical state of the patient,~~ and the patient's ability to understand the information.

(c) The physician may, ~~in his or her discretion and~~ without restriction, recommend any mode of treatment which is in his or her judgment the best treatment for the patient.

~~Nothing in~~ This subsection does not ~~shall~~ reduce other provisions of law regarding informed consent.

Section 3. Subsections (1) and (2) of section 459.0125, Florida Statutes, are amended to read:

459.0125 Breast cancer; information on treatment alternatives.—

(1) DEFINITION.—As used in this section, the term

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"medically viable," as applied to treatment alternatives, means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards~~, including treatment alternatives described in the written summary prepared by the Florida Cancer Control and Research Advisory Council in accordance with s. 1004.435(4)(m)~~.

(2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

(a) It is the obligation of every physician treating a patient who is, or in the judgment of the physician is at high risk of being, diagnosed as having breast cancer to inform such patient of the medically viable treatment alternatives available to such patient; to describe such treatment alternatives; and to explain the relative advantages, disadvantages, and risks associated with the treatment alternatives to the extent deemed necessary to allow the patient to make a prudent decision regarding such treatment options. In compliance with this subsection, ~~:~~

~~(a)~~ the physician may, ~~in her or his discretion:~~

~~1.~~ orally communicate such information directly to the patient or the patient's legal representative~~;~~

~~2. Provide the patient or the patient's legal representative with a copy of the written summary prepared in accordance with s. 1004.435(4)(m) and express her or his willingness to discuss the summary with the patient or the patient's legal representative; or~~

~~3. Both communicate such information directly and provide a copy of the written summary to the patient or the patient's legal representative for further consideration and possible later discussion~~.

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(b) In providing such information, the physician shall consider ~~take into consideration~~ the emotional and physical state of the patient~~, the physical state of the patient,~~ and the patient's ability to understand the information.

(c) The physician may, ~~in her or his discretion and~~ without restriction, recommend any mode of treatment which is in the physician's judgment the best treatment for the patient.

~~Nothing in~~ This subsection does not ~~shall~~ reduce other provisions of law regarding informed consent.

Section 4. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act, *Vice Chair*

SENATOR ELEANOR SOBEL
33rd District

April 2, 2014

Senator Negron, Chair
Appropriations Committee
412 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Negron:

This letter is to request that **SB 734** relating to the **Florida Cancer Control and Research Advisory Council (CCRAB)** be placed on the agenda of the next scheduled meeting of the committee.

The proposed legislation would **revise the membership of the Florida Cancer Control and Research Advisory Council (15 from 35 to reach a quorum)**. It also requires a statewide research plan. Further, it deletes the duties of the Council, Board of Governors, and State Surgeon General relating to the awarding of grants and contracts for cancer-related programs, and deletes the Council duties relating to the development of written summaries of treatment alternatives. Lastly, it deletes the financial aid provisions and the Florida Cancer Control and Research Fund.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel

Eleanor Sobel
State Senator, 33rd District

Cc: Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
❒ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 742
INTRODUCER:	Gaming Committee and Senator Sobel and others
SUBJECT:	Racing Animals
DATE:	April 23, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Guthrie	GM	**Fav/CS**
2.	Davis	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 742, now titled Racing Animals, requires greyhound track veterinarians to prepare detailed reports of all injuries to racing greyhound dogs that occur while the dogs are on a racetrack or in another location. Injury reports must be signed under oath and witnessed by a representative of the Division of Pari-Mutuel Wagering (division) in the Department of Business and Professional Regulation (department). The reports and any associated records are public records that must be maintained for seven years. False statements in an injury report may result in a $1,500 fine for a first violation and $3,000 or more for subsequent violations.

The bill modifies requirements regarding prohibited medication or drugging of racing animals (horses and greyhounds). The fine for violations may be up to $10,000 or the race winnings (purse amount), whichever is greater. Prosecutions must be started within 180 days of the race date. Samples collected from racing animals at racetracks are held by the division, but a portion of each sample is sent to the state laboratory to analyze whether it contains any substance prohibited in racing animals. If the analyzed sample does contain prohibited substances, the owner or trainer has the right to request analysis by an independent laboratory on the remaining portion of the sample. If the second analysis does not confirm the first, or is of insufficient quantity to do so, no prosecution may be pursued against the owner or trainer, and any suspended licensee must be reinstated. The ability of laboratories approved by the division to analyze samples for prohibited substances must be assessed on an annual basis.

The department estimates the need for two positions and $231,026 from the Pari-mutuel Wagering Trust Fund for the 2014-2015 fiscal year. See Section V.

II. Present Situation:

As of June 30, 2013, there were 30 pari-mutuel facilities in Florida, including 16 greyhound tracks, six jai alai frontons, four quarter horse tracks, three thoroughbred tracks, and one harness track.[1] Among the 16 greyhound racing tracks, three conducted races at leased facilities[2] so the actual number of operating tracks is 13. In addition, there were four tracks that operated two greyhound permits each,[3] bringing the total number of greyhound racing permitholders with Fiscal Year 2013-2014 operating licenses to 20. Jefferson County Kennel Club recently closed, reducing the number of operating permitholders to 19 and the number of operating tracks to 12.

Racing greyhounds are registered with the National Greyhound Association and are used in racing at a pari-mutuel facility, or have been used, bred, raised, or trained to be used for such racing.[4] More greyhound racing performances occur in Florida than any other state.

Regulation by Division of Pari-Mutuel Wagering

Greyhound racing is regulated by the Division of Pari-Mutuel Wagering in the Department of Business and Professional Regulation. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties.

Under current law, greyhound permitholders are not required to have operating licenses if not currently conducting live racing. There are ten inactive permits: one greyhound,[5] two jai alai, one limited thoroughbred,[6] and six quarter horse[7] permits.

Greyhound permitholders must apply for an annual operating license, specifying the number, dates, and starting times of all performances to be conducted.[8] A "performance" is a minimum of eight consecutive live races.[9] At least three live performances must be held at a track each week.[10] When a permitholder conducts at least three live performances in a week, it must pay

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[1] Information about facilities regulated by the Division of Pari-Mutuel Wagering are published in *82nd Annual Report, Fiscal Year 2012-2013,* http://www.myfloridalicense.com/dbpr/pmw/documents/AR/AnnualReport2012-2013--82nd--2014-01-24.pdf (last visited April 10, 2014).

[2] Tampa Greyhound conducts races at St. Petersburg Kennel Club (a.k.a., Derby Lane), and both Jacksonville Kennel Club and Bayard Raceways (St. Johns) conduct races at Orange Park Kennel Club.

[3] H & T Gaming @ Mardi Gras and Mardi Gras share a facility in Hallandale Beach, Daytona Beach Kennel Club and West Volusia Racing-Daytona share a facility in Daytona Beach, Palm Beach Kennel Club and License Acquisitions-Palm Beach share a facility in West Palm Beach, and Sanford-Orlando Kennel Club and Penn Sanford @SOKC share a facility in Longwood.

[4] Section 550.002(29), F.S.

[5] North American Racing Association (Key West).

[6] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred (Gulfstream-GPTARP and Ocala Thoroughbred Racing).

[7] A quarter horse is capable of high speed for a short distance; the breed was developed in the American West. See s. 550.002(28), F.S.

[8] Section 550.01215, F.S.

[9] Section 550.002(25), F.S.

[10] Section 550.002(11), F.S.

purses (cash prizes) on wagers accepted at the track on certain greyhound races run at other tracks (in Florida or elsewhere).[11]

In order to receive an operating license, a greyhound permitholder must have conducted a full schedule of live racing during the preceding year,[12] that is, a minimum of 100 live performances.[13]

If a permitholder does not conduct all of the performances specified in its operating license, the division may determine whether to fine the permitholder or suspend the license,[14] unless the failure is due to certain events beyond the permitholder's control.[15] Financial hardship itself is not an acceptable basis to avoid a fine or suspension.[16]

Intertrack Wagering and Simulcast

Section 550.615(2), F.S., allows a greyhound permitholder that has conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers on any type of pari-mutuel race or game conducted by other licensed pari-mutuel permitholders in the state. This type of wagering is defined as "intertrack wagering."[17]

Wagering on a simulcast event occurs when a wager is placed on (1) a live race or game that is broadcast outside the state from an in-state location, or (2) a live race or game that occurs outside the state but is broadcast to a permitholder in the state.[18]

Cardrooms at Pari-mutuel Locations

Section s. 849.086, F.S., provides that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit and license to conduct a full schedule of greyhound performances may obtain a cardroom license. Eleven of the 12 currently operating greyhound racing locations have cardrooms.[19] As a result of the "90 percent rule," the required minimum of live performances varies among greyhound permitholders (e.g., in Fiscal Year 2012-2013, the number of performances ranged from 104 to 395).

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[11] Section 550.09514(2)(c), F.S.
[12] Section 550.002(11), F.S. In accordance with s. 550.002(38), F.S., a full schedule of live racing is calculated from July 1 to June 30, which is the state fiscal year.
[13] The performances may be during the day or in the evenings, as set forth in the schedule that is part of the operating license issued by the division.
[14] Section 550.01215(4), F.S.
[15] *Id*.
[16] *Id*.
[17] Section 550.002(17), F.S.
[18] Section 550.002(32), F.S.
[19] Section 849.086(5)(a), F.S., provides that an initial cardroom license may be issued to a permitholder only after its facilities are in place and it has conducted its first day of live racing or games. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing. See s. 849.086(5)(b), F.S., Renewal of a cardroom license requires that the permitholder's annual application requests at least 90 percent of the performances conducted either (1) in the year in which its first cardroom license was issued, or (2) in the state fiscal year immediately prior to the application if a full schedule of live racing was conducted.

Slot Machines at Pari-mutuel Locations in Miami-Dade and Broward Counties

Section 551.104(4), F.S., outlines licensing requirements related to slot machine gaming, which is authorized only in Miami-Dade and Broward counties.[20] A greyhound permitholder that is also a slot machine licensee must conduct at least a full schedule of live racing or games as defined in s. 551.002 (11), F.S.

Injury Reporting

The division, by administrative rule pursuant to s. 550.2415(12), F.S., requires notification of the death of a racing greyhound while in training or during a race on the grounds of a greyhound track or kennel compound. The track must notify the division within 18 hours of the deceased animal's location, where the death occurred, and how to reach the kennel operator, trainer, and the person making the report.[21] Also, if an animal is injured and later dies or is euthanized, the division may conduct a postmortem examination.[22]

Testing for Prohibited Substances in Racing Animals

The racing of animals (horses and greyhound) using any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-masking agent is generally prohibited.[23] However, the division may adopt rules specifying acceptable levels of naturally occurring substances in untreated animals which may not be exceeded in race-day specimens.[24] Other drugs and substances are permitted under limited conditions, such as furosemide to treat exercise-induced bleeding, and vitamins and minerals that do not exceed acceptable levels.[25] Classification of a substance in a sample as permissible or impermissible may be dependent upon whether:

- The substance is administered within or outside the allowed time frame before a race is scheduled to begin;
- The racing animal is approved for administration of the substance, is qualified by gender to receive it;
- The level of the substance exceeds acceptable levels set by administrative rule; and
- The method of administration of the substance is prohibited.[26]

Each racetrack permitholder must maintain a detention enclosure for securing urine, blood or other samples from racing animals.[27] The trainer of record for each animal is responsible for the

[20] See s. 551.010, F.S., and FLA. CONST. art. X, s. 23.
[21] See also Rule 61D-2.023(2)(k), F.A.C.
[22] Section 550.2415(9), F.S. also provides that postmortem examinations may be made of any animal that dies while housed at a permitted racetrack, association compound, or licensed kennel or farm.
[23] Section 550.2415, F.S.
[24] Section 550.2415(b), F.S. The division may also set acceptable levels of environmental contaminants and trace levels of prohibited substances that are not reportable as a violation.
[25] Section 550.2415(7), F.S.
[26] *Id*.
[27] Rule 61D-6.002(2), F.A.C.

condition of the animals entered into race,[28] and for securing all prescribed medications, over-the-counter medicines, and natural or synthetic medicinal compounds.[29]

Samples of blood, urine, saliva, or any other bodily fluid may be collected from a race animal before and immediately after it has raced.[30] If racing officials find, through reasonably reliable evidence, that substances other than permissible substances have been administered, or that otherwise permissible substances have been administered during prohibited periods before the time of a race, the animal may be prohibited from racing in the race (scratched).[31]

The winner of every race is sent to the detention enclosure for examination by an authorized representative of the division and the taking of samples to monitor and detect both permissible and impermissible substances.[32] Any other animals that participated in the race may be designated for examination and testing by the stewards, judges, racetrack veterinarian or a division representative.[33]

All samples are collected by staff of the Office of Operations within the division and sent to the University of Florida, College of Medicine Racing Laboratory for analysis.[34] Blood specimens must be collected from racing animals by veterinarians employed by the division or any licensed veterinarian hired or retained by the division, and the collection must be witnessed by the animal's trainer, owner, or designee.[35]

The 82nd Annual Report of the division reflects that during Fiscal Year 2012-2013, the laboratory processed 89,597 samples and performed 386,276 analyses, as follows:[36]

Sample Type	Horse Urine/Blood	Greyhound Urine	Investigative
Samples Received	20,133	69,397	67
Samples Analyzed	20,005	48,184	25
Number of Analyses	95,535	290,675	66
Positive Results	285	21	n/a

The volume of many greyhound urine samples that were taken at racetracks, 21,538 or 31 percent of the total, was insufficient to permit valid testing of those samples.[37]

[28] Rule 61D-6.002(1), FAC.
[29] Rule 61D-6.003, F.A.C. Prescription drugs must be prescribed by a licensed veterinarian who has a current veterinarian-patient relationship, and all substances must be properly labelled.
[30] Section 550.2415(1)(a), F.S.
[31] See s. 550.2415(8), F.S. and Rule 61D-6.005, F.A.C.
[32] Rule 61D-6.005, F.A.C.
[33] *Id.*
[34] See in *82nd Annual Report, Fiscal Year 2012-2013,* at page 3, *http://www.myfloridalicense.com/dbpr/pmw/documents/AR/AnnualReport2012-2013--82nd--2014-01-24.pdf* (last visited April 10, 2014). The division annually contracts with the racing laboratory for these services.
[35] Rule 61D-6.005, F.A.C.
[36] *See supra* note 34, at page 35.
[37] *Id.*

Of the 89,530 non-investigative samples that were collected at racetracks, 68,189 samples were analyzed, and there were 306 positive results (i.e. a finding of impermissible substances).[38]

If a prohibited substance is found in a race-day specimen, it is evidence that the substance was administered to and in the racing animal while racing.[39] Test results are confidential and exempt public records for ten days after the testing of all samples collected on a particular day have been completed and the positive results have been reported to the director of the division, or until action against a person licensed by the division has been commenced by the service of an administrative complaint.[40]

Once the division notifies the owners or trainer of the positive result as required, the owner may request that each urine or blood sample be split into a primary sample and a secondary (split) sample. The splitting procedure must occur in the laboratory using procedures approved by the division by rule.[41] At the request of either the affected owner or trainer, the division must send the secondary sample to an independent laboratory for analysis.

If the positive result found by the state laboratory is not confirmed by the analysis made by the independent laboratory, no further administrative or disciplinary action may be pursued by the division.[42] If the positive result is confirmed, or if the volume of the secondary sample is insufficient to do so, then administrative proceedings may begin on the basis of the analysis made by the state laboratory.[43] There must be a good faith attempt by the division to obtain a sufficient quantity of fluid specimens to allow both a primary test to be made by the state laboratory and a secondary test to be made by an independent laboratory.[44] The division must begin administrative proceedings against a licensee for a violation based on a positive drug test result within two years of the race date.[45]

According to the division, there were 27 license suspensions, and $66,375 in fines assessed for violations of all pari-mutuel statutes and rules in Fiscal Year 2012-2103.[46]

III. Effect of Proposed Changes:

The bill requires that an injury to a racing greyhound be reported by a racetrack veterinarian to the division. The bill requires reporting of the following information about an injury that does not cause a racing greyhound's death:

- Specific identification of the injured greyhound (name, tattoos, microchip information, color weight, and sex);
- Contact information for the greyhound's owner, trainer, and kennel operator;
- The location where the injury occurred, whether on a racetrack, or elsewhere;

[38] *Id*.
[39] Section 550.2415(1)(b), F.S.
[40] See ss. 5502415(1)(a) and (4), F.S.
[41] Section 550.2415(5)(a), F.S.
[42] Section 550.2415(5)(b), F.S.
[43] Section 550.2415(5)(c), F.S.
[44] *Id*.
[45] Section 550.2415(4), F.S.
[46] *See supra* note 34, at page 3.

- The weather and track conditions at the time of the injury; and
- The type and location of the injury, its cause, and the recovery time anticipated.

Further, if the injury occurs during a race, an injury report must state:
- The name of the racetrack and the time injury occurred; and
- The distance, grade, race, and post position of the injured greyhound.

Racing greyhound injury reports must be sworn to by the racetrack veterinarian under penalty of perjury and witnessed by an employee or other designated representative of the division. False statements in an injury report may result in a $1,500 fine for a first violation and $3,000 or more for subsequent violations. The bill does not set a deadline for the submission of injury reports.

The bill provides that the records that are created and maintained regarding injury reports are public records that must be maintained by the division for seven years. Any oral or written requests to the division for the records must result in the records being made "readily available."

The bill modifies requirements relating to the prohibited medication or drugging of racing animals (horses and greyhounds). The fine for violations may be up to $10,000 or the race winnings (purse amount), whichever is greater. Prosecutions must be started within 180 days of the race date.

The division must split urine and blood samples collected at racetracks, retaining a portion of the sample sent to the state racing laboratory. The University of Florida, College of Medicine Racing Laboratory is under annual contract for these services. If the state laboratory finds that the sample contains prohibited substances, the owner or trainer has the right to request another analysis be made on the retained portion (split sample) by an independent laboratory.

If the independent laboratory's analysis does not confirm the finding made by the state laboratory, or if the quantity of the available split sample is not sufficient to do so, no prosecution may be pursued against the owner or trainer, and any suspended license must be reinstated.

Laboratories approved by the division to analyze samples collected from racing animals must undergo a third party, annual assessment of their ability to detect and quantify substances that may be administered to racing animals. The administrator of the quality assurance program must report the results and findings to the division.

The bill provides for an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 742 requires additional reporting which will have an indeterminate fiscal impact on greyhound racetracks. The changes to the sampling of urine and blood specimens from racing animals and the annual assessment of independent testing laboratories will have an indeterminate impact on horse and greyhound tracks, and the owners and trainers of racing animals.

Individuals who knowingly file false injury reports will be subject to a fine up to $1,500 for a first violation and at least $3,000 for second or subsequent violations.

Individuals found in violation of impermissibly medicating or drugging race animals will be subject to a fine in an amount not exceeding the purse or sweepstakes earned by the animal or $10,000, whichever is greater.

C. Government Sector Impact:

The bill may have a positive but indeterminate increase in state revenues related to the additional fines for violations resulting from falsifying injury reports and impermissibly medicating race animals.

The bill requires information system program changes to the department's Versa system and OnBase document management system. The department indicates that the additional programming costs can be handled within existing resources. The infrastructure and licensing costs are estimated to be $3,147 for two additional personnel.[47]

The bill requires recordkeeping of injury reports and producing documents in response to public records requests for injury reports on greyhounds. The bill also changes the current process related to the collection of split sampling and provides additional guidelines and requirements for the division. The department staff estimates the implementation of this bill will require two full-time equivalent positions and $227,879 from the Pari-mutuel Wagering Trust Fund. Included in the costs are expenditures of $16,000 for two

[47] *2014 Legislative Bill Analysis for CS/SB 742*, Department of Business and Professional Regulation (April 17, 2014).

additional freezers to store the volume of samples, increased shipping costs of $35,000 for collected samples, and $55,000 for additional supplies (i.e. containers, tags, tubes, etc.).[48]

All unappropriated funds in excess of $1.5 million, and those funds necessary for incurred obligations and subsequent year positive cash flow for slot machine regulation in the Pari-mutuel Wagering Trust Fund, are transferred to the General Revenue Fund annually.[49] Therefore, increases to the division's appropriations will impact the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not set deadlines for completing racing greyhound injury reports or providing the quality assurance results and findings reports to the Division of Pari-Mutuel Wagering.

VIII. Statutes Affected:

The bill substantially amends section 550.2415 of the Florida Statutes.

IX. Additional Information:

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

CS by Gaming on April 8, 2014:
The committee substitute amends s. 550.2415, F.S., to modify requirements respecting the prohibited medication or drugging of racing animals (horses and greyhounds). The fine for violations may be up to $10,000 or the race winnings (purse amount), whichever is greater. Prosecutions must be started within 180 days of the race date.

The Division of Pari-Mutuel Racing must split urine and blood samples collected at racetracks, retaining a portion of the sample sent to the state racing laboratory. If the state laboratory finds that the sample contains prohibited substances, the owner or trainer has the right to request another analysis be made on the retained portion (split sample) by an approved independent laboratory. Independent laboratories must undergo third party assessment of their ability to detect and quantify substances that may be administered to racing animals.

If the independent laboratory's analysis does not confirm the finding made by the state laboratory, or if the quantity of the available split sample is insufficient, no prosecution may be pursued against the owner or trainer, and any suspended license must be reinstated.

[48] *Id*.
[49] *Id*.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
04/24/2014	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment (with title amendment)

Between lines 145 and 146
insert:

Section 2. Subsection (1) of section 550.01215, Florida Statutes, is amended to read:

550.01215 License application; periods of operation; bond, conversion of permit.—

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the

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division its application for a license to conduct performances, if any, during the next state fiscal year. Each application shall specify the number, dates, and starting times of all performances which the permitholder intends to conduct. It shall also specify which performances will be conducted as charity or scholarship performances. In addition, each application for a license shall include, for each permitholder which elects to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom or, for each thoroughbred permitholder which elects to receive or rebroadcast out-of-state races after 7 p.m., the dates for all performances which the permitholder intends to conduct. Permitholders may ~~shall be entitled to~~ amend their applications through February 28. A greyhound permitholder operating pursuant to a current year's operating license issued by the division may specify that it intends to conduct no live performances in its annual application for a license to conduct performances during the next state fiscal year. A greyhound permitholder operating pursuant to a current year's operating license may amend its license for the 2014-2015 state fiscal year through August 31, 2014.

Section 3. Subsections (1), (7), and (8) of section 550.0351, Florida Statutes, are amended to read:

550.0351 Charity racing days.—

(1) The division shall, upon the request of a permitholder, authorize each horseracing permitholder~~, dogracing permitholder,~~ and jai alai permitholder up to five charity or scholarship days in addition to the regular racing days authorized by law.

~~(7) In addition to the charity days authorized by this~~

~~section, any dogracing permitholder may allow its facility to be used for conducting "hound dog derbies" or "mutt derbies" on any day during each racing season by any charitable, civic, or nonprofit organization for the purpose of conducting "hound dog derbies" or "mutt derbies" if only dogs other than those usually used in dogracing (greyhounds) are permitted to race and if adults and minors are allowed to participate as dog owners or spectators. During these racing events, betting, gambling, and the sale or use of alcoholic beverages is prohibited.~~

(7)~~(8)~~ In addition to the eligible charities that meet the criteria set forth in this section, a jai alai permitholder is authorized to conduct two additional charity performances each fiscal year for a fund to benefit retired jai alai players. This performance shall be known as the "Retired Jai Alai Players Charity Day." The administration of this fund shall be determined by rule by the division.

Section 4. Paragraph (b) of subsection (14) of section 550.054, Florida Statutes, is amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(14)

(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit to conduct greyhound racing. A permitholder of a permit converted under this section shall be required to apply for and conduct a full schedule of live racing in the first fiscal year following the conversion ~~A permitholder of a permit converted under this section shall be required to apply for and conduct a~~

~~full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter~~. The holder of a permit converted pursuant to this subsection or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under this subsection and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.

Section 5. Subsections (1) and (3) of section 550.0951, Florida Statutes, are amended to read:

550.0951 Payment of daily license fee and taxes; penalties.—

(1)~~(a)~~ DAILY LICENSE FEE.—Each person engaged in the business of conducting <u>horserace meets</u> ~~race meetings~~ or jai alai games under this chapter, hereinafter referred to as the "permitholder," "licensee," or "permittee," shall pay to the division, for the use of the division, a daily license fee on each live or simulcast pari-mutuel event of $100 for each horserace ~~and $80 for each dograce~~ and $40 for each jai alai

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game conducted at a racetrack or fronton licensed under this chapter. ~~In addition to the tax exemption specified in s. 550.09514(1) of $360,000 or $500,000 per greyhound permitholder per state fiscal year, each greyhound permitholder shall receive in the current state fiscal year a tax credit equal to the number of live greyhound races conducted in the previous state fiscal year times the daily license fee specified for each dograce in this subsection applicable for the previous state fiscal year. This tax credit and the exemption in s. 550.09514(1) shall be applicable to any tax imposed by this chapter or the daily license fees imposed by this chapter except during any charity or scholarship performances conducted pursuant to s. 550.0351.~~ Each permitholder shall pay daily license fees not to exceed $500 per day on any simulcast races or games on which such permitholder accepts wagers regardless of the number of out-of-state events taken or the number of out-of-state locations from which such events are taken. This license fee shall be deposited with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

~~(b) Each permitholder that cannot utilize the full amount of the exemption of $360,000 or $500,000 provided in s. 550.09514(1) or the daily license fee credit provided in this section may, after notifying the division in writing, elect once per state fiscal year on a form provided by the division to transfer such exemption or credit or any portion thereof to any greyhound permitholder which acts as a host track to such permitholder for the purpose of intertrack wagering. Once an election to transfer such exemption or credit is filed with the division, it shall not be rescinded. The division shall~~

~~disapprove the transfer when the amount of the exemption or credit or portion thereof is unavailable to the transferring permitholder or when the permitholder who is entitled to transfer the exemption or credit or who is entitled to receive the exemption or credit owes taxes to the state pursuant to a deficiency letter or administrative complaint issued by the division. Upon approval of the transfer by the division, the transferred tax exemption or credit shall be effective for the first performance of the next payment period as specified in subsection (5). The exemption or credit transferred to such host track may be applied by such host track against any taxes imposed by this chapter or daily license fees imposed by this chapter. The greyhound permitholder host track to which such exemption or credit is transferred shall reimburse such permitholder the exact monetary value of such transferred exemption or credit as actually applied against the taxes and daily license fees of the host track. The division shall ensure that all transfers of exemption or credit are made in accordance with this subsection and shall have the authority to adopt rules to ensure the implementation of this section.~~

(3) TAX ON HANDLE.—Each permitholder shall pay a tax on contributions to pari-mutuel pools, the aggregate of which is hereinafter referred to as "handle," on races or games conducted by the permitholder. The tax is imposed daily and is based on the total contributions to all pari-mutuel pools conducted during the daily performance. If a permitholder conducts more than one performance daily, the tax is imposed on each performance separately.

(a) The tax on handle for quarter horse racing is 1.0

percent of the handle.

(b)1. The tax on handle for dogracing is 1.28 ~~5.5~~ percent of the handle~~, except that for live charity performances held pursuant to s. 550.0351, and for intertrack wagering on such charity performances at a guest greyhound track within the market area of the host, the tax is 7.6 percent of the handle~~.

2. The tax on handle for jai alai is 7.1 percent of the handle.

(c)1. The tax on handle for intertrack wagering is 2.0 percent of the handle if the host track is a horse track, 3.3 percent if the host track is a harness track, 1.28 ~~5.5~~ percent if the host track is a dog track to be remitted by the guest track, and 7.1 percent if the host track is a jai alai fronton. The tax on handle for intertrack wagering is 0.5 percent if the host track and the guest track are thoroughbred permitholders or if the guest track is located outside the market area of a nongreyhound ~~the~~ host track and within the market area of a thoroughbred permitholder currently conducting a live race meet. The tax on handle for intertrack wagering on rebroadcasts of simulcast thoroughbred horseraces is 2.4 percent of the handle and 1.5 percent of the handle for intertrack wagering on rebroadcasts of simulcast harness horseraces. The tax shall be deposited into the Pari-mutuel Wagering Trust Fund.

2. If the host facility is a jai alai permitholder, the tax on handle for intertrack wagers is ~~accepted by any dog track located in an area of the state in which there are only three permitholders, all of which are greyhound permitholders, located in three contiguous counties, from any greyhound permitholder also located within such area or any dog track or jai alai~~

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~~fronton located as specified in s. 550.615(6) or (9), on races or games received from the same class of permitholder located within the same market area is 3.9 percent if the host facility is a greyhound permitholder and, if the host facility is a jai alai permitholder, the rate shall be~~ 6.1 percent except that it shall be 2.3 percent on handle at such time as the total tax on intertrack handle paid to the division by the permitholder during the current state fiscal year exceeds the total tax on intertrack handle paid to the division by the permitholder during the 1992-1993 state fiscal year.

(d) Notwithstanding any other provision of this chapter, in order to protect the Florida jai alai industry, effective July 1, 2000, a jai alai permitholder may not be taxed on live handle at a rate higher than 2 percent.

Section 6. Section 550.09514, Florida Statutes, is amended to read:

550.09514 Greyhound dogracing taxes; purse requirements.—

~~(1) Wagering on greyhound racing is subject to a tax on handle for live greyhound racing as specified in s. 550.0951(3). However, each permitholder shall pay no tax on handle until such time as this subsection has resulted in a tax savings per state fiscal year of $360,000. Thereafter, each permitholder shall pay the tax as specified in s. 550.0951(3) on all handle for the remainder of the permitholder's current race meet. For the three permitholders that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, the maximum tax savings per state fiscal year shall be $500,000. The provisions of this subsection relating to tax exemptions shall not apply to any charity or~~

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~~scholarship performances conducted pursuant to s. 550.0351.~~

(1)~~(2)~~(a) The division shall determine for each greyhound permitholder the annual purse percentage rate of live handle for the state fiscal year 1993-1994 by dividing total purses paid on live handle by the permitholder, exclusive of payments made from outside sources, during the 1993-1994 state fiscal year by the permitholder's live handle for the 1993-1994 state fiscal year. A greyhound ~~Each~~ permitholder conducting live racing during a fiscal year shall pay as purses for such live races conducted during its current race meet a percentage of its live handle not less than the percentage determined under this paragraph, exclusive of payments made by outside sources, for its 1993-1994 state fiscal year.

(b) Except as otherwise set forth herein, in addition to the minimum purse percentage required by paragraph (a), each greyhound permitholder conducting live racing during a fiscal year shall pay as purses an annual amount of $60 for each live race conducted ~~equal to 75 percent of the daily license fees paid~~ by the greyhound ~~each~~ permitholder in ~~for~~ the preceding ~~1994-1995~~ fiscal year. ~~This purse supplement shall be disbursed weekly during the permitholder's race meet in an amount determined by dividing the annual purse supplement by the number of performances approved for the permitholder pursuant to its annual license and multiplying that amount by the number of performances conducted each week. For the greyhound permitholders in the county where there are two greyhound permitholders located as specified in s. 550.615(6), such permitholders shall pay in the aggregate an amount equal to 75 percent of the daily license fees paid by such permitholders for~~

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~~the 1994-1995 fiscal year. These permitholders shall be jointly and severally liable for such purse payments.~~ The additional purses provided by this paragraph must be used exclusively for purses other than stakes and shall be disbursed weekly during the permitholder's race meet. The division shall conduct audits necessary to ensure compliance with this section.

(c)1. Each greyhound permitholder, when conducting at least three live performances during any week, shall pay purses in that week on wagers it accepts as a guest track on intertrack and simulcast greyhound races at the same rate as it pays on live races. Each greyhound permitholder, when conducting at least three live performances during any week, shall pay purses in that week, at the same rate as it pays on live races, on wagers accepted on greyhound races at a guest track which is not conducting live racing and is located within the same market area as the greyhound permitholder conducting at least three live performances during any week.

2. Each host greyhound permitholder shall pay purses on its simulcast and intertrack broadcasts of greyhound races to guest facilities that are located outside its market area in an amount equal to one quarter of an amount determined by subtracting the transmission costs of sending the simulcast or intertrack broadcasts from an amount determined by adding the fees received for greyhound simulcast races plus 3 percent of the greyhound intertrack handle at guest facilities that are located outside the market area of the host and that paid contractual fees to the host for such broadcasts of greyhound races.

(d) The division shall require sufficient documentation from each greyhound permitholder regarding purses paid on live

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racing to assure that the annual purse percentage rates paid by each greyhound permitholder conducting ~~on the~~ live races are not reduced below those paid during the 1993-1994 state fiscal year. The division shall require sufficient documentation from each greyhound permitholder conducting live races to assure that the purses paid by each permitholder on the greyhound intertrack and simulcast broadcasts are in compliance with the requirements of paragraph (c).

(e) In addition to the purse requirements of paragraphs (a)-(c), each greyhound permitholder conducting live races shall pay as purses an amount equal to one-third of the amount of the tax reduction on live and simulcast handle applicable to such permitholder as a result of the reductions in tax rates provided by s. 6 of chapter 2000-354, Laws of Florida ~~this act through the amendments to s. 550.0951(3)~~. With respect to intertrack wagering when the host and guest tracks are greyhound permitholders not within the same market area, an amount equal to the tax reduction applicable to the guest track handle as a result of the reduction in tax rate provided by s. 6 of chapter 2000-354, Laws of Florida, ~~this act through the amendment to s. 550.0951(3)~~ shall be distributed to the guest track, one-third of which amount shall be paid as purses at the guest track. However, if the guest track is a greyhound permitholder within the market area of the host or if the guest track is not a greyhound permitholder, an amount equal to such tax reduction applicable to the guest track handle shall be retained by the host track, one-third of which amount shall be paid as purses at the host track. These purse funds shall be disbursed in the week received if the permitholder conducts at least one live

performance during that week. If the permitholder does not conduct at least one live performance during the week in which the purse funds are received, the purse funds shall be disbursed weekly during the permitholder's next race meet in an amount determined by dividing the purse amount by the number of performances approved for the permitholder pursuant to its annual license, and multiplying that amount by the number of performances conducted each week. The division shall conduct audits necessary to ensure compliance with this paragraph.

(f) Each greyhound permitholder conducting live racing shall, during the permitholder's race meet, supply kennel operators and the Division of Pari-Mutuel Wagering with a weekly report showing purses paid on live greyhound races and all greyhound intertrack and simulcast broadcasts, including both as a guest and a host together with the handle or commission calculations on which such purses were paid and the transmission costs of sending the simulcast or intertrack broadcasts, so that the kennel operators may determine statutory and contractual compliance.

(g) Each greyhound permitholder conducting live racing shall make direct payment of purses to the greyhound owners who have filed with such permitholder appropriate federal taxpayer identification information based on the percentage amount agreed upon between the kennel operator and the greyhound owner.

(h) At the request of a majority of kennel operators under contract with a greyhound permitholder conducting live racing, the permitholder shall make deductions from purses paid to each kennel operator electing such deduction and shall make a direct payment of such deductions to the local association of greyhound

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kennel operators formed by a majority of kennel operators under contract with the permitholder. The amount of the deduction shall be at least 1 percent of purses, as determined by the local association of greyhound kennel operators. ~~No~~ Deductions may not be taken pursuant to this paragraph without a kennel operator's specific approval before or after the effective date of this act.

(2)~~(3)~~ For the purpose of this section, the term "live handle" means the handle from wagers placed at the permitholder's establishment on the live greyhound races conducted at the permitholder's establishment.

Section 7. Subsection (2) of section 550.1625, Florida Statutes, is amended to read:

550.1625 Dogracing; taxes.—

(2) A permitholder that conducts a dograce meet under this chapter must pay ~~the daily license fee,~~ the admission tax~~, the breaks tax,~~ and the tax on pari-mutuel handle as provided in s. 550.0951 and is subject to all penalties and sanctions provided in s. 550.0951(6).

Section 8. Section 550.1647, Florida Statutes, is repealed.

Section 9. Section 550.1648, Florida Statutes, is amended to read:

550.1648 Greyhound adoptions.—

~~(1)~~ A ~~Each~~ dogracing permitholder conducting live racing at ~~operating~~ a dogracing facility in this state shall provide for a greyhound adoption booth to be located at the facility.

(1) The greyhound adoption booth must be operated on weekends by personnel or volunteers from a bona fide organization that promotes or encourages the adoption of

greyhounds ~~pursuant to s. 550.1647~~. Such bona fide organization, as a condition of adoption, must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter. The fee for sterilization may be included in the cost of adoption. As used in this section, the term "weekend" includes the hours during which live greyhound racing is conducted on Friday, Saturday, or Sunday, and the term "bona fide organization that promotes or encourages the adoption of greyhounds" means an organization that provides evidence of compliance with chapter 496 and possesses a valid exemption from federal taxation issued by the Internal Revenue Service. Information pamphlets and application forms shall be provided to the public upon request.

(2) ~~In addition,~~ The kennel operator or owner shall notify the permitholder that a greyhound is available for adoption and the permitholder shall provide information concerning the adoption of a greyhound in each race program and shall post adoption information at conspicuous locations throughout the dogracing facility. Any greyhound that is participating in a race and that will be available for future adoption must be noted in the race program. The permitholder shall allow greyhounds to be walked through the track facility to publicize the greyhound adoption program.

~~(2) In addition to the charity days authorized under s. 550.0351, a greyhound permitholder may fund the greyhound adoption program by holding a charity racing day designated as "Greyhound Adopt-A-Pet Day." All profits derived from the operation of the charity day must be placed into a fund used to support activities at the racing facility which promote the~~

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~~adoption of greyhounds. The division may adopt rules for administering the fund. Proceeds from the charity day authorized in this subsection may not be used as a source of funds for the purposes set forth in s. 550.1647.~~

(3)(a) Upon a violation of this section by a permitholder or licensee, the division may impose a penalty as provided in s. 550.0251(10) and require the permitholder to take corrective action.

(b) A penalty imposed under s. 550.0251(10) does not exclude a prosecution for cruelty to animals or for any other criminal act.

Section 10. Paragraph (a) of subsection (6) of section 550.3551, Florida Statutes, is amended to read:

550.3551 Transmission of racing and jai alai information; commingling of pari-mutuel pools.—

(6)(a) ~~A maximum of 20 percent of the total number of races on which wagers are accepted by a greyhound permitholder not located as specified in s. 550.615(6) may be received from locations outside this state.~~ A horseracing or a jai alai permitholder may not conduct fewer than eight live races or games on any authorized race day except as provided in this subsection. A thoroughbred permitholder may not conduct fewer than eight live races on any race day without the written approval of the Florida Thoroughbred Breeders' Association and the Florida Horsemen's Benevolent and Protective Association, Inc., unless it is determined by the department that another entity represents a majority of the thoroughbred racehorse owners and trainers in the state. A harness permitholder may conduct fewer than eight live races on any authorized race day,

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except that such permitholder must conduct a full schedule of live racing during its race meet consisting of at least eight live races per authorized race day for at least 100 days. Any harness ~~horse~~ permitholder that during the preceding racing season conducted a full schedule of live racing may, at any time during its current race meet, receive full-card broadcasts of harness horse races conducted at harness racetracks outside this state at the harness track of the permitholder and accept wagers on such harness races. With specific authorization from the division for special racing events, a permitholder may conduct fewer than eight live races or games when the permitholder also broadcasts out-of-state races or games. The division may not grant more than two such exceptions a year for a permitholder in any 12-month period, and those two exceptions may not be consecutive.

Section 11. A new subsection (11) is added to section 550.615, Florida Statutes, to read:

550.615 Intertrack wagering.—

(11) A greyhound permitholder operating pursuant to a current year's operating license that specifies no live performances is qualified to accept wagers on live races conducted at out-of-state greyhound tracks only on the days when such permitholder receives a live race that a greyhound host track in this state makes available.

Section 12. Paragraph (g) of subsection (9) of section 550.6305, Florida Statutes, is amended to read:

550.6305 Intertrack wagering; guest track payments; accounting rules.—

(9) A host track that has contracted with an out-of-state

121868

horse track to broadcast live races conducted at such out-of-state horse track pursuant to s. 550.3551(5) may broadcast such out-of-state races to any guest track and accept wagers thereon in the same manner as is provided in s. 550.3551.

(g)1. Any thoroughbred permitholder which accepts wagers on a simulcast signal must make the signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345.

2. Any thoroughbred permitholder which accepts wagers on a simulcast signal received after 6 p.m. must make such signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345, including any permitholder located as specified in s. 550.615(6). Such guest permitholders are authorized to accept wagers on such simulcast signal, notwithstanding any other provision of this chapter to the contrary.

3. Any thoroughbred permitholder which accepts wagers on a simulcast signal received after 6 p.m. must make such signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345~~, including any permitholder located as specified in s. 550.615(9)~~. Such guest permitholders are authorized to accept wagers on such simulcast signals for a number of performances not to exceed that which constitutes a full schedule of live races for a quarter horse permitholder pursuant to s. 550.002(11), notwithstanding any other provision of this chapter to the contrary~~, except that the restrictions provided in s. 550.615(9)(a) apply to wagers on such simulcast signals~~.

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No thoroughbred permitholder shall be required to continue to rebroadcast a simulcast signal to any in-state permitholder if the average per performance gross receipts returned to the host permitholder over the preceding 30-day period were less than $100. Subject to the provisions of s. 550.615(4), as a condition of receiving rebroadcasts of thoroughbred simulcast signals under this paragraph, a guest permitholder must accept intertrack wagers on all live races conducted by all then-operating thoroughbred permitholders.

Section 13. Paragraph (c) of subsection (4) of section 551.104, Florida Statutes, is amended to read:

551.104 License to conduct slot machine gaming.—

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(c) Conduct no fewer than a full schedule of live racing or games as defined in s. 550.002(11). A permitholder's responsibility to conduct such number of live races or games shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event beyond the control of the permitholder. <u>The live racing requirement in this paragraph does not apply to a greyhound permitholder operating pursuant to a current year's operating license issued by the division.</u>

Section 14. Subsections (2) and (4) of section 551.114, Florida Statutes, are amended to read:

551.114 Slot machine gaming areas.—

(2) The slot machine licensee shall display pari-mutuel races or games within the designated slot machine gaming areas

and offer patrons within the designated slot machine gaming areas the ability to engage in pari-mutuel wagering on any live, intertrack, and simulcast races conducted or offered to patrons of the licensed facility.

(4) Designated slot machine gaming areas may be located within the current live gaming facility or in an existing building that must be contiguous and connected to the live gaming facility. If a designated slot machine gaming area is to be located in a building that is to be constructed, that new building must be contiguous and connected to the live gaming facility. For a greyhound permitholder authorized to conduct pari-mutuel gaming activities pursuant to a current year's operating license that specifies no live performances, designated slot machine gaming areas may be located only within the eligible facility for which the division issued the initial annual slot machine license.

Section 15. Paragraphs (a) and (b) of subsection (5) and paragraph (d) of subsection (13) of section 849.086, Florida Statutes, are amended to read:

849.086 Cardrooms authorized.—

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(a) Only those persons holding a valid cardroom license issued by the division may operate a cardroom. A cardroom license may only be issued to a licensed pari-mutuel permitholder. ~~and~~ An authorized cardroom may only be operated at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel

wagering activities. An initial cardroom license shall be issued to a pari-mutuel permitholder only after its facilities are in place and after it conducts its first day of live racing or games or, for a greyhound permitholder, only after it has conducted a full schedule of live racing in each of the preceding 10 years or after it was converted pursuant to s. 550.054(14).

(b) After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom. In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing. Notwithstanding the full schedule of

live racing requirements in this paragraph, the division may approve an annual cardroom license renewal for a greyhound permitholder authorized to conduct pari-mutuel gaming activities pursuant to a current year's operating license that specifies no live performances, provided that such greyhound permitholder must conduct intertrack wagering on greyhound signals, to the extent available, on each day of cardroom operation.

(13) TAXES AND OTHER PAYMENTS.—

(d)1. Each greyhound permitholder conducting live racing and jai alai permitholder that operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement greyhound purses, if any, or jai alai prize money, respectively, during the permitholder's current or next ensuing pari-mutuel meet.

2. Each thoroughbred and harness horse racing permitholder that operates a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

3. A ~~No~~ cardroom license or renewal thereof may not ~~shall~~ be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel

121868

facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.

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

And the title is amended as follows:

Delete line 11

and insert:

false statements on an injury form; amending s. 550.01215, F.S.; authorizing a certain greyhound permitholder to specify in its annual license application that it does not intend to conduct live performances; extending the date by which a certain greyhound permitholder may amend its license; amending s. 550.0351, F.S.; deleting the requirement that the Division of Pari-mutuel Wagering authorize a dogracing permitholder to conduct charity or scholarship days; removing the authority of a dogracing permitholder to use its facility for "hound dog derbies" or "mutt derbies"; amending s. 550.054, F.S.; requiring a holder of a permit that was converted from jai alai to greyhound to apply for and conduct a full schedule of live racing in the first year following conversion; amending s. 550.0951, F.S.; removing the requirement that a greyhound permitholder pay a daily license fee on each event; removing a requirement that a greyhound permitholder receive a certain tax credit; removing the authority of a greyhound permitholder to elect to

121868

transfer certain exemptions or credits; reducing the tax on handle for dogracing; conforming provisions to changes made by the act; reducing the tax rate on handle, and specifying one tax rate on handle, for intertrack wagering if the host track is a dog track; amending s. 550.09514, F.S.; removing certain provisions that prohibit tax on handle until a specified amount of tax savings have resulted; revising purse requirements of a greyhound permitholder that conducts live racing; amending s. 550.1625, F.S.; removing the requirement that a greyhound permitholder pay the daily license fee or the breaks tax; repealing s. 550.1647, F.S., relating to greyhound permitholders, unclaimed tickets, and breaks; amending s. 550.1648, F.S.; requiring a greyhound permitholder that conducts live racing to provide a greyhound adoption booth at its facility; conforming a cross-reference to changes made by the act; defining the term “bona fide organization that promotes or encourages the adoption of greyhounds”; requiring sterilization of greyhounds before adoption; removing provisions relating to charity racing days; amending s. 550.3551, F.S.; removing a provision that limits the number of out-of-state races on which wagers are accepted by a greyhound permitholder; removing a greyhound permitholder from a live racing requirement; amending s. 550.615, F.S.; limiting intertrack wagering for certain greyhound permitholders to specified days; amending s. 550.6305,

F.S.; clarifying cross-references; amending s. 551.104, F.S.; specifying that the live racing requirement to receive a license to conduct slot machine gaming does not apply to certain greyhound permitholders; amending s. 551.114, F.S.; authorizing certain greyhound permitholders to locate their slot machine gaming area in certain locations; amending s. 849.086, F.S.; specifying conditions under which a greyhound permitholder may receive an initial cardroom license; specifying that certain greyhound permitholders are not required to conduct a minimum number of live races in order to maintain or renew a cardroom license; requiring certain greyhound permitholders to conduct intertrack wagering on greyhound signals to operate a cardroom; providing an

601026

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment to Amendment (121868)

Delete lines 56 - 86
and insert:
Section 4. Subsection (15) of section 550.054, Florida Statutes, is created to read:
550.054 Application for permit to conduct pari-mutuel wagering.—
(15) A permitholder of a permit converted under this section shall be required to apply for and conduct a full

601026

schedule of live racing in the first fiscal year following the conversion.

487824

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment to Amendment (121868) (with title amendment)

Between lines 86 and 87
insert:

Section 5. Subsection (3) is added to section 550.0555, Florida Statutes, to read:

550.0555 Greyhound dogracing permits; relocation within a county; conditions.—

(3) Notwithstanding any other law, a greyhound permitholder

487824

operating pursuant to a current year's operating license that specifies no live performances may not relocate its permit.

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

And the title is amended as follows:

Between lines 614 and 615

insert:

amending s. 550.0555, F.S.; prohibiting certain greyhound permitholders from relocating;

961536

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment to Amendment (121868) (with title amendment)

Delete lines 435 - 440
and insert:
(11) A greyhound permitholder operating pursuant to a current year's operating license that specifies no live performances is qualified to:
(a) Receive broadcasts at any time of any class of pari-mutuel race or game and accept wagers on such races or games

961536

conducted by any class of permitholder licensed under this chapter; and

(b) Accept wagers on live races conducted at out-of-state greyhound tracks only on the days when such permitholder receives all live races that any greyhound host track in this state makes available.

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

And the title is amended as follows:

Delete lines 646 - 648

and insert:

requirement; amending s. 550.615, F.S.; specifying that certain greyhound permitholders are qualified to conduct intertrack wagering and to accept wagers on live races conducted at out-of-state greyhound tracks under certain conditions; amending s. 550.6305,

647280

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment to Amendment (121868) (with title amendment)

Delete line 496
and insert:
permitholder. For the purpose of maintaining continued authority to conduct slot machine gaming, the live racing requirement in this paragraph does

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

647280

And the title is amended as follows:

Delete lines 650 - 653

and insert:

551.104, F.S.; specifying that certain greyhound permitholders are not required to satisfy the live racing requirement in order to maintain authority to conduct slot machine gaming; amending s. 551.114, F.S.; authorizing

By the Committee on Gaming; and Senators Sobel, Soto, Clemens, and Abruzzo

584-04017-14 2014742c1

A bill to be entitled

An act relating to racing animals; amending s. 550.2415, F.S.; revising the prohibition on the use of medication or drugs on animals; revising penalties for such use; revising procedures for testing animals for medication or drugs; requiring the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation to maintain records of greyhounds injured while racing; providing for the content of such records; providing fines for making false statements on an injury form; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1), paragraphs (a) and (b) of subsection (3), and subsections (4) and (5) of section 550.2415, Florida Statutes, are amended, and paragraph (f) is added to subsection (6) of that section, to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.—

(1)(a) The racing of an animal that has been impermissibly medicated or drugged ~~with any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-masking agent~~ is prohibited. It is a violation of this section for a person to impermissibly medicate or drug an animal resulting ~~administer or cause to be administered any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-masking agent to an animal which will result~~

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

584-04017-14 2014742c1

in a positive test for such substance based on samples taken from the animal ~~immediately~~ prior to or immediately after the racing of that animal. Test results and the identities of the animals being tested and of their trainers and owners of record are confidential and exempt from s. 119.07(1) and from s. 24(a), Art. I of the State Constitution for 10 days after testing of all samples collected on a particular day has been completed and any positive test results derived from such samples have been reported to the director of the division or administrative action has been commenced.

(3)(a) Upon the finding of a violation of this section, the division may revoke or suspend the license or permit of the violator or deny a license or permit to the violator; impose a fine against the violator in an amount not exceeding the purse or sweepstakes earned by the animal in the race at issue or $10,000, whichever is greater ~~$5,000~~; require the full or partial return of the purse, sweepstakes, and trophy of the race at issue; or impose against the violator any combination of such penalties. The finding of a violation of this section in no way prohibits a prosecution for criminal acts committed.

(b) The division, notwithstanding the provisions of chapter 120, may summarily suspend the license of an occupational licensee responsible under this section or division rule for the condition of a race animal if the division laboratory reports the presence of a prohibited ~~an impermissible~~ substance in the animal or its blood, urine, saliva, or any other bodily fluid, either before a race in which the animal is entered or after a race the animal has run.

(4) A prosecution pursuant to this section for a violation

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

of this section must be commented within 180 days ~~2 years~~ after the violation was committed. Service of an administrative complaint marks the commencement of administrative action.

(5) The division shall implement a split-sample procedure for testing animals under this section. Each urine and blood sample shall be split into a primary sample and a secondary (split) sample upon collection, under rules adopted by the division. The division shall transfer custody of the primary sample to the division laboratory, with custody of the split sample to remain with the division except as provided in this subsection.

(a) ~~Upon finding a positive drug test result,~~ The division ~~department~~ shall notify the owner or trainer, the stewards, and the horsemen's association of all drug test ~~the~~ results~~. The owner may request that each urine and blood sample be split into a primary sample and a secondary (split) sample. Such splitting must be accomplished in the laboratory under rules approved by the division. Custody of both samples must remain with the division~~. In the event of a positive test result ~~However~~, upon request by the affected trainer or owner of the animal from which the sample was obtained, the division shall send the split sample to an approved independent laboratory for analysis. The division shall establish standards and rules for uniform enforcement and shall maintain a list of at least five approved independent laboratories for an owner or trainer to select from in the event of a positive test result ~~sample~~.

(b) If the division ~~state~~ laboratory's findings are not confirmed by the independent laboratory, no further administrative or disciplinary action under this section may be

pursued. The division may adopt rules identifying substances that diminish in a blood or urine sample due to passage of time and that must be taken into account in applying this section.

(c) If the independent laboratory confirms the division ~~state~~ laboratory's positive result, ~~or if there is an insufficient quantity of the secondary (split) sample for confirmation of the state laboratory's positive result,~~ the division may commence administrative proceedings as prescribed in this chapter and consistent with chapter 120. For purposes of this subsection, the department shall in good faith attempt to obtain a sufficient quantity of the test fluid to allow both a primary test and a secondary test to be made. If there is an insufficient quantity of the split sample for confirmation of the division laboratory's positive result, the division may not take further action on the matter against the owner or trainer, and any resulting license suspension must be immediately lifted.

(d) The division shall require its laboratory and the independent laboratories to annually participate in an externally administered quality assurance program designed to assess testing proficiency in the detection and appropriate quantification of medications, drugs, and naturally occurring substances that may be administered to racing animals. The administrator of the quality assurance program shall report its results and findings to the division.

(6)

(f)1. The division shall maintain records regarding injuries incurred by racing greyhounds while they are racing in this state, including injuries incurred in schooling races. The records must include:

a. The greyhound's registered name, right and left ear tattoo numbers, and, if any, the microchip manufacturer and number.

b. The name, business address, and telephone number of the greyhound owner and trainer and the kennel operator.

c. The color, weight, and sex of the greyhound.

d. The location where the injury took place, whether on a racetrack or in another area.

e. If the injury occurred while the greyhound was racing, the racetrack where the injury occurred and the distance, grade, race, and post position of the greyhound when the injury occurred.

f. The weather conditions, time, and track condition when the injury occurred.

g. The specific type and bodily location of injury, the cause of the injury, and the estimated recovery time from the injury.

2. All injury forms shall be completed and signed under oath or affirmation under penalty of perjury by the racetrack veterinarian, whose signature must be witnessed by a designated representative of the division.

3. Injury records created and maintained under this paragraph shall be maintained by the division for a period of 7 years and shall be made readily available to the public upon oral or written request to the division.

4. Knowingly making a false statement on an injury form shall result in a fine not to exceed $1,500. A second or subsequent violation of this paragraph shall result in a fine of at least $3,000.

Section 2. This act shall take effect July 1, 2014.

April 15, 2014

Senator Joe Negron, Chair
Appropriations Committee
412 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Negron,

This letter is to request that **SB 742** relating to Greyhound Injury Reporting be placed on the agenda of the next scheduled meeting of the Appropriations Committee.

The proposed legislation would require facilities that race greyhounds to report and provide documentation of any injury or death relating to greyhounds housed within their facility. Every three days, a racing greyhound dies in Florida. Further, Florida is one of only two states in the country that does not require this information to be provided by these facilities.

Thank you for your consideration of this request.

With Best Regards,

Eleanor Sobel
State Senator, 33rd District

Cc: Cindy Kynoch, Ann Roberts, Alicia Weiss

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic _____ Bill Number 742 *(if applicable)*

Name Jeff Kottkamp Amendment Barcode 121868 *(if applicable)*

Job Title _____

Address 3311 Dartmoor Dr. Phone _____
Street

Tallahassee FL E-mail Lgjdu1@aol.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Fla. Casino Watch & Fla. Greyhound Assoc.

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic _____ Bill Number 742 *(if applicable)*

Name JACK COREY Amendment Barcode 121868 *(if applicable)*

Job Title _____

Address 118 E. Call St. Phone 850-893-0993

Street

Tall. FL

City *State* *Zip*

E-mail JACK.COREY@MYCMC.COM

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Greyhound Assoc.

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Decoupling Amendment

Bill Number 742 *(if applicable)*

Name Don Goldstein

Amendment Barcode 121868 *(if applicable)*

Job Title

Address 12321 Bramfield Dr.
Street
Riverview FL 33579
City *State* *Zip*

Phone 813 361 7146

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing himself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Decoupling Amendment

Bill Number 742 *(if applicable)*

Name Cary Theil

Amendment Barcode 121868 *(if applicable)*

Job Title Exec Director

Address PO Box F
Street
Arlington Mass 02476
City *State* *Zip*

Phone 781-488-3526

E-mail Carye@gy2kusa.org

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

Representing Guy 2K USA

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Decoupling Amendment
Bill Number 742 *(if applicable)*

Name Katie MacFall
Amendment Barcode 121868 *(if applicable)*

Job Title FL State Director

Address 1624 Metropolitan Circle
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 850 508-1001

E-mail kmacfall@humanesociety.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic _____ Bill Number SB 742 *(if applicable)*

Name Jack Corbett Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 110 E. Call Ave Phone 850-893-0995

Street

Tall E-mail jacorbett@aol.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Drycleaning Assn

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Injury Reporting

Bill Number 742 *(if applicable)*

Name Don Goldstein

Amendment Barcode *(if applicable)*

Job Title

Address 12321 Bramfield Dr.
Street

Phone 813 361 7146

Riverview FL 33579
City *State* *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Himself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Greyhound Injury Repatry

Bill Number 742 *(if applicable)*

Name Kate MacFall

Amendment Barcode *(if applicable)*

Job Title FL. State Director

Address 1624 Metroplex Cmln
Street

Tallahassee FL. 32308
City *State* *Zip*

Phone 850 508-1001

E-mail kmacfall@humanesociety.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Greyhound Injury Reporting

Bill Number 742 *(if applicable)*

Name Carey Theil

Amendment Barcode *(if applicable)*

Job Title Ex. Director

Address PO Box F
Street
Arlington Mass 02476
City *State* *Zip*

Phone 781-488-3526

E-mail Careygry2Kusa.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Grey2K USA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 744
INTRODUCER:	Children, Families, and Elder Affairs Committee; and Senator Detert
SUBJECT:	Motor Vehicle Insurance and Driver Education for Children in Care
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Fav/CS**
2.	Everette	Eichin	TR	**Favorable**
3.	Johnson	Knudson	BI	**Favorable**
4.	Brown	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 744 directs the Department of Children and Families (DCF) to establish a statewide pilot program to pay specified costs of driver education, licensure, and motor vehicle insurance for a foster child who meets certain qualifications. The bill sets limits of the amount to be paid and requires payment to be made in the order of eligibility until funds are exhausted.

The bill requires the DCF to contract with a qualified not-for-profit entity to operate and develop procedures for the program. The bill requires an annual report to the governor and the Legislature.

The bill provides for preferential enrollment in driver education for specified children in the care of the DCF.

The bill contains an appropriation of $800,000 from the General Revenue Fund to the DCF for the purpose of implementing the bill during the 2014-2015 fiscal year.

II. Present Situation:

Foster Children

Young people in the foster care system often face barriers to participating in everyday life experiences common to other young people their age. These life experiences are a part of how all children are prepared for the responsibilities they will assume as adults. The Florida State Youth Advisory Board has long identified barriers to driving an automobile that are experienced by the children in Florida's foster care system as a concern. Staff of the Department of Children and Families (DCF) concur that foster care children who are not able to learn or gain experience driving miss an important part of learning how to be independent, including being able to work.

Both statute and administrative code support the efforts of teens in foster care to engage in age-appropriate activities.[1] DCF rules specifically require community-based care lead agency service providers to support foster care teens who have demonstrated the appropriate level of maturity in their efforts to learn to drive and obtain a learner's permit or driver's license, and to assist in obtaining automobile insurance for those who are allowed to drive.[2]

At the end of January 2014, the DCF reported that there were 385 15-year-olds, 458 16-year-olds, and 517 17-year-olds in foster care.[3] The DCF has contracted with Cby25, a private not-for-profit corporation, to survey youth in foster care every six months and to publish reports.[4] According to the most recent of these reports, published in the spring of 2013:

- 5 percent of 15-year-old respondents (11 children of 243 surveyed) had learner's permits;
- 8 percent of 16-year-olds (25 children of 300 surveyed) had learner's permits;
- 13 percent of 17-year-olds (52 children of 387 surveyed) had learner's permits; and
- 9 percent of the total number of children surveyed (88 of 930 surveyed) had learner's permits.

Children surveyed reported the following regarding drivers' licenses:

- 1 percent of 16-year-olds (4 children of 300 surveyed) had driver's licenses;
- 4 percent of 17-year-olds (16 children of 387 surveyed) had driver's licenses; and
- 3 percent of the total number of children surveyed (20 of 687 surveyed) had driver's licenses.[5]

Usually, children in foster care are placed with a foster parent; however, they may also be placed in a group home or other residential facility[6] or, upon turning 16, in an independent living setting, which is subsidized by the DCF.[7]

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[1] *See* s. 409.145(3), F.S.
[2] Rule 65C-30.007, F.A.C.
[3] Email from Jane McElroy, Department of Children and Families (Feb. 12, 2014) (on file with the Senate Committee on Children, Families and Elder Affairs).
[4] *My Services, Answers from Youth in Foster Care, available on the DCF website at* http://www.dcf.state.fl.us/programs/indliving/docs/MyServicesSpring2013SurveyReport.pdf (last visited Feb. 13, 2014).
[5] *Id*., at 63.
[6] Section 39.01(20), F.S.
[7] Section 409.1451(3)(c), F.S.

Currently, foster parents (who are also referred to as licensed foster homes) receive payment from the state of a monthly board rate for caring for a foster child. The basic board rate for a child aged 13-21 is $515 per month.[8]

Driver's Licenses for Teens

A child who is 15 years of age is authorized to obtain a learner's driver's license (learner's permit), provided he or she meets the school attendance requirements of s. 322.091, F.S., and the application and testing requirements of s. 322.1615, F.S. Section 322.09, F.S., requires that, when a child applies for a learner's permit, the application must be signed by a parent, guardian, or when there is no parent or guardian, some other responsible adult. The learner's permit is considered a restricted form of the regular driver's license, or Class E driver license.

Special Driver's License and Insurance Provisions for Foster Children and Foster Parents

Among the primary obstacles to these children being able to drive are the potential liability of the foster parents when the children drive vehicles owned by the foster parent and the attendant cost of insurance to protect foster parents from this liability.

Section 322.09(2), F.S., provides that any negligence or willful misconduct of the child operating a motor vehicle will be imputed to the adult who signed the application. That adult is jointly and severally liable with the child for any damages caused by the negligent or willful misconduct.

In 2001, s. 322.09, F.S., was amended to provide that foster parents or authorized representatives of a residential group home who sign for a foster child's license do not become liable for any damages or misconduct of the child.[9] While this provision relieves the foster parent of liability resulting directly from the signature on the driver license application, it does not address any vicarious liability that the foster parent may have because of the foster parent's ownership of the vehicle that the child drives.[10] This liability arises whenever an insured individual allows another to operate his or her motor vehicle and is independent of the provisions of s. 322.09, F.S. Thus, the foster parent who owns the motor vehicle continues to be subject to vicarious liability for the actions of the child while operating the foster parent's vehicle, in the same way the foster parent would be vicariously liable for the actions of any other person operating that vehicle. This vicarious liability is one of the risks for which insurance coverage is purchased.

Also in 2001, s. 627.746, F.S., was created to prohibit a motor vehicle insurance company from charging an additional premium on a motor vehicle owned by a foster parent for coverage of a child operating the vehicle while the child is holding a learner's permit.[11] This prohibition is only applicable until the child obtains a regular driver's license.

[8] Section 409.145(4), F.S.
[9] Chapter 2001-83, Laws of Fla.
[10] *See Hertz Corp. vs. Jackson*, 617 So.2d 105 (Fla. 1993).
[11] Chapter 2001-83, Laws of Fla.

Costs Associated with Obtaining a Driver's License

Driver's education courses are offered free of charge through the public school system but enrollment may be limited. Some school districts offer a summer driver's education course, charging fees from $50 to $250.[12] Commercial courses are offered in some jurisdictions at prices ranging from $300-$5,000.[13]

The cost of obtaining a class E (regular) driver's license is $48.[14] The learner's permit is considered a restricted form of a class E license, requiring the payment of the $48 fee, but no additional fee is required to upgrade from a learner's permit to a class E license. In order to obtain a learner's permit, the person applying must, among other requirements, have completed a traffic law and substance education course[15] and have successfully completed a written examination.[16,17]

The cost of obtaining motor vehicle insurance coverage for a teen driver varies widely contingent on many factors used by insurance companies.[18] These factors include:

- Type of vehicle;
- Driving history;
- Vehicle Usage;
- Geographic Location or Territory;
- Gender;
- Company specific discounts;
- Age;[19] and
- Amount of coverage.

As a generic estimate, the Office of the Guardian ad Litem has used the figure of $2,000 annually per child for motor vehicle insurance.[20]

Emancipation of Minors, Generally

All states have laws dealing with the "emancipation" of minors, which specify when and under what conditions children become independent of their parents for legal purposes. Approximately half of the states regulate emancipation by statutes specifically designed for that purpose. These statutes may specify the conditions required or the procedures for seeking emancipation. Statutes vary considerably from state to state, but under common law, most states allow for the possibility

[12] Florida Guardian ad Litem, A *Voice Heard: Keys to Independence*, *available at* http://guardianadlitem.org/news_main.asp (last visited Feb. 13, 2014).
[13] *Id.*
[14] Section 322.21, F.S.
[15] A representative cost for meeting this requirement is $29.95, according to the Guardian ad Litem Program, *Voices*, *ibid.*
[16] The cost for taking the examination is $14.95, *Id.*
[17] Section 322.1615, F.S.
[18] Section 627.062, F.S., provides that such rates may not be excessive, inadequate, or unfairly discriminatory.
[19] Department of Financial Services, *Automobile Insurance--A Toolkit for Consumers*, available at: http://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/AutoToolkit.pdf (last visited March 19, 2014).
[20] E-mail from Alan Abramowitz, Statewide Director, Guardian ad Litem Program, February 13, 2014 (on file with the Senate Committee on Children, Families, and Elder Affairs).

of court-reviewed emancipation. No fixed age of emancipation exists, yet a minor is presumed to become emancipated upon reaching the age of majority. In most states, the age of majority is 18.[21]

Emancipation is the removal of "disability of nonage." Legally, in most instances, children lack the capacity that adults are assumed to have to perform certain activities, such as entering into binding contracts, making certain purchases, and being held responsible in the same way as adults for criminal offenses. This lack of capacity is termed the "disability of nonage." Emancipation is the act by which a person gains all the rights and responsibilities of an adult. An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents. Emancipated minors lose the right to have their parents provide for them and the protection of the Department of Children and Family Services.[22]

A circuit court has jurisdiction to remove the disabilities of nonage of a minor who is age 16 or older residing in Florida upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem. Subsequent to July 1, 2012, the petition may also be filed by the minor if the minor is a certified homeless and unaccompanied minor over the age of 16. The petition must contain the following information:[23]

- The name, address, residence, and date of birth of the minor;
- The name, address, and current location of each of the minor's parents, if known;
- The name, date of birth, custody, and location of any children born to the minor;
- A statement of the minor's character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met;
- Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding; and
- A statement of the reason why the court should remove the disabilities of nonage.

In addition, the law provides that:

- If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage;
- If the petition is filed by the guardian ad litem or next friend[24], service of process must be perfected on the natural parents;

[21] A substantial portion of this paragraph was taken from: Cornell University of Law, Legal Information Institute, *Emancipation of Minors, available at* http://www.law.cornell.edu/wex/emancipation_of_minors (last visited Jan. 21, 2014).
[22] A substantial portion of this paragraph was taken from: Volusia County Law Library, *Emancipation in Florida Research Guide, available at* http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf (last visited Jan. 21, 2014).
[23] Section 743.015, F.S.
[24] A "next friend" is a person acting for the benefit of (an) infant, or other person not *sui juris* (person unable to look after his or her own interests or manage his or her own lawsuit) without being regularly appointed (as a) guardian, *Black's Law Dictionary, 6th Edition*, 1979.

- If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the non-petitioning parent;[25]
- The court shall consider the petition and receive such evidence as it deems necessary to rule on the petition;
- If the court determines that removal of the disabilities of nonage is in the minor's best interest, it must enter an order to that effect; and
- The judgment must be recorded in the county in which the minor resides, and a certified copy must be received as evidence of the removal of disabilities of nonage for all matters in all courts.[26]

Special Provisions Relating to Emancipation for Foster Children

Section 39.701(3), F.S., requires that the dependency court must hold a judicial review within 90 days following the child's 17th birthday. At this hearing, the court is required to enter an order, separate from the judicial review order, that the disability of nonage for the child has been removed pursuant to s. 743.045, F.S.[27]

Section 743.045, F.S. provides for the removal of the disability of nonage for foster children over the age of 17 for executing contracts for a residential lease.

Additionally, s. 743.046, F.S., which is not referenced in s. 39.701(3), F.S., removes the disability of nonage for foster children over the age of 17 for securing utility services at residential property.

Similarly, s. 743.044, F.S., which is also not referenced in s. 39.701(3), removes the disability of nonage for foster children over the age of 16 for executing agreements for depository financial services. All three of these special provisions (ss. 743.044, 743.045, and 743.046, F.S.) require the entry of a court order to be effective.

III. Effect of Proposed Changes:

Section 1 amends s. 39.701(3), F.S., to add the removal of the disability of nonage for the purposes of obtaining motor vehicle insurance to the matters to be considered at the special judicial review scheduled at the time a child becomes 17 years of age.

Section 2 creates s. 409.1454, F.S., directing the Department of Children and Families (DCF) to establish a three-year pilot program to pay the costs of driver education, licensure, and other costs incidental to licensure and motor vehicle insurance for children in licensed out of home care who have successfully completed a driver education program, to the extent that funding is available.

The bill limits the amount of the payments to the increase in cost attributable to the addition of the child to the policy. The bill directs that payments be made to eligible recipients in the order

[25] Constructive service of process may be used, provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the nonpetitioning parent.
[26] Section 743.015, F.S.
[27] Section 39.701(1), F.S.

of eligibility until available funds are exhausted. The bill directs the DCF to contract with a not-for-profit entity whose mission is to support youth aging out of foster care to develop procedures for operating and administering the pilot program and requires the DCF to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives in each year for the duration of the pilot project.

Section 3 creates s. 743.047, F.S., authorizing the court to remove the disability of nonage for minors obtaining motor vehicle insurance if the child has reached 16 years of age, has been adjudicated dependent, is residing in an out-of-home placement, and has completed a driver education program. In order to execute the documents necessary for the insurance, the child must present a court order removing the disability of nonage for this purpose.

Section 4 amends s. 1003.48, F.S., to require secondary schools offering driver's education courses to grant preferential enrollment to students in the custody of the DCF if the student maintains appropriate progress as required by the school.

Section 5 appropriates $800,000 from the General Revenue Fund to the DCF for implementing this act during Fiscal Year 2014-2015.

Section 6 provides for an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The pilot program created by CS/SB 744 would pay the costs of driver education, licensure and other costs incidental to licensure, and motor vehicle insurance for children in licensed out-of-home care who have successfully completed a driver education program. The Department of Children and Families reports that, at this time, it is unable to determine the number of caregivers accepting insurance liability for youth in out-of-

home care upon receipt of a driver's license. Insurance premium reimbursements to caregivers will vary by caregiver and child.

C. Government Sector Impact:

The cost of the bill is limited to the appropriation of $800,000 from the General Revenue Fund for Fiscal Year 2014-2015.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.701 and 1003.48.

This bill creates the following sections of the Florida Statutes: 409.1451 and 743.047.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 18, 2014:
The CS:

- Amends s. 39.701(3), F.S., to add the emancipation of minors for securing motor vehicle insurance to the matters to be considered at the special judicial review held for foster children reaching 17 years of age; and
- Amends s. 409.1454, F.S., to clarify that the bill addresses only children in licensed out of home care.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and Senator Detert

586-01857-14 2014744c1

A bill to be entitled

An act relating to motor vehicle insurance and driver education for children in care; amending s. 39.701, F.S.; authorizing the court to consider the best interest of a child in removing specified disabilities of nonage for certain minors; creating s. 409.1454, F.S.; providing legislative findings; directing the Department of Children and Families to establish a statewide pilot program to pay specified costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a child in licensed out-of-home care who meets certain qualifications; providing limits of the amount to be paid; requiring payments to be made in the order of eligibility until funds are exhausted; requiring the department to contract with a qualified not-for-profit entity to operate and develop procedures for the pilot program; requiring the department to submit an annual report with recommendations to the Governor and the Legislature; creating s. 743.047, F.S.; removing the disability of nonage of minors for purposes of obtaining motor vehicle insurance; requiring an order by the court for the disability of nonage to be removed; amending s. 1003.48, F.S.; providing for preferential enrollment in driver education for specified children in care; providing an appropriation; providing an effective date.

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

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

586-01857-14 2014744c1

Section 1. Paragraph (a) of subsection (3) of section 39.701, Florida Statutes, is amended to read:

39.701 Judicial review.—

(3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

(a) In addition to the review and report required under paragraphs (1)(a) and (2)(a), respectively, the court shall hold a judicial review hearing within 90 days after a child's 17th birthday. The court shall also issue an order, separate from the order on judicial review, that the disability of nonage of the child has been removed pursuant to ss. 743.045 and 743.047 for any of these disabilities that the court finds is in the child's best interest to remove. The court ~~s. 743.045 and~~ shall continue to hold timely judicial review hearings. If necessary, the court may review the status of the child more frequently during the year before the child's 18th birthday. At each review hearing held under this subsection, in addition to any information or report provided to the court by the foster parent, legal custodian, or guardian ad litem, the child shall be given the opportunity to address the court with any information relevant to the child's best interest, particularly in relation to independent living transition services. The department shall include in the social study report for judicial review written verification that the child has:

1. A current Medicaid card and all necessary information concerning the Medicaid program sufficient to prepare the child to apply for coverage upon reaching the age of 18, if such application is appropriate.

2. A certified copy of the child's birth certificate and,

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

if the child does not have a valid driver license, a Florida identification card issued under s. 322.051.

3. A social security card and information relating to social security insurance benefits if the child is eligible for those benefits. If the child has received such benefits and they are being held in trust for the child, a full accounting of these funds must be provided and the child must be informed as to how to access those funds.

4. All relevant information related to the Road-to-Independence Program, including, but not limited to, eligibility requirements, information on participation, and assistance in gaining admission to the program. If the child is eligible for the Road-to-Independence Program, he or she must be advised that he or she may continue to reside with the licensed family home or group care provider with whom the child was residing at the time the child attained his or her 18th birthday, in another licensed family home, or with a group care provider arranged by the department.

5. An open bank account or the identification necessary to open a bank account and to acquire essential banking and budgeting skills.

6. Information on public assistance and how to apply for public assistance.

7. A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and the educational program or school in which he or she will be enrolled.

8. Information related to the ability of the child to remain in care until he or she reaches 21 years of age under s.

39.013.

9. A letter providing the dates that the child is under the jurisdiction of the court.

10. A letter stating that the child is in compliance with financial aid documentation requirements.

11. The child's educational records.

12. The child's entire health and mental health records.

13. The process for accessing his or her case file.

14. A statement encouraging the child to attend all judicial review hearings occurring after the child's 17th birthday.

Section 2. Section 409.1454, Florida Statutes, is created to read:

409.1454 Motor vehicle insurance for children in care.—

(1) The Legislature finds that the costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a child in licensed out-of-home care after such child obtains a driver license creates an additional barrier to engaging in normal age-appropriate activities and gaining independence and may limit opportunities for obtaining employment and completing educational goals. The Legislature also finds that the completion of an approved driver education course is necessary to develop safe driving skills.

(2) To the extent that funding is available, the department shall establish a 3-year pilot program to pay the cost of driver education, licensure and other costs incidental to licensure, and motor vehicle insurance for children in licensed out-of-home care who have successfully completed a driver education program.

(3) If a caregiver, or an individual or not-for-profit

entity approved by the caregiver, adds a child to his or her existing insurance policy, the amount paid to the caregiver or approved purchaser may not exceed the increase in cost attributable to the addition of the child to the policy.

(4) Payment shall be made to eligible recipients in the order of eligibility until available funds are exhausted.

(5) The department shall contract with a not-for-profit entity whose mission is to support youth aging out of foster care to develop procedures for operating and administering the pilot program, including, but not limited to:

(a) Determining eligibility, including responsibilities for the child and caregivers.

(b) Developing application and payment forms.

(c) Notifying eligible children, caregivers, group homes, and residential programs of the pilot program.

(d) Providing technical assistance to lead agencies, providers, group homes, and residential programs to support removing obstacles that prevent children in foster care from driving.

(6) By July 1, 2015, and annually thereafter for the duration of the pilot program, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the success of and outcomes achieved by the pilot program. The report shall include a recommendation as to whether the pilot program should be continued, terminated, or expanded.

Section 3. Section 743.047, Florida Statutes, is created to read:

743.047 Removal of disabilities of minors; executing

agreements for motor vehicle insurance.—For the purpose of ensuring that a child in foster care will be able to secure motor vehicle insurance, the disability of nonage of minors shall be removed provided that the child has reached 16 years of age, has been adjudicated dependent, is residing in an out-of-home placement as defined in s. 39.01, and has completed a driver education program. Upon issuance of an order by a court of competent jurisdiction, such child is authorized to make and execute all documents, contracts, or agreements necessary for obtaining motor vehicle insurance as if the child is otherwise competent to make and execute contracts. Execution of any such contract or agreement for motor vehicle insurance has the same effect as if it were the act of a person who is not a minor. A child seeking to enter into such contract or agreement or execute other necessary instrument incidental to obtaining motor vehicle insurance must present an order from a court of competent jurisdiction removing the disabilities of nonage of the minor pursuant to this section.

Section 4. Section 1003.48, Florida Statutes, is amended to read:

1003.48 Instruction in operation of motor vehicles.—

(1) A course of study and instruction in the safe and lawful operation of a motor vehicle shall be made available by each district school board to students in the secondary schools in the state. The secondary school shall provide preferential enrollment to a student who is in the custody of the Department of Children and Families if the student maintains appropriate progress as required by the school. As used in this section, the term "motor vehicle" has ~~shall have~~ the same meaning as in s.

320.01(1)(a) and includes ~~shall include~~ motorcycles and mopeds. Instruction in motorcycle or moped operation may be limited to classroom instruction. The course may ~~shall~~ not be made a part of, or a substitute for, any of the minimum requirements for graduation.

(2) In order to make such a course available to any secondary school student, the district school board may use any one of the following procedures or any combination thereof:

(a) Use ~~Utilize~~ instructional personnel employed by the district school board.

(b) Contract with a commercial driving school licensed under ~~the provisions of~~ chapter 488.

(c) Contract with an instructor certified under ~~the provisions of~~ chapter 488.

(3)~~(a)~~ District school boards shall earn funds on full-time equivalent students at the appropriate basic program cost factor, regardless of the method by which such courses are offered.

(4)~~(b)~~ For the purpose of financing the Driver Education Program in the secondary schools, there shall be levied an additional 50 cents per year to the driver ~~driver's~~ license fee required by s. 322.21. The additional fee shall be promptly remitted to the Department of Highway Safety and Motor Vehicles, which shall transmit the fee to the Chief Financial Officer to be deposited in the General Revenue Fund.

(5)~~(4)~~ The district school board shall prescribe standards for the course required by this section and for instructional personnel directly employed by the district school board. A ~~Any~~ certified instructor or licensed commercial driving school is

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~~shall be deemed~~ sufficiently qualified and is ~~shall~~ not ~~be~~ required to meet any standards in lieu of or in addition to those prescribed under chapter 488.

Section 5. The sum of $800,000 is appropriated from the General Revenue Fund to the Department of Children and Families for the purpose of implementing this act during the 2014-2015 fiscal year.

Section 6. This act shall take effect July 1, 2014.

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

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 25, 2014

I respectfully request that **744**, relating to Keys to Independence, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/02/14
Meeting Date

Topic Motor Vehicle Insurance & Driver Ed

Bill Number SJ 744 *(if applicable)*

Name Mindy Gould

Amendment Barcode _____ *(if applicable)*

Job Title Legislation Chair

Address 18181 NE 31st Court, # 409
Street
Aventura FL 33160
City *State* *Zip*

Phone 305-439-8979

E-mail mindy.gould.pta@aol.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 744 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Foster Child Issues - Children in Care

Bill Number 744 *(if applicable)*

Name ALAN ABRAMOWITZ

Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 600 Calhoun
Street
Tallahassee
City *State* *Zip*

Phone 850-241-5252

E-mail JimAbramowitz@gal.com

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

Representing GAL

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic MV Insurance and Driver Education for Children in Care Bill Number 744 *(if applicable)*

Name Christina Spudeas Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 1801 N. University Drive, Suite 3B Phone 954-796-0860
Street

Coral Springs, FL 33071 E-mail christina.spudeas@floridaschildrenfi
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida's Children First & FLORIDA YOUTH SHINE

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 746
INTRODUCER:	Community Affairs Committee; Criminal Justice Committee; Health Policy Committee; and Senator Sobel
SUBJECT:	Health Care Clinic Act
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Sumner	Cannon	CJ	**Fav/CS**
3.	Stearns	Yeatman	CA	**Fav/CS**
4.	Brown/Forbes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 746 amends the definition of "clinic" within the Health Care Clinic Act to include any entity that "receives remuneration" rather than entities that "tender charges for reimbursement." The bill also makes clinics subject to additional inspections, administrative penalties,[1] and any applicable criminal penalties if an inspection or investigation reveals that the clinic hired or continued to employ a physician whose license is suspended or revoked or the licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic. The bill exempts certain federally certified clinics from licensure under the act.

The bill is estimated to have a net recurring negative fiscal impact of approximately $69,000 to the Agency for Health Care Administration's (AHCA) Health Care Trust Fund. The net impact results from an estimate of approximately $176,000 of additional annual revenue for the trust fund and the need for $245,000 of recurring expenditures from the trust fund for four full-time equivalent positions to implement the bill.

[1] See s. 400.995, F.S., allowing the AHCA to deny, revoke, or suspend a license and impose fines of up to $5,000 for violations of the Health Care Clinic Act.

II. Present Situation:

Part X of ch. 400, F.S., is known as the Health Care Clinic Act (the Act). The purpose of the Act is to provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration (AHCA).

Health care clinics in the state must be licensed by the AHCA;[2] however, there are numerous exclusions from the definition of "clinic" in s. 400.9905, F.S.,[3] and from the requirement to obtain a license as a clinic. The definition of "clinic" includes only entities that "tender charges for reimbursement." The AHCA interprets this phrase to solely include entities that bill third parties, such as Medicare, Medicaid, and insurance companies. Entities that provide health care services on a "cash only" basis are excluded from the definition of "clinic" and, as such, need not be licensed by the AHCA.[4]

III. Effect of Proposed Changes:

Section 1 amends s. 400.9905, F.S., to broaden the definition of "clinic" to include any entity that "receives remuneration" rather than entities that "tender charges for reimbursement." The effect of this change is to require "cash only" clinics to obtain a license as a clinic and, as a result, these facilities will be subject to periodic inspections. The bill exempts clinics subject to federal licensure requirements under 42 C.F.R. part 485, subpart H.

Section 2 amends s. 400.995, F.S., to subject clinics to additional inspections, administrative penalties,[5] licensure suspension or revocation, any applicable criminal penalties[6] or any combination thereof if:

- An inspection or investigation reveals that the clinic hired or continued to employ a physician whose license is suspended or revoked; or
- The licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic.

Section 3 establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[2] Section 400.991, F.S.
[3] Section 400.9905(4)(a)-(n), F.S.
[4] See the AHCA's bill analysis for SB 746 (January 28, 2014) on file with staff of the Committee on Appropriations.
[5] See s. 400.995, F.S., allowing the AHCA to deny, revoke, or suspend a license and impose fines of up to $5,000 for violations of the Health Care Clinic Act.
[6] The criminal penalties are not specified, however, these penalties could include a felony of the third degree imposed by s. 458.327(1)(b), F.S., on physicians who attempt to use a license which is suspended or revoked to practice medicine.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under CS/CS/CS/SB 746, "cash only" clinics that are not currently licensed will be required to obtain a license from the AHCA and pay a $2,000 licensing fee in order to continue operating legally.

B. Private Sector Impact:

"Cash only" clinics that are not currently licensed will incur the $2,000 licensing fee if they choose to seek licensure. Also, clinics that hire or continue to employ a physician whose license is suspended or revoked may be required to pay a fine of up to $5,000.

C. Government Sector Impact:

The AHCA anticipates a recurring increase in licensing fee revenue of approximately $176,000 under the bill that will be deposited into the Health Care Trust Fund.

The AHCA anticipates the licensure workload will increase by 10 percent requiring 4 FTE positions to manage the program. The licensure fees will substantially cover the increased workload costs. Existing resources can absorb the difference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.9905 and 400.995.

IX. Additional Information:

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

CS/CS/CS by Community Affairs on April 8, 2014:
The CS exempts certain federally certified clinics from the licensure requirements of the bill.

CS/CS by Criminal Justice on March 24, 2014:
The CS subjects clinics to additional inspections and licensure suspension or revocation (or any combination of penalties including administrative and criminal penalties) if an inspection or investigation reveals that the licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic.

CS by Health Policy on March 11, 2014:
The CS provides that only clinics that hire or continues to employ, directly or contractually, a physician whose license is suspended or revoked, are liable for sanctions or criminal penalties.

B. Amendments:

None.

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

By the Committees on Community Affairs; Criminal Justice; and Health Policy; and Senator Sobel

578-04053-14 2014746c3

A bill to be entitled

An act relating to the Health Care Clinic Act; amending s. 400.9905, F.S.; redefining the term "clinic"; exempting certain federally certified clinics from licensure under the act; amending s. 400.995, F.S.; providing that a clinic is subject to penalties if it engages physicians whose licenses have been suspended or revoked; providing an effective date.

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

Section 1. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity that provides ~~where~~ health care services ~~are provided~~ to individuals and that receives remuneration ~~which tenders charges for reimbursement~~ for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42

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C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services or other health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(c) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part

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405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital under chapter 395.

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(e) An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan under 26 U.S.C. s. 409 that has a board of trustees at least two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, a ~~any~~ community college or university clinic, and an ~~any~~ entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof.

(f) A sole proprietorship, group practice, partnership, or

corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

(g) A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this paragraph and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

(h) Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

(i) Entities that provide only oncology or radiation

therapy services by physicians licensed under chapter 458 or chapter 459 or entities that provide oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 which are owned by a corporation whose shares are publicly traded on a recognized stock exchange.

(j) Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

(k) Entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and that derive at least 90 percent of their gross annual revenues from the provision of such services. Entities claiming an exemption from licensure under this paragraph must provide documentation demonstrating compliance.

(l) Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under paragraph (a) or paragraph (k) and that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this paragraph, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

(m) Entities that are owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who

is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state law for purposes of this part.

(n) Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number. The application for exemption under this subsection must ~~shall~~ contain information that includes: the name, residence, and business address and phone number of the entity that owns the practice; a complete list of the names and contact information of all the officers and directors of the corporation; the name, residence address, business address, and medical license number of each licensed Florida health care practitioner employed by the entity; the corporate tax identification number of the entity seeking an exemption; a listing of health care services to be provided by the entity at the health care clinics owned or operated by the entity and a certified statement prepared by an independent certified public accountant which states that the entity and the health care clinics owned or operated by the entity have not received payment for health care services under personal injury protection insurance coverage for the preceding year. If the agency determines that an entity which is exempt under this subsection has received payments for medical services under personal injury protection insurance coverage, the agency may deny or revoke the exemption from licensure under this subsection.

Notwithstanding this subsection, an entity shall be deemed a

clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h) or, as a provider certified pursuant to 42 C.F.R. part 485, subpart H, exempted under this subsection before July 1, 2014. However, if a single legal entity owned a clinic that is exempt under this subsection before July 1, 2014, the exemption extends beyond that date to other clinics owned by that entity which are certified under 42 C.F.R. part 485, subpart H.

Section 2. Present subsection (6) of section 400.995, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

400.995 Agency administrative penalties.—

(6) A clinic is subject to additional inspections, administrative penalties, licensure suspension or revocation, applicable criminal penalties, or any combination of the above if:

(a) An inspection or investigation reveals that the clinic hired or continues to directly or contractually engage a physician whose license is suspended or revoked; or

(b) The licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic.

Section 3. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act, *Vice Chair*

SENATOR ELEANOR SOBEL
33rd District

April 16 2014

Senator Joe Negron, Chair
Appropriations
412 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Negron:

This letter is to request that SB 746 relating to Health Care Clinics be placed on the agenda of the next scheduled meeting of the committee.

The proposed legislation would change the language of F.S. 400.9905, so that facilities that accept cash only would also be included in the definition of health care clinics. The current language leaves these facilities out, creating a perverse situation whereby employees of such facilities can prescribe illegal amounts of anabolic steroids and HGH with impunity. This bill would mean that such facilities would be subject to the same regulations, inspections, and penalties as other health care clinics in the state.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel
State Senator, 33rd District

CC: Cindy Kynoch, Staff Director of Appropriations Committee

REPLY TO:
❒ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
❒ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 746 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number 746 *(if applicable)*

Name Chris Niland Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115 Phone 904-233-3051
Street

Jacksonville, FL 32204 E-mail nilandlaw@aol.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Public Health Ass'n/FL Society of Plastic Surgeons

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

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 768
INTRODUCER:	Appropriations Committee; Judiciary Committee; Criminal Justice Committee; and Senator Braynon
SUBJECT:	Human Trafficking
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Clodfelter	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 768 revises laws on human trafficking. These changes:

- Include certain human trafficking offenses in s. 92.56, F.S., which provide protections from disclosure of information about victims of sexual offenses;
- Allow a defendant who is charged with the crime of human trafficking of a minor to access court records relating to the victim to prepare a defense, but prohibit the defendant from disclosing the victim's identity to persons not related to the preparation of the defense;
- Prohibit adult theaters from employing a person under 18 years of age and require adult theaters to obtain and keep records of proof of the age and identity of its employees and independent contractors;
- Eliminate the statute of limitations for human trafficking offenses under s. 787.06, F.S.;
- Clarify that the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Separate existing offenses that do not differentiate the age of the victim into separate offenses for adult and child victims, remove the requirement to prove the use of coercion if the victim is a child, and create new offenses relating to mentally defective or mentally incapacitated persons and branding of victims;
- Provide legislative intent that adults who involve minors in prostitution prohibited under ch. 796, F.S., be prosecuted under other applicable laws of the state;
- Raise the offense classification for deriving support from the earnings of a prostitute, with additional increases in classification for subsequent offenses;

- Raise the offense classification for acts related to prostitution (but not engaging in prostitution) from a second degree misdemeanor to a third degree felony, with additional increases in classification for subsequent offenses;
- Allow victims of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed under ch. 796, F.S., (prostitution) and ch. 847, F.S., (obscenity), regardless of the disposition of the arrest or of any charges;
- Provide that if a person is adjudicated not guilty by reason of insanity or found to be incompetent to stand trial for prostitution or obscenity, expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or carry a concealed firearm;
- Authorize compensation claims for victims of human trafficking; and
- Make victims of human trafficking eligible for victim relocation assistance.

The Criminal Justice Impact Conference determined that CS/HB 1017, which includes the same additions and changes relating to criminal laws as the bill, will require an undetermined number of additional prison beds. The Office of State Courts Administrator anticipates any increase in judicial workload can be absorbed within existing resources.

II. Present Situation:

Human Trafficking

Section 787.06, F.S., punishes "human trafficking," which the statute defines as "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining[1] another person for the purpose of exploitation of that person."[2]

The statute punishes a variety of acts relating to human trafficking.[3] Specifically, the statute provides any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially by receiving anything of value from participating in a venture[4] involving human trafficking:

[1] "Obtain" means, in relation to labor or services, to secure performance thereof. Section 787.06(2)(g), F.S.
[2] Section 787.06(2)(d), F.S.
[3] The statute was substantially amended by the Legislature in 2012 in HB 7049 (2012-97, L.O.F.). Among other things the legislation consolidated in s. 787.06, F.S., sex trafficking offenses that were previously contained in other statutes.
[4] "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity. Section 787.06(2)(k), F.S.

- Using coercion[5] for labor[6] or services[7] commits a first degree felony (s. 787.06(3)(a), F.S.);[8]
- Using coercion for commercial sexual activity[9] commits a first degree felony (s. 787.06(3)(b), F.S.);
- Using coercion for labor or services of any individual who is an unauthorized alien commits a first degree felony (s. 787.06(3)(c), F.S.);
- Using coercion for commercial sexual activity of an unauthorized alien commits a first degree felony (s. 787.06(3)(d), F.S.);
- Using coercion for labor or services by transferring or transporting a person into the state commits a felony of the first degree (s. 787.06(3)(e), F.S.);
- Using coercion for commercial sexual activity by transferring or transporting a person into the state commits a first degree felony (s. 787.06(3)(f), F.S.);
- For commercial sexual activity in which any child under the age of 18 is involved commits a first degree felony, punishable by imprisonment of up to life imprisonment (s. 787.06(3)(g), F.S.); or
- For commercial sexual activity in which any child under the age of 15 is involved commits a life felony (s. 787.06(3)(h), F.S.).

Additionally, a parent, legal guardian, or other person having custody or control of a minor commits a first degree felony if he or she sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking (s. 787.06(4), F.S.).

Definition of "Sexual Abuse of a Child"

Chapter 39, F.S., addresses proceedings relating to the protection of the welfare of children.[10] The definition of "sexual abuse of a child" in s. 39.01(67), F.S., includes the sexual exploitation

[5] "Coercion" means: 1) using or threatening to use physical force against any person; 2) restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; 3) using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; 4) destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; 5) causing or threatening to cause financial harm to any person; 6) enticing or luring any person by fraud or deceit; or 7) providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person. Section 787.06(2)(a), F.S. "Financial harm" includes extortionate extension of credit, loan sharking as defined in s. 687.071, F.S., or employment contracts that violate the statute of frauds as provided in s. 725.01, F.S. Section 787.06(2)(c), F.S.

[6] "Labor" means work of economic or financial value. Section 787.06(2)(e), F.S.

[7] "Services" means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs. Section 787.06(2)(h), F.S.

[8] Generally, a first degree felony is punishable by up to 30 years in state prison, a fine of up to $10,000, or imprisonment and a fine. Sections 775.082 and 775.083, F.S.

[9] "Commercial sexual activity" means any violation of ch. 796, F.S. (Prostitution), or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(b), F.S. "Sexually explicit performance" means an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest. Section 787.06(2)(i), F.S.

[10] Chapter 39, F.S., establishes a Florida child dependency process and provides the process and procedures for: reporting child abuse and neglect; protective investigations; taking children into custody and shelter hearings; petition, arraignment,

of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in ch. 796, F.S. (prostitution) based on such behavior; or allowing, encouraging, or forcing a child to:

- Solicit for or engage in prostitution;
- Engage in a sexual performance, as defined by ch. 827, F.S. (child abuse); or
- Participate in sex trafficking as provided in s. 796.035 (selling or buying of minors into prostitution).

Prior to legislation that passed in 2012,[11] s. 796.035, F.S., provided:

> Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge that, as a consequence of the sale or transfer, the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

As a result of the 2012 legislation, the offense was modified and reference to the "trade of sex trafficking" was removed.[12] The statute now reads:

> Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will engage in prostitution commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Consequently, as a result of the 2012 legislative changes, the reference to "trade of sex trafficking in s. 796.035" is not in current law.

Victim Identity Information in Judicial Proceedings and Records

Section 92.56(1)(a), F.S., provides the confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h), F.S., must be maintained in court records pursuant to s. 119.0714(1)(h), F.S.,[13] and in court proceedings, including testimony from witnesses.

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and adjudication of dependency; disposition of the dependent child; post-disposition change of custody; case plans; permanency; judicial reviews; and termination of parental rights.

[11] Chapter 2012-97, L.O.F.

[12] Additionally, the 2012 legislation repealed s. 796.045, F.S., which punished sex trafficking. Sex trafficking is now addressed in s. 787.06, F.S.

[13] Section 119.0714(1), F.S., provides that nothing in ch. 119, F.S. (the public records chapter), shall be construed to exempt from s. 119.07(1), F.S. (inspection and copying), a public record that was made a part of a court file and that is not specifically closed by order of court, except for a record or information specified in that subsection. One of the exceptions is

Section 119.071(2)(h), F.S., provides the following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of a victim of child abuse as defined by ch. 827, F.S.[14]
- Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewd acts), ch. 827, F.S. (child abuse), or ch. 847, F.S. (acts involving obscenity or materials harmful to a minor).
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under any of the previously referenced chapters, regardless of whether the photograph, videotape, or image identifies the victim.[15]

If a petition for access to confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the court must maintain the confidential and exempt status of this information if the state or the victim demonstrates:

- The identity of the victim is not already known in the community;
- The victim has not voluntarily called public attention to the offense;
- The identity of the victim has not otherwise become a reasonable subject of public concern;
- The disclosure of the victim's identity would offend a reasonable person; and
- The disclosure of the victim's identity would:
  - Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;
  - Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;
  - Cause severe emotional or mental harm to the victim;
  - Make the victim unwilling to testify as a witness; or
  - Be inappropriate for other good cause shown.

A defendant charged with a crime described in ch. 794, F.S., or ch. 800, F.S., or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under s. 92.56, F.S.

The previously-described victim identification information may be released to the defendant or his or her attorney to prepare for defense. The confidential and exempt status of this information

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criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S. Section 119.0714(1)(h), F.S.

[14] Section 827.03(1)(b), F.S., defines "child abuse" as: 1) intentional infliction of physical or mental injury upon a child; 2) an intentional act that could reasonably be expected to result in physical or mental injury to a child; or 3) active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

[15] Section 119.071(2)(h)2., F.S. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency: a) in the furtherance of its official duties and responsibilities; b) for print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered; and c) to another governmental agency in the furtherance of its official duties and responsibilities.

may not be construed to prevent disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in ch. 794, F.S., or ch. 800, F.S., or of child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., or any crime involving the production, possession, or promotion of child pornography as described in ch. 847, F.S., in all court records and records of court proceedings, both civil and criminal.

The protection of s. 92.56, F.S., may be waived by the victim of the alleged offense by filing with the court a written consent to the use or release of identifying information during court proceedings and in the records of court proceedings.

Section 92.56, F.S., does not prohibit publication or broadcast of the substance of trial testimony in a prosecution for an offense described in ch. 794, F.S., or ch. 800, F.S., or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in ch. 827, F.S., but publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has filed with the court written consent or the court has declared such records not confidential and exempt as provided for in s. 92.56 (1), F.S. A willful and knowing violation of s. 92.56, F.S., or a willful and knowing failure to obey any court order issued under the statute constitutes contempt.[16]

Victim Compensation and Relocation Assistance

The Florida Crimes Compensation Act[17] authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for victims of crime. Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury.[18] Currently, s. 906.065(2), F.S., makes ineligible compensation claims filed by persons engaged in unlawful activity at the time of the crime.

Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The Department of Legal Affairs (the Florida Attorney General's Office) administers the assistance program. Under this program, a victim of sexual battery[19] who needs relocation assistance may receive a one-time payment not exceeding $1,500 on any one claim and a lifetime maximum of $3,000 if all of the following criteria are met:

- Proof that a sexual battery offense was committed.
- The sexual battery offense must be reported to the proper authorities.

[16] Section 92.56(6), F.S.
[17] Sections 960.01-960.28, F.S.
[18] Attorney General, *Crime Victims' Services*. http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument (last visited on April 3, 2014).
[19] See s. 794.011, F.S. (sexual battery).

- The victim's need for assistance as certified by a certified rape crisis center in this state.
- The center must certify the victim is cooperating with law enforcement officials, if applicable, and document the victim has developed a safety plan.
- The act of sexual battery must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear his or her continued safety.[20]

Criminal Punishment Code/Sentence Point Multipliers

The Criminal Punishment Code (Code)[21] is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[22] Points are assigned and accrued based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense and, if applicable, additional offenses, prior offenses, prior capital felonies, victim injury, legal status violations, community sanction violations, possession of a firearm, and prior serious felonies.[23]

If total sentence points are less than or equal to 44 points, the lowest permissible sentence is any nonstate prison sanction (e.g., probation). Generally, the sentencing range is a nonprison sanction up to the maximum penalty for the felony degree of the primary offense.[24] If total sentence points are greater than 44 points, 28 points are subtracted from that number. This total is then multiplied by 0.75 to determine the lowest permissible sentence in prison months.[25] For example, if an offender's primary offense is a second degree felony and his or her total sentence points are 80 points, 28 points are subtracted from 80, which equals 52 points. The 52 points are then multiplied by 0.75, which equals 39, or 39 months in prison. In this example, absent mitigation,[26] the sentencing range is 39 months in state prison up to 15 years in state prison, the maximum penalty for a second degree felony.

[20] Section 960.199(2), F.S.
[21] Sections 921.002-921.0027, F.S.
[22] A noncapital felony is ranked in one of two ways. The felony may be assigned a ranking by its placement in a specific ranking level in the Code's offense severity ranking chart. See s. 921.0022, F.S. However, if the offense is not ranked in the chart, it is assigned a ranking based on its felony degree as provided in s. 921.0023, F.S.
[23] See s. 921.0024, F.S. Further discussion of Code sentencing is based on provisions of this statute, unless otherwise noted.
[24] The maximum penalty for the felony degree is generally prescribed in s. 775.082, F.S. An exception is when the scored lowest permissible sentence exceeds the maximum penalty prescribed in s. 775.082, F.S. In this case, the scored lowest permissible sentence for the primary offense becomes both the minimum and maximum penalty for the primary offense.
[25] Mandatory minimum terms are an exception to general sentencing under the Code. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply." Rule 3.704(26) ("The Criminal Punishment Code"), Florida Rules of Criminal Procedure.
[26] The Code includes a list of 'mitigating' factors. See s. 921.0026, F.S. If a mitigating factor is found by the sentencing court, the court may decrease an offender's sentence below the lowest permissible sentence (a "downward departure"). A mandatory minimum term is not subject to these mitigating factors. *See State v. Vanderhoff*, 14 So. 3d 1185 (Fla. 5th DCA 2009).

III. Effect of Proposed Changes:

This bill revises the law on human trafficking. These changes:

- Provide protections for disclosure of court record information that identifies a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity;
- Clarify the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Prohibit a public employee or officer having access to specified personal information regarding a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity from willfully and knowingly disclosing that information to an unauthorized person or entity;
- Authorize a compensation claim filed by a person engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Provide that a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity is eligible for victim relocation assistance.

Section 1 amends s. 92.56, F.S. (judicial proceedings and court records involving sexual offenses), to specify in the title of the statute that the statute also includes human trafficking offenses and to add the following offenses to s. 92.56(2), (3), and (5), F.S., that involve human trafficking:

- For labor or services under the age of 18;
- Using coercion for commercial sexual activity of an adult;
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien;
- For commercial sexual activity by the transfer or transport of any child under the age of 18 from outside this state to within the state;
- For commercial sexual activity who does so by the transfer or transport of an adult from outside this state to within the state; and
- For commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective or mentally incapacitated, is involved.

The effects of this change are:

- A defendant charged with any of these specified human trafficking offenses may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order, in order for the defendant to prepare for his or her defense.
- The state may use a pseudonym instead of the victim's name to designate the victim of any of these specified human trafficking offenses in all court records and records of court proceedings, both civil and criminal.
- Section 92.56, F.S., does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for any of these human trafficking offenses.

Section 2 amends s. 450.021, F.S., to prohibit a person under 18 years of age from working in an adult theater regardless of whether such person's disabilities of nonage have been removed by marriage or otherwise.

Section 3 amends s. 450.045, F.S., to require an adult theater to obtain proof of the identity and age of its employees and independent contractors prior to employment or the provision of services. The adult theater must also verify the validity of the identification documents used to provide such proof. The adult theater is required to maintain a photocopy of the person's government-issued photo identification card, as well as proof of the verification of the validity of the identification document. These records must be maintained at the location where the employee or independent contractor works or provides services to the adult theater for at least three years. This section provides the Department of Business and Professional Regulation and its agents the authority to enter and inspect at any time a place or establishment and to have access to age verification documents kept on file by the adult theater.

Section 4 amends s. 775.082, F.S., to provide that for a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), F.S., (commercial sex trafficking in which a child under 18 years of age is involved), the punishment be a term of life imprisonment.

Section 5 amends s. 775.15, F.S., to provide that there is no time limitation for the criminal prosecution of a violation of s. 787.06, F.S., relating to human trafficking offenses.

Section 6 amends s. 787.06(3), F.S., which includes a number of first degree felony human trafficking offenses when coercion is used. Currently, the subsection provides that it is unlawful for any person to knowingly, or in reckless disregard of the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking involving any of a number of specified acts. The bill clarifies that the section applies to persons who engage or attempt to engage in human trafficking whether or not the activity involve a venture.

In addition to clarifying that participation in human trafficking is not a prerequisite, the bill revises and adds to the list of prohibited offenses. Currently, the offenses do not differentiate between adult and child victims and include the use of coercion as an element of the offense. The bill creates separate offenses for adult and child victims and removes the requirement to prove the use of coercion if the victim is a child. The amended offense list includes the following first degree felonies for human trafficking that is engaged in:

- For labor or services of any child under 18 years of age.
- Using coercion for labor or services of an adult.
- Using coercion for commercial sexual activity of an adult.
- For labor or services of any child under 18 years of age who is an unauthorized alien.
- Using coercion for labor or services of an adult who is an unauthorized alien.
- Using coercion for commercial activity of an adult who is an unauthorized alien.
- For labor or services by the transfer or transport of any child under the 18 years of age from outside this state to within the state.
- Using coercion for labor or services by the transfer or transport of any adult from outside this state to within the state.
- For commercial sexual activity done by transfer or transport of any child under 18 years of age from outside this state to within this state (first degree felony punishable by life).
- Using coercion for commercial sexual activity done by transfer or transport of any adult from outside this state to within this state.

The bill consolidates the offenses of commercial sexual activity involving any child who is under 18 years of age (currently a first degree felony punishable by life) and commercial sexual activity involving any child who is under 15 years of age (currently a life felony) into a single life felony offense of commercial sexual activity involving any child who is under 18 years of age. In addition, the bill expands potential victims to include persons who are mentally defective or mentally incapacitated. The bill specifies that this life felony must be punished by imprisonment for life.

The offense of sale or transfer of a minor by a parent, legal guardian, or other person who has custody or control of a minor with knowledge or reckless disregard that the minor will be subject to human trafficking is currently a first degree felony punishable by life imprisonment. The bill raises it to a life felony.

The bill creates a new second degree felony offense for permanently branding or directing the branding of a person who is a victim of human trafficking. The term "permanently branded" is defined as "a mark on the individual's body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure."

The bill creates a new provision that the defendant's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the defendant's bona fide belief of the victim's age cannot be raised as a defense in a prosecution for human trafficking.

Section 7 creates s. 796.001, F.S., to provide legislative intent that adults who involve minors in behaviors prohibited under ch. 796, F.S. (prostitution) be prosecuted under other laws of the state, such as, but not limited to, s. 787.06, F.S., ch. 794, F.S., ch. 800, F.S., s. 810.145, F.S., ch. 827, F.S., and ch. 847, F.S.

Section 8 repeals s. 796.03, F.S., s. 796.035, F.S., and s. 796.036, F.S., which relate to various prostitution related offenses.

Section 9 amends s. 706.05, F.S., which currently provides that it is a third degree felony to knowingly derive support from the earnings of a prostitute. The bill makes the crime a second degree felony for a first offense, elevates second and subsequent offenses to first degree felonies, and provides a mandatory minimum term of 10 years of imprisonment for third and subsequent offenses.

Section 10 amends s. 796.07, F.S., which prohibits and provides penalties for prostitution and related acts. Currently, each of the offenses in s. 796.07, F.S., is a second degree misdemeanor for a first violation, a first degree misdemeanor for a second violation, and a third degree misdemeanor for a third or subsequent violation. The bill maintains this scheme for persons who offer to commit, commit, or engage in prostitution (s. 796.07(2)(e), F.S.) and persons who reside, enter, or remain in a place, structure or building, or enter or remain in a conveyance, for the purpose of prostitution (s. 797.06(2)(g), F.S.). Each of the other acts related to prostitution (ss. 796.07 (a), (b), (c), (d), (f), (h), and (i), F.S.) is raised to a third degree felony for a first offense, a second degree felony for a second offense, and a first degree felony for a third or

subsequent offense. These felony offenses generally apply to persons who commit acts that facilitate prostitution or who purchase the services of a person engaged in prostitution.

In addition to increasing the offense classification for certain acts related to prostitution, the bill requires assessment of a criminal penalty of $5000 for the offenses that are designated as felonies if the offense results in any judicial disposition other than acquittal or dismissal. Currently, the statute requires assessment of a $5000 civil penalty for all offenses under s. 796.07, F.S., that result in any judicial disposition other than acquittal or dismissal.

Section 11 amends s. 921.0022, F.S., to make revisions to the Criminal Punishment Code Offense Severity Ranking Chart that are consistent with changes made in the bill. Sections 796.03 and 796.035, F.S. are removed because they are repealed in Section 8 of the bill. The human trafficking offenses in s. 787.06(3), F.S., that are created or renumbered in Section 6 of the bill are added or renumbered in the Severity Ranking Chart. Each offense that involves a child victim is ranked one level higher than the corresponding offense in which the victim is an adult.

Section 12 amends s. 943.0583, F.S., to allow victims of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed under ch. 796, F.S., and ch. 847, F.S., regardless of the disposition of the arrest or of any charges.

This section also provides that a person adjudicated not guilty by reason of insanity or found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determination of eligibility to purchase or possess a firearm or carry a concealed firearm. The expunction shall not prevent any governmental agency authorized by state or federal law to determine eligibility to purchase or possess a firearm or carry a concealed firearm from accessing or using the record of the judgment or finding in the court of its official duties.

Section 13 amends s. 960.065(2), F.S., which provides that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award under the Florida Crimes Compensation Act. The bill provides an exception for a victim engaged in prostitution as a result of being a victim of human trafficking:

- Using coercion for commercial sexual activity of an adult;
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien;
- For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 from outside this state to within the state;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state; or
- For commercial sexual activity in which a child under the age of 18 or any person who is mentally defective or mentally incapacitated is involved.

Section 14 amends s. 960.199, F.S., which provides for relocation assistance to victims of sexual battery. The bill extends relocation assistance to victims of human trafficking.

The statute currently provides the need for assistance by a victim of sexual battery must be certified by a certified rape center in this state.

Specific to human trafficking victims:
- The bill provides in addition to a certified rape crisis center, a state-certified domestic violence center may also certify the need for relocation assistance.
- The state attorney or statewide prosecutor must approve the certification of need made by either the rape center or the domestic violence center.

Florida law provides that the center's certification must assert the victim is cooperating with law enforcement officials, if applicable, and document the victim has developed a safety plan.

Sections 15 – 30 amend ss. 39.01, 90.404, 772.102, 775.0877, 775.21, 787.01, 787.02, 794.056, 856.022, 895.02, 938.085, 938.10, 943.0435, 943.0585, 943.059, 944.606, 944.607, 948.013, and 948.32, F.S., to make technical changes. Most of the changes delete references to statutes that are repealed by the bill.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) considered CS/HB 1017, which includes the same additions and changes relating to criminal laws as CS/CS/CS/SB 768. The CJIC determined that CS/HB 1017 would have a positive indeterminate impact on prison beds, meaning that it would require more prison beds but the number could not be determined.

The majority of the sentence increases would lengthen current felony sentences and thus be felt several years from the effective date. However, because the amendment increases the offense classification of many first time prostitution-related offenses from misdemeanors to felonies, it is possible that the some impact will be felt in the first year of the bill. In its analysis of the impact of the bill on the court system, the Office of the State Courts Administrator (OSCA) states any judicial or court workload impact is likely to be absorbed within existing resources. The OSCA provides the following additional comments regarding the bill's impact:

> The extent to which judicial workload would be affected by this bill depends upon the number of human trafficking cases that would be filed as a result of this bill, which is unknown. The more human trafficking cases that are filed as a result of this bill, the more judicial workload may be increased due to prosecution of the cases and required decisions on applications for disclosure of information by defendants.[27]

The Department of Legal Affairs has not provided an analysis of the bill's impact. The bill may result in more victims receiving victim compensation funds from the department.

VI. Technical Deficiencies:

The bill is a combination of CS/CS/SB 768 and CS/SB 1440. CS/SB 1440 made substantial amendments to s. 787.06(3), F.S., that were not in CS/CS/SB 768. As a result, it appears that portions of the bill that were in CS/CS/SB 768 and that referred to paragraphs in s. 787.06(3), F.S., may no longer reference the offense that is intended.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 92.56, 787.06, 960.065, and 960.199.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 22, 2014:
The Committee Substitute:

- Removes a change to the definition of "sexual abuse of a child".

[27] 2014 Judicial Impact Statement (CS/SB 768) (April 4, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Criminal Justice).

- Prohibits adult theaters from employing a person under 18 years of age and requires adult theaters to obtain and keep records of proof of the age and identity of its employees and independent contractors.
- Eliminates the statute of limitations for human trafficking offenses under s. 787.06, F.S.
- Separates existing offenses in s. 787.06(3), F.S., that do not differentiate the age of the victim into separate offenses for adult and child victims, removes the requirement to prove the use of coercion if the victim is a child, and creates new offenses relating to mentally defective or mentally incapacitated persons and branding of victims.
- Provides legislative intent that adults who involve minors in prostitution prohibited under ch. 796, F.S., be prosecuted under other applicable laws of the state.
- Raises the offense classification for deriving support from the earnings of a prostitute, with additional increases in classification for subsequent offenses.
- Raises the offense classification for acts related to prostitution (but not engaging in prostitution) from a second degree misdemeanor to a third degree felony, with additional increases in classification for subsequent offenses.
- Allows victims of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed under ch. 796, F.S., (prostitution) and ch. 847, F.S., (obscenity), regardless of the disposition of the arrest or of any charges.
- Provided that if a person is adjudicated not guilty by reason of insanity or found to be incompetent to stand trial for prostitution or obscenity, expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or carry a concealed firearm.

CS/CS by Judiciary on April 8, 2014:
The CS revises provisions on relocation assistance available to victims:

- The state attorney or statewide prosecutor will only need to approve certifications of need for human trafficking victims, not all victims of sexual battery.
- A state-certified domestic violence center may also certify a victim of human trafficking's need for relocation assistance.

CS by Criminal Justice on March 24, 2014:
Removes a provision from the bill that provides a penalty for a public employee/officer who willfully and knowingly discloses certain information regarding a human trafficking victim to a person not authorized to have access to that information.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 92.56, Florida Statutes, is amended to read:

92.56 Judicial proceedings and court records involving sexual offenses and human trafficking.—

(1)(a) The confidential and exempt status of criminal intelligence information or criminal investigative information

made confidential and exempt pursuant to s. 119.071(2)(h) must be maintained in court records pursuant to s. 119.0714(1)(h) and in court proceedings, including testimony from witnesses.

(b) If a petition for access to such confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status of such information shall be maintained by the court if the state or the victim demonstrates that:

1. The identity of the victim is not already known in the community;

2. The victim has not voluntarily called public attention to the offense;

3. The identity of the victim has not otherwise become a reasonable subject of public concern;

4. The disclosure of the victim's identity would be offensive to a reasonable person; and

5. The disclosure of the victim's identity would:

a. Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;

b. Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;

c. Cause severe emotional or mental harm to the victim;

d. Make the victim unwilling to testify as a witness; or

e. Be inappropriate for other good cause shown.

(2) A defendant charged with a crime <u>specified</u> ~~described~~ in <u>s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), or (g), or in</u> chapter 794 or chapter 800, or with child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, may

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apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h) or maintained as confidential and exempt pursuant to court order under this section. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information does ~~may~~ not ~~be construed to~~ prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime specified ~~described~~ in s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), or (g), or in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, or any crime involving the production, possession, or promotion of child pornography as described in chapter 847, in all court records and records of court proceedings, both civil and criminal.

(4) The protection of this section may be waived by the victim of the alleged offense in a writing filed with the court, in which the victim consents to the use or release of identifying information during court proceedings and in the records of court proceedings.

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(5) This section does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for an offense specified ~~described~~ in s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), or (g), or in chapter 794 or chapter 800, or for a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in chapter 827; however, ~~but~~ the publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim~~,~~ unless the victim has consented in writing to the publication and filed such consent with the court or unless the court has declared such records not confidential and exempt as provided for in subsection (1).

(6) A willful and knowing violation of this section or a willful and knowing failure to obey a ~~any~~ court order issued under this section constitutes contempt.

Section 2. Subsection (5) is added to section 450.021, Florida Statutes, to read:

450.021 Minimum age; general.—

(5) In order to better ensure the elimination of minors being exploited and becoming victims of human trafficking, a person under the age of 18, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, may not be employed, permitted, or suffered to work in an adult theater, as defined in s. 847.001(2)(b).

Section 3. Subsection (3) is added to section 450.045, Florida Statutes, to read:

450.045 Proof of identity and age; posting of notices.—

(3)(a) In order to provide the department and law

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enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, an adult theater as defined in s. 847.001(2)(b) shall obtain proof of the identity and age of each of its employees or independent contractors, and shall verify the validity of the identification and age verification document with the issuer, before his or her employment or provision of services as an independent contractor.

(b) The adult theater shall obtain and keep on record a photocopy of the person's driver license or state or federal government-issued photo identification card, along with a record of the verification of the validity of the identification and age verification document with the issuer, during the entire period of employment or business relationship with the independent contractor and for at least 3 years after the employee or independent contractor ceases employment or the provision of services.

(c) The department and its agents have the authority to enter during operating hours, unannounced and without prior notice, and inspect at any time a place or establishment covered by this subsection and to have access to age verification documents kept on file by the adult theater and such other records as may aid in the enforcement of this subsection.

Section 4. Paragraph (a) of subsection (3) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(3) A person who has been convicted of any other designated

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felony may be punished as follows:

(a)1. For a life felony committed prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), by a term of imprisonment for life.

Section 5. Subsection (18) is added to section 775.15, Florida Statutes, to read:

775.15 Time limitations; general time limitations; exceptions.—

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(18) A prosecution for a violation of s. 787.06 may be commenced at any time. This subsection applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2014.

Section 6. Subsections (3) and (4) of section 787.06, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

787.06 Human trafficking.—

(3) A ~~Any~~ person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

(a)1. ~~Using coercion~~ For labor or services of any child under the age of 18 commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services of an adult commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Using coercion for commercial sexual activity of an adult commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c)1. ~~Using coercion~~ For labor or services of any child under the age of 18 ~~individual~~ who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services of an adult who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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(d) Using coercion for commercial sexual activity of an adult ~~any individual~~ who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e)1. ~~Using coercion~~ For labor or services who does so by the transfer or transport of any child under the age of 18 ~~individual~~ from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for labor or services who does so by the transfer or transport of an adult from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f)1. ~~Using coercion~~ For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 ~~individual~~ from outside this state to within the state commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Using coercion for commercial sexual activity who does so by the transfer or transport of an adult from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) For commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective or mentally incapacitated as those terms are defined in s. 794.011(1), is involved commits a life felony ~~of the first degree~~, punishable ~~by imprisonment for a term of years not exceeding life, or~~ as provided in s. 775.082(3)(a)5. ~~775.082~~, s.

775.083, or s. 775.084. ~~In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 18 years.~~

~~(h) For commercial sexual activity in which any child under the age of 15 is involved commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 15 years.~~

For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.

(4)(a) A ~~Any~~ parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking commits a life ~~first degree~~ felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who permanently brands, or directs to be branded, a victim of an offense under this section commits a second degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, the term "permanently branded" means a mark on the individual's body

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that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure.

(8) In a prosecution under this section, the defendant's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the defendant's bona fide belief of the victim's age cannot be raised as a defense.

Section 7. Section 796.001, Florida Statutes, is created to read:

796.001 Offenses by adults involving minors; intent.—It is the intent of the Legislature that adults who involve minors in any behavior prohibited under this chapter be prosecuted under other laws of this state, such as, but not limited to, s. 787.06, chapter 794, chapter 800, s. 810.145, chapter 827, and chapter 847. The Legislature finds that the prosecution of such adults under this chapter is inappropriate since a minor is unable to consent to such behavior.

Section 8. Sections 796.03, 796.035, and 796.036, Florida Statutes, are repealed.

Section 9. Section 796.05, Florida Statutes, is amended to read:

796.05 Deriving support from the proceeds of prostitution.—

(1) It shall be unlawful for any person with reasonable belief or knowing another person is engaged in prostitution to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person's prostitution.

(2) Anyone violating this section commits:

(a) For a first offense, a felony of the second ~~third~~

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degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) For a second offense, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) For a third or subsequent offense, a felony of the first degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 10 years.

Section 10. Subsection (2) and subsections (4) through (6) of section 796.07, Florida Statutes, are amended to read:

796.07 Prohibiting prostitution and related acts.—

(2) It is unlawful:

(a) To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.

(b) To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.

(c) To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.

(d) To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.

(e) To offer to commit, or to commit, or to engage in,

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prostitution, lewdness, or assignation.

(f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

(g) To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.

(h) To aid or~~,~~ abet~~, or participate~~ in any of the acts or things enumerated in this subsection.

(i) To purchase the services of any person engaged in prostitution.

(4) A person who violates paragraph (2)(e) or (g) ~~any provision of this section~~ commits:

(a) A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

(b) A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083.

(c) A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) A person who violates paragraph (2)(a), (b), (c), (d), (f), (h), or (i) commits:

1. For a first offense, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. For a second offense, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. For a third or subsequent offense, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~A person who is charged with a third or subsequent violation of this section shall be offered admission to a~~

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~~pretrial intervention program or a substance abuse treatment program as provided in s. 948.08.~~

(6) A person who violates paragraph (2)(a), (b), (c), (d), (f), (h), or (i) ~~paragraph (2)(f)~~ shall be assessed a criminal ~~civil~~ penalty of $5,000 if the violation results in any judicial disposition other than acquittal or dismissal. Of the proceeds from each penalty assessed under this subsection, the first $500 shall be paid to the circuit court administrator for the sole purpose of paying the administrative costs of treatment-based drug court programs provided under s. 397.334. The remainder of the penalty assessed shall be deposited in the Operations and Maintenance Trust Fund of the Department of Children and Family Services for the sole purpose of funding safe houses and short-term safe houses as provided in s. 409.1678.

Section 11. Paragraphs (c), (e), and (g) through (j) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.

316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.

328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)	3rd	Operating a clinic without a

			license or filing false license application or other required information.
368			
	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
369			
	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
370			
	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
371			
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
372			
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
373			
	697.08	3rd	Equity skimming.
374			
	790.15(3)	3rd	Person directs another to discharge firearm from a

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		vehicle.
~~796.05(1)~~	~~3rd~~	~~Live on earnings of a prostitute.~~
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud

		(Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

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831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

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893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner’s practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner’s practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.

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893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(e) LEVEL 5

Florida Statute	Felony Degree	Description

316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester’s spiny lobster trap, line, or buoy.
379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester’s trap contents or trap gear by another harvester.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers’

			compensation coverage.
425			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
426			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
427			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
428			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
429			
	790.01(2)	3rd	Carrying a concealed firearm.
430			
	790.162	2nd	Threat to throw or discharge destructive device.
431			
	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
432			

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790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.

441	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
442	812.131(2)(b)	3rd	Robbery by sudden snatching.
443	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
444	817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
445	817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
446	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification

		information of 10 or more individuals.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

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893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for

			religious services or a specified business site.
462			
	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
463			
	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
464			
	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
465			
466	(g) LEVEL 7		
467			
468			
	Florida Statute	Felony Degree	Description
469			
	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.

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456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.

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465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded

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			$50,000 and there were five or more victims.
494			
	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
495			
	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
496			
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
497			
	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver’s license or identification card; other registration violations.
498			
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
499			
	775.21(10)(g)	3rd	Failure to report or providing

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			false information about a sexual predator; harbor or conceal a sexual predator.
500			
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
501			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
502			
	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
503			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
504			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.

784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

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784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult ~~any individual~~ from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or

		attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
~~796.03~~	~~2nd~~	~~Procuring any person under 16 years for prostitution.~~
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.

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796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized

		emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

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812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other

		unauthorized document.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.

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838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes,

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			plans, finances, directs, manages, or supervises criminal gang-related activity.
566			
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
567			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
568			
	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

577	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
578	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
579	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
580	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
581	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
582	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to

			comply with reporting requirements.
583			
	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
584			
	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
585			
	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
586			
	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
587			
	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
588			
	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

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944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

(h) LEVEL 8

Florida	Felony	Description

Statute	Degree	
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.

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655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.

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782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult ~~individual~~ from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive

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			device which results in bodily harm or property damage.
617			
	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
618			
	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
619			
	800.04(4)	2nd	Lewd or lascivious battery.
620			
	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
621			
	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
622			
	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
623			
	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.

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812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false

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		instrument.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $100,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad

			vehicle resulting in great bodily harm.
638			
	860.16	1st	Aircraft piracy.
639			
	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
640			
	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
641			
	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
642			
	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
643			
	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
644			
	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.

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893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.

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893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than

			$100,000.
	(i) LEVEL 9		
	Florida Statute	Felony Degree	Description
	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
	409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling

			or exceeding $100,000.
655.50(10)(b)3.		1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
775.0844		1st	Aggravated white collar crime.
782.04(1)		1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)		1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
782.051(1)		1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)		1st	Aggravated manslaughter of an elderly person or disabled adult.

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787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.

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680		
787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of a child from outside Florida to within the state.
681		
~~787.06(3)(g)~~	~~1st,PBL~~	~~Human trafficking for commercial sexual activity of a child under the age of 18.~~
682		
~~787.06(4)~~	~~1st~~	~~Selling or buying of minors into human trafficking.~~
683		
790.161	1st	Attempted capital destructive device offense.
684		
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
685		
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
686		
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.

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794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
~~796.035~~	~~1st~~	~~Selling or buying of minors into prostitution.~~
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.

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817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise

			transferring custody or control, of a minor.
701			
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
702			
	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
703			
	893.135	1st	Attempted capital trafficking offense.
704			
	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
705			
	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
706			
	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
707			

893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

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(j) LEVEL 10

Florida Statute	Felony Degree	Description
499.0051(10)	1st	Knowing sale or purchase of contraband prescription drugs resulting in death.
782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.
782.07(3)	1st	Aggravated manslaughter of a child.
787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(g) ~~787.06(3)(h)~~	Life	Human trafficking for commercial sexual activity of a child under the age of 18 or

			mentally defective or incapacitated person ~~15~~.
725			
	787.06(4)(a)	Life	Selling or buying of minors into human trafficking.
726			
	794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.
727			
	812.135(2)(a)	1st,PBL	Home-invasion robbery with firearm or other deadly weapon.
728			
	876.32	1st	Treason against the state.

729 Section 12. Subsection (3), paragraph (a) of subsection
730 (8), and paragraph (a) of subsection (10) of section 943.0583,
731 Florida Statutes, are amended to read:
732 943.0583 Human trafficking victim expunction.—
733 (3) A person who is a victim of human trafficking may
734 petition for the expunction of a criminal history record
735 resulting from the arrest or filing of charges ~~any conviction~~
736 for an offense committed or reported to have been committed
737 while the person ~~he or she~~ was a victim of human trafficking,
738 which offense was committed or reported to have been committed
739 as a part of the human trafficking scheme of which the person ~~he~~
740 ~~or she~~ was a victim or at the direction of an operator of the
741 scheme, including, but not limited to, violations under chapters

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796 and 847, without regard to the disposition of the arrest or of any charges. However, this section does not apply to any offense listed in s. 775.084(1)(b)1. Determination of the petition under this section should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings. If a person is adjudicated not guilty by reason of insanity or is found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or to carry a concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it prevent any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm from accessing or using the record of the judgment or finding in the course of such agency's official duties.

(8)(a) Any criminal history record of a minor or an adult that is ordered expunged by the court of original jurisdiction over the charges ~~crime~~ sought to be expunged pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the department must be retained in all cases.

(10)(a) A criminal history record ordered expunged under this section that is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the record shall be made available to

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criminal justice agencies for their respective criminal justice purposes and to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties. Otherwise, such record may ~~shall~~ not be disclosed to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

Section 13. Subsection (2) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(2) A ~~Any~~ claim is ineligible for an award if it is filed by or on behalf of a person who:

(a) Committed or aided in the commission of the crime upon which the claim for compensation was based;

(b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based, unless the victim was engaged in prostitution as a result of being a victim of human trafficking as described in s. 787.06(3)(b), (d), (f), or (g);

(c) Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the claim for compensation is based;

(d) Has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal under s. 775.084; or

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(e) Has been adjudicated guilty of a forcible felony offense as described in s. 776.08~~,~~

~~is ineligible for an award~~.

Section 14. Section 960.199, Florida Statutes, is amended to read:

960.199 Relocation assistance for victims of sexual battery or human trafficking.—

(1) The department may award a one-time payment of up to $1,500 on any one claim and a lifetime maximum of $3,000 to a victim of sexual battery as defined in s. 794.011 or of human trafficking as described in s. 787.06(3)(b), (d), (f), or (g) who needs relocation assistance.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a sexual battery offense or human trafficking offense as described in s. 787.06(3)(b), (d), (f), or (g) was committed.

(b) The sexual battery offense or human trafficking offense as specified in s. 787.06(3)(b), (d), (f), or (g) must be reported to the proper authorities.

(c) The victim’s need for assistance must be certified by a certified rape crisis center in this state or by the state attorney or statewide prosecutor having jurisdiction over the offense. A victim of human trafficking’s need for assistance may also be certified by a state-certified domestic violence center.

(d) The center’s ~~center~~ certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has

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developed a safety plan. If the victim seeking relocation assistance is a victim of a human trafficking offense as specified in s. 787.06(3)(b), (d), (f), or (g), the certified rape crisis center's or certified domestic violence center's certification shall include approval of the state attorney or statewide prosecutor, who shall attest that the victim is cooperating with law enforcement officials, if applicable.

(e) The act of sexual battery or human trafficking as specified in s. 787.06(3)(b), (d), (f), or (g) must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

(3) Relocation payments for a sexual battery or human trafficking claim under this section shall be denied if the department has previously approved or paid out a domestic violence relocation claim under s. 960.198 to the same victim regarding the same incident.

Section 15. Paragraph (g) of subsection (67) of section 39.01, Florida Statutes, is amended to read:

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

(67) "Sexual abuse of a child" for purposes of finding a child to be dependent means one or more of the following acts:

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

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1. Solicit for or engage in prostitution;

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of human ~~sex~~ trafficking as provided in s. 787.06(3)(g) ~~s. 796.035~~.

Section 16. Paragraphs (b) and (c) of subsection (2) of section 90.404, Florida Statutes, are amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "child molestation" means conduct proscribed by s. 787.025(2)(c), s. 787.06(3)(g) ~~and (h)~~, s. 794.011, excluding s. 794.011(10), s. 794.05, ~~s. 796.03, s. 796.035,~~ s. 800.04, s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1) when committed against a person 16 years of age or younger.

(c)1. In a criminal case in which the defendant is charged with a sexual offense, evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense is admissible and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "sexual offense" means conduct proscribed by s. 787.025(2)(c),s. 787.06(3)(b), (d), (f), or (g), ~~or (h),~~ s. 794.011, excluding s. 794.011(10), s. 794.05, ~~s. 796.03, s. 796.035,~~ s.

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825.1025(2)(b), s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

Section 17. Paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is amended to read:

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

(1) "Criminal activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 414.39, relating to public assistance fraud.

3. Section 440.105 or s. 440.106, relating to workers' compensation.

4. Part IV of chapter 501, relating to telemarketing.

5. Chapter 517, relating to securities transactions.

6. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

7. Chapter 550, relating to jai alai frontons.

8. Chapter 552, relating to the manufacture, distribution, and use of explosives.

9. Chapter 562, relating to beverage law enforcement.

10. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

11. Chapter 687, relating to interest and usurious

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practices.

12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

13. Chapter 782, relating to homicide.

14. Chapter 784, relating to assault and battery.

15. Chapter 787, relating to kidnapping or human trafficking.

16. Chapter 790, relating to weapons and firearms.

17. Section ~~796.03, s.~~ 796.04, s. 796.05, or s. 796.07, relating to prostitution.

18. Chapter 806, relating to arson.

19. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

20. Chapter 812, relating to theft, robbery, and related crimes.

21. Chapter 815, relating to computer-related crimes.

22. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

23. Section 827.071, relating to commercial sexual exploitation of children.

24. Chapter 831, relating to forgery and counterfeiting.

25. Chapter 832, relating to issuance of worthless checks and drafts.

26. Section 836.05, relating to extortion.

27. Chapter 837, relating to perjury.

28. Chapter 838, relating to bribery and misuse of public office.

29. Chapter 843, relating to obstruction of justice.

30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

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s. 847.07, relating to obscene literature and profanity.

31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

32. Chapter 893, relating to drug abuse prevention and control.

33. Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.

34. Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

Section 18. Paragraph (m) of subsection (1) of section 775.0877, Florida Statutes, is amended to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(m) Sections ~~796.03,~~ 796.07~~,~~ and 796.08, relating to prostitution; or

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which

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she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

Section 19. Paragraph (a) of subsection (4) and paragraph (b) of subsection (10) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent or guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g)~~, or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 810.145(8)(b); s. 825.1025(2)(b); s. 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo

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contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g)~~, or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(10) PENALTIES.—

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 20. Paragraph (a) of subsection (3) of section 787.01, Florida Statutes, is amended to read:

787.01 Kidnapping; kidnapping of child under age 13, aggravating circumstances.—

(3)(a) A person who commits the offense of kidnapping upon a child under the age of 13 and who, in the course of committing the offense, commits one or more of the following:

1. Aggravated child abuse, as defined in s. 827.03;

2. Sexual battery, as defined in chapter 794, against the child;

3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5);

4. A violation of ~~s. 796.03 or~~ s. 796.04, relating to prostitution, upon the child; or

5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151,

commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 21. Paragraph (a) of subsection (3) of section 787.02, Florida Statutes, is amended to read:

787.02 False imprisonment; false imprisonment of child under age 13, aggravating circumstances.—

(3)(a) A person who commits the offense of false imprisonment upon a child under the age of 13 and who, in the course of committing the offense, commits any offense enumerated in subparagraphs 1.-5., commits a felony of the first degree,

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punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

1. Aggravated child abuse, as defined in s. 827.03;

2. Sexual battery, as defined in chapter 794, against the child;

3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5);

4. A violation of ~~s. 796.03 or~~ s. 796.04, relating to prostitution, upon the child; or

5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151.

Section 22. Subsection (1) of section 794.056, Florida Statutes, is amended to read:

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s. 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; ~~s. 796.03; s. 796.035;~~ s. 796.04; s. 796.05; s. 796.06; s.

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796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1). Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

Section 23. Subsection (1) of section 856.022, Florida Statutes, is amended to read:

856.022 Loitering or prowling by certain offenders in close proximity to children; penalty.—

(1) Except as provided in subsection (2), this section applies to a person convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction against a victim who was under 18 years of age at the time of the offense: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the offender was not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection, if the person has not received a pardon for any felony or similar law of another jurisdiction necessary for the operation of this subsection and a conviction of a felony or similar law of another jurisdiction necessary for the operation of this

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subsection has not been set aside in any postconviction proceeding.

Section 24. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband and adulterated drugs.

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10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.

18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

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24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human trafficking.

27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

29. Section ~~796.03, s. 796.035, s.~~ 796.04, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

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41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 25. Section 938.085, Florida Statutes, is amended to read:

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; ~~s. 796.03;~~

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~~s. 796.035;~~ s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1), the court shall impose a surcharge of $151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of $150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 26. Subsection (1) of section 938.10, Florida Statutes, is amended to read:

938.10 Additional court cost imposed in cases of certain crimes.—

(1) If a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of s. 784.085, chapter 787, chapter 794, ~~s. 796.03, s. 796.035,~~ s. 800.04, chapter 827, s. 847.012, s. 847.0133, s. 847.0135(5), s. 847.0138, s. 847.0145, s. 893.147(3), or s. 985.701, or any offense in violation of s. 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the court shall impose a court cost of $151 against the offender in addition to any other cost or penalty required by law.

Section 27. Paragraph (a) of subsection (1) of section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual offenders required to register with the

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department; penalty.—

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

(a)1. "Sexual offender" means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c., or sub-subparagraph d., as follows:

a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g)~~, or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and

(II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility;

b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of

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this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g)~~, or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph; or

d. On or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:

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(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(b) where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or

(IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals.

2. For all qualifying offenses listed in sub-subparagraph (1)(a)1.d., the court shall make a written finding of the age of the offender at the time of the offense.

For each violation of a qualifying offense listed in this subsection, the court shall make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), the court shall additionally make a written finding indicating that the offense did or did not involve sexual activity and indicating that the offense did or did not involve force or coercion. For a violation of s. 800.04(5), the court shall additionally make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion.

Section 28. Section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent

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with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court may ~~shall~~ not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of

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records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) A valid certificate of eligibility for expunction issued by the department pursuant to subsection (2).

(b) The petitioner’s sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated

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delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for expunction.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

A ~~Any~~ person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Before ~~Prior to~~ petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the

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status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction, and that none of the charges related to the arrest or alleged criminal activity to which the petition to expunge pertains resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.

3. That the criminal history record does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or

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pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

(b) Remits a $75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

(d) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

(e) Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.

(f) Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (h) and the record is otherwise eligible for expunction.

(g) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(h) Has previously obtained a court order sealing the record under this section, former s. 893.14, former s. 901.33,

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or former s. 943.058 for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were not dismissed prior to trial, without regard to whether the outcome of the trial was other than an adjudication of guilt. The requirement for the record to have previously been sealed for a minimum of 10 years does not apply when a plea was not entered or all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were dismissed prior to trial.

(3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the

court.

(c) For an order to expunge entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of an order to expunge which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to expunge. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner’s attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any

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criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the

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Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person’s failure to recite or acknowledge an expunged criminal history record.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 7. for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to disclose information relating to the existence of an expunged

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criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 29. Section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court may ~~shall~~ not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,

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chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of

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criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each petition to a court to seal a criminal history record is complete only when accompanied by:

(a) A valid certificate of eligibility for sealing issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.0585, former s. 893.14, former s. 901.33, or former s. 943.058.

4. Is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.

A ~~Any~~ person who knowingly provides false information on such sworn statement to the court commits a felony of the third

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degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. A certificate of eligibility for sealing is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

(a) Has submitted to the department a certified copy of the disposition of the charge to which the petition to seal pertains.

(b) Remits a $75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

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(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

(e) Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.0585, former s. 893.14, former s. 901.33, or former s. 943.058.

(f) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.

(3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

(a) In judicial proceedings under this section, a copy of the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and to the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to seal to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal

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history record from the court.

(c) For an order to seal entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of any order to seal which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to seal. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to seal entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner’s attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to seal when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or when such order does not comply with the requirements of this section.

(e) An order sealing a criminal history record pursuant to

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this section does not require that such record be surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

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5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person’s failure to recite or acknowledge a sealed criminal history record.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal

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history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)8. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 30. Paragraph (b) of subsection (1) of section 944.606, Florida Statutes, is amended to read:

944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g)~~, or (h)~~;

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s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

Section 31. Paragraph (a) of subsection (1) of section 944.607, Florida Statutes, is amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

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

(a) "Sexual offender" means a person who is in the custody or control of, or under the supervision of, the department or is in the custody of a private correctional facility:

1. On or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), or (g)~~, or (h)~~; s. 794.011, excluding s. 794.011(10); s. 794.05; ~~s. 796.03; s. 796.035;~~ s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a

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former statute number to one of those listed in this paragraph; or

2. Who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard as to whether the person otherwise meets the criteria for registration as a sexual offender.

Section 32. Subsection (2) of section 948.013, Florida Statutes, is amended to read:

948.013 Administrative probation.—

(2) Effective for an offense committed on or after July 1, 1998, a person is ineligible for placement on administrative probation if the person is sentenced to or is serving a term of probation or community control, regardless of the conviction or adjudication, for committing, or attempting, conspiring, or soliciting to commit, any of the felony offenses described in s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent; s. 787.025; chapter 794; ~~s. 796.03;~~ s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145.

Section 33. Subsection (1) of section 948.32, Florida Statutes, is amended to read:

948.32 Requirements of law enforcement agency upon arrest of persons for certain sex offenses.—

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(1) When any state or local law enforcement agency investigates or arrests a person for committing, or attempting, soliciting, or conspiring to commit, a violation of s. 787.025(2)(c), chapter 794, ~~s. 796.03,~~ s. 800.04, s. 827.071, s. 847.0133, s. 847.0135, or s. 847.0145, the law enforcement agency shall contact the Department of Corrections to verify whether the person under investigation or under arrest is on probation, community control, parole, conditional release, or control release.

Section 34. This act shall take effect October 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to human trafficking; amending s. 92.56, F.S.; authorizing a defendant who has been charged with specified human trafficking offenses to apply for an order of disclosure of confidential and exempt information; authorizing the court to use a pseudonym, instead of a victim's name, to designate the victim of specified human trafficking offenses; providing that trial testimony for specified human trafficking offenses may be published or broadcast under certain circumstances; amending s. 450.021, F.S.; prohibiting the employment of minors in adult theaters; amending s. 450.045, F.S.; requiring adult theaters to verify the ages of employees and

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independent contractors and maintain specified documentation; amending s. 775.082, F.S.; providing a life sentence for a specified felony; amending s. 775.15, F.S.; eliminating the statute of limitations for prosecutions under a specified human trafficking provision; providing applicability; amending s. 787.06, F.S.; revising and providing penalties for various human trafficking offenses against minors and adults; creating s. 796.001, F.S.; providing legislative intent concerning prosecutions of adults for certain offenses involving minors; repealing ss. 796.03, 796.035, and 796.036, F.S., relating to procuring a person under the age of 18 for prostitution, selling or buying of minors into prostitution, and reclassification of certain violations involving minors, respectively; amending ss. 796.05 and 796.07, F.S.; revising and providing penalties for various prostitution offenses; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made by the act; amending s. 943.0583, F.S.; providing for expunction of criminal history records of certain criminal charges against victims of human trafficking that did not result in convictions; requiring destruction of investigative records related to such expunged records; amending s. 960.065, F.S.; providing an exception to ineligibility for victim assistance awards to specified victims of human trafficking;

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amending s. 960.199, F.S.; authorizing the Department of Legal Affairs to provide relocation assistance to a victim of specified human trafficking offenses; requiring the human trafficking offense to be reported to the proper authorities and certified by the state attorney or statewide prosecutor; requiring the state attorney's or statewide prosecutor's approval of a rape crisis center's or a certified domestic violence center's certification that a victim is cooperating with law enforcement officials; providing that the act of human trafficking must occur under certain circumstances for the victim to be eligible for relocation assistance; amending ss. 39.01, 90.404, 772.102, 775.0877, 775.21, 787.01, 787.02, 794.056, 856.022, 895.02, 938.085, 938.10, 943.0435, 943.0585, 943.059, 944.606, 944.607, 948.013, and 948.32, F.S.; conforming cross-references; providing an effective date.

By the Committees on Judiciary; and Criminal Justice; and
Senator Braynon

590-03981-14 2014768c2

A bill to be entitled

An act relating to human trafficking; amending s. 39.01, F.S.; redefining the term "sexual abuse of a child" to include human trafficking; amending s. 92.56, F.S.; authorizing a defendant who has been charged with specified human trafficking offenses to apply for an order of disclosure of confidential and exempt information; authorizing the court to use a pseudonym, instead of a victim's name, to designate the victim of specified human trafficking offenses; providing that trial testimony for specified human trafficking offenses may be published or broadcast under certain circumstances; amending s. 787.06, F.S.; making technical changes; amending s. 960.065, F.S.; providing an exception to ineligibility for victim assistance awards to specified victims of human trafficking; amending s. 960.199, F.S.; authorizing the Department of Legal Affairs to provide relocation assistance to a victim of specified human trafficking offenses; requiring the human trafficking offense to be reported to the proper authorities and certified by the state attorney or statewide prosecutor; requiring the state attorney's or statewide prosecutor's approval of a rape crisis center's or a certified domestic violence center's certification that a victim is cooperating with law enforcement officials; providing that the act of human trafficking must occur under certain circumstances for the victim to be eligible for relocation assistance; providing an

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590-03981-14 2014768c2

effective date.

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

Section 1. Paragraph (g) of subsection (67) of section 39.01, Florida Statutes, is amended to read:

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

(67) "Sexual abuse of a child" for purposes of finding a child to be dependent means one or more of the following acts:

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in commercial sexual activity ~~the trade of sex trafficking~~ as provided in ss. 787.06(3)(g) or (h) and 796.035 ~~s. 796.035~~.

Section 2. Section 92.56, Florida Statutes, is amended to read:

92.56 Judicial proceedings and court records involving sexual offenses and human trafficking.—

(1)(a) The confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h) must

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be maintained in court records pursuant to s. 119.0714(1)(h) and in court proceedings, including testimony from witnesses.

(b) If a petition for access to such confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status of such information shall be maintained by the court if the state or the victim demonstrates that:

1. The identity of the victim is not already known in the community;

2. The victim has not voluntarily called public attention to the offense;

3. The identity of the victim has not otherwise become a reasonable subject of public concern;

4. The disclosure of the victim's identity would be offensive to a reasonable person; and

5. The disclosure of the victim's identity would:

a. Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;

b. Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;

c. Cause severe emotional or mental harm to the victim;

d. Make the victim unwilling to testify as a witness; or

e. Be inappropriate for other good cause shown.

(2) A defendant charged with a crime specified ~~described~~ in s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or chapter 800, or with child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, may apply to the trial court for an order of disclosure of

information in court records held confidential and exempt pursuant to s. 119.0714(1)(h) or maintained as confidential and exempt pursuant to court order under this section. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information does ~~may~~ not ~~be construed to~~ prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime specified ~~described~~ in s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, or any crime involving the production, possession, or promotion of child pornography as described in chapter 847, in all court records and records of court proceedings, both civil and criminal.

(4) The protection of this section may be waived by the victim of the alleged offense in a writing filed with the court, in which the victim consents to the use or release of identifying information during court proceedings and in the records of court proceedings.

(5) This section does not prohibit the publication or

broadcast of the substance of trial testimony in a prosecution for an offense specified ~~described~~ in s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or chapter 800, or for a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in chapter 827; however, ~~but~~ the publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim~~,~~ unless the victim has consented in writing to the publication and filed such consent with the court or unless the court has declared such records not confidential and exempt as provided for in subsection (1).

(6) A willful and knowing violation of this section or a willful and knowing failure to obey a ~~any~~ court order issued under this section constitutes contempt.

Section 3. Subsection (3) of section 787.06, Florida Statutes, is amended to read:

787.06 Human trafficking.—

(3) A ~~Any~~ person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

(a) Using coercion for labor or services commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Using coercion for commercial sexual activity commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Using coercion for labor or services of an ~~any~~ individual who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Using coercion for commercial sexual activity of an ~~any~~ individual who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Using coercion for labor or services who does so by the transfer or transport of an ~~any~~ individual from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) Using coercion for commercial sexual activity who does so by the transfer or transport of an ~~any~~ individual from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) For commercial sexual activity in which a ~~any~~ child younger than ~~under the age of~~ 18 years of age is involved commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084. In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state is not required to ~~need not~~ prove that the defendant knew that the person was younger than ~~had not attained the age of~~ 18 years of age.

(h) For commercial sexual activity in which a ~~any~~ child younger than ~~under the age of~~ 15 years of age is involved

commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state is not required to ~~need not~~ prove that the defendant knew that the person was younger than ~~had not attained the age of~~ 15 years of age.

For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.

Section 4. Subsection (2) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(2) A ~~Any~~ claim is ineligible for an award if it is filed by or on behalf of a person who:

(a) Committed or aided in the commission of the crime upon which the claim for compensation was based;

(b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based, unless the victim was engaged in prostitution as a result of being a victim of human trafficking as described in s. 787.06(3)(b), (d), (f), (g), or (h);

(c) Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the claim for compensation is based;

(d) Has been adjudicated as a habitual felony offender,

habitual violent offender, or violent career criminal under s. 775.084; or

(e) Has been adjudicated guilty of a forcible felony offense as described in s. 776.08~~,~~

~~is ineligible for an award~~.

Section 5. Section 960.199, Florida Statutes, is amended to read:

960.199 Relocation assistance for victims of sexual battery or human trafficking.—

(1) The department may award a one-time payment of up to $1,500 on any one claim and a lifetime maximum of $3,000 to a victim of sexual battery as defined in s. 794.011 or of human trafficking as described in s. 787.06(3)(b), (d), (f), (g), or (h) who needs relocation assistance.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a sexual battery offense or human trafficking offense as described in s. 787.06(3)(b), (d), (f), (g), or (h) was committed.

(b) The sexual battery offense or human trafficking offense as specified in s. 787.06(3)(b), (d), (f), (g), or (h) must be reported to the proper authorities.

(c) The victim's need for assistance must be certified by a certified rape crisis center in this state or by the state attorney or statewide prosecutor having jurisdiction over the offense. A victim of human trafficking's need for assistance may also be certified by a state-certified domestic violence center.

(d) The center's ~~center~~ certification must assert that the

victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan. If the victim seeking relocation assistance is a victim of a human trafficking offense as specified in s. 787.06(3)(b), (d), (f), (g), or (h), the certified rape crisis center's or certified domestic violence center's certification shall include approval of the state attorney or statewide prosecutor, who shall attest that the victim is cooperating with law enforcement officials, if applicable.

(e) The act of sexual battery or human trafficking as specified in s. 787.06(3)(b), (d), (f), (g), or (h) must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

(3) Relocation payments for a sexual battery or human trafficking claim under this section shall be denied if the department has previously approved or paid out a domestic violence relocation claim under s. 960.198 to the same victim regarding the same incident.

Section 6. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Human Trafficking

Bill Number 768 *(if applicable)*

Name Nelson Diaz

Amendment Barcode *(if applicable)*

Job Title President of the Board, Kristi House

Address 999 Ponce de Leon, #1105
Street
Miami FL 33134
City *State* *Zip*

Phone 305-490-3414

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

Representing K

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 780
INTRODUCER:	Criminal Justice Committee and Senator Bradley
SUBJECT:	Controlled Substances
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Harkness	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 780 adds four new synthetic cannabinoids and two new synthetic phenethylamines (hallucinogenic substances) to the list of Schedule I controlled substances.

The bill also adds three chemical substances to the provisions of the trafficking statute that punishes trafficking in phenethylamines. These chemical substances are currently Schedule I controlled substances that are most commonly found in the street drug "Molly."

The bill also amends the trafficking in phenethylamines provision to specify it applies to analogs or isomers of any listed phenethylamine.

The bill has an insignificant or indeterminate fiscal impact.

II. Present Situation:

Schedule I Controlled Substances

A substance is a "controlled substance" if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties which may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high potential for

abuse[1] and no currently accepted medical use in treatment in the United States and, in its use under medical supervision, does not meet accepted safety standards.[2]

As a result of legislation that became law in 2011, 2012, and 2013, there are several synthetic cannabinoids,[3] cathinones,[4] and phenethylamines[5] listed as Schedule I controlled substances in s. 893.03(1)(c), F.S.[6]

Non-Trafficking Controlled Substance Offenses

Unlawful activities involving controlled substances (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances),[7] and s. 893.135, F.S. (drug trafficking). Only certain controlled substances sold, etc., in a trafficking quantity are subject to s. 893.13, F.S.

Several synthetic cannabinoids, cathinones, and phenethylamines are listed as Schedule I controlled substances under s. 893.03(1)(c), F.S. Selling, manufacturing, or delivering, or possessing with intent to sell, manufacture or deliver, a controlled substance listed in s. 893.03(1)(c), F.S., is a third degree felony.[8] However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.[9] For

[1] "Potential for abuse" means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user's health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user's own initiative rather than on the basis of professional medical advice. Section 893.02(20), F.S.
[2] Section 893.03(1), F.S.
[3] "Synthetic Cannabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but the term 'Synthetic Cannabinoids' or 'Cannabinomimetics' is widely used to refer to them as they are cannabinoid-like in their activity." "Synthetic Cannabinoid Drug Information, " Redwood Toxicology Laboratory, https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last viewed on Feb. 25, 2014).
[4] Cathinone is a Schedule I controlled substance. Section 893.03(1)(c)8., F.S. Cathinone is an alkaloid found in the shrub *Catha edulis* (khat) and is chemically similar to amphetamines and other substances. "Consideration of the cathinones" (March 2010), Advisory Council on the Misuse of Drugs, United Kingdom, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/119173/acmd-cathinodes-report-2010.pdf (last viewed on Feb. 25, 2014). The "molecular architecture" of cathinone "can be altered to produce a series of different compounds which are closely structurally related to cathinone." *Id.* at p. 6.
[5] "Phenethylamines" is a broad category of "psychoactive substances" Sanders B., Lankenau S.E., Bloom J.J., Hathazi D. "'Research chemicals': Tryptamine and Phenethylamine Use Among High Risk Youth," *Substance Use & Misuse* (2008), Vol. 43, No. 3-4, Pages 389-402, available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/ (last viewed on Feb. 25, 2014). Probably the most well-known phenethylamine is 3,4-Methylenedioxymethamphetamine (MDMA), which is often referred to by the street name "Ecstasy."
[6] Chapters 2011-73, 2011-90, 2012-23, and 2013-29, L.O.F.
[7] Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties.
[8] Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.
[9] Section 893.13(1)(c)-(f) and (h), F.S.

example, selling a controlled substance listed in s. 893.03(1)(c), F.S., within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.[10]

Purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.[11]

Possessing three grams or less of a synthetic cannabinoid listed in s. 893.03(1)(c)46.-50., 114.-142., 151.-159, or 166.-169., F.S., is a first degree misdemeanor.[12] Possessing more than three grams of any of these synthetic cannabinoids or any amount of any other substance listed in s. 893.03(1)(c), F.S., is a third degree felony.[13]

Drug Trafficking

"Drug trafficking" consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession of, certain controlled substances in a statutorily-specified quantity.

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are covered under s. 893.135, F.S. Relevant to the bill, s. 893.135(1)(k), F.S., currently punishes trafficking in phenethylamines.

The quantity of a covered controlled substance must also meet a minimum weight threshold prescribed in s. 893.135, F.S. Most drug trafficking offenses are first degree felonies and are subject to mandatory minimum terms. Section 893.135, F.S., establishes escalating weight ranges. The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substance possessed, sold, etc.

Section 893.135(1)(k), F.S., provides that it is a first degree felony[14] to traffic in a listed phenethylamine or combination or mixture containing a listed phenethylamine. If the quantity involved is:

- 10 grams or more, but less than 200 grams, the violator is sentenced to a three-year mandatory minimum term of imprisonment and a mandatory fine of $50,000;
- 200 grams or more, but less than 400 grams, the violator is sentenced to a seven-year mandatory minimum term of imprisonment and a mandatory fine of $100,000; or
- 400 grams or more, the violator is sentenced to a 15-year mandatory minimum term of imprisonment and a mandatory fine of $250,000.

[10] Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.
[11] Section 893.13(2)(a)2., F.S.
[12] Section 893.13(6)(b), F.S. A first degree misdemeanor is punishable by up to a year in jail, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S.
[13] Section 893.13(6)(a), F.S.
[14] A first degree felony is generally punishable by up to 30 years in state prison. Section 775.082, F.S. Repeat offender sanctions may be available under ss. 775.082 and 775.084, F.S

It is a capital felony[15] to knowingly manufacture or bring into this state 30 kilograms or more of a listed phenethylamine or combination or mixture containing a listed phenethylamine if the violator knows that the probable result of the manufacture or importation would be the death of any person. In addition to life imprisonment or a death sentence, there is a mandatory fine of $250,000.

Florida Department of Law Enforcement Analysis of Chemical Substances Added or Scheduled by the Bill

The Florida Department of Law Enforcement (FDLE) has provided the following information relevant to the chemical substances added or scheduled by the bill:

> The proposed chemical substances to be added to Section 893.03 are currently being seen and abused throughout the State of Florida as an alternative to traditional illicit substances used to alter users' mental faculties or to obtain a "high." The proposed list of Schedule I additions are substances that have no legitimate medical use and have a high potential for abuse. Under the current statute, state and local law enforcement agencies were unable to intercede in cases involving any of the proposed chemical substances, thus creating an environment where individuals are able to possess, distribute, and/or use harmful substances without fear of intervention by state and local law enforcement. On October 9, 2013, four of the six substances in the bill were scheduled by Attorney General Pam Bondi in an emergency rule, temporarily making them controlled substances for criminal purposes. The emergency rule expires on June 30 (or sooner if supplanted by a superseding statutory amendment).
>
> In addition, on November 15, 2013, the U.S. Department of Justice, Drug Enforcement Administration (DEA) federally scheduled two new synthetic phenethylamines in 21 CFR Part 1308 that are currently not scheduled as controlled substances in Florida. These new hallucinogenic compounds are 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine) and 2C-C-NBOMe(4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine). DEA reports that the abuse of these substances can cause severe toxic reactions, including death. According to DEA, reports from medical examiners and toxicology laboratories link some combination of 25I-NBOMe (currently scheduled in Florida), 25C-NBOMe, and 25B-NBOMe to the death of at least nineteen individuals in the U.S., between the ages of 15 and 29 years old, during the period of March 2012 to August 2013. Adding these two new synthetic phenethylamines substances as schedule I drugs will align Florida law with the current DEA scheduling of said substances.

[15] A capital felony is punishable by life imprisonment or death. Section 775.082, F.S. *See* s. 921.142, F.S. (further proceedings to determine sentence for capital trafficking felonies).

> Generally, "Molly" (short for "molecule") is illicitly marketed as a pure form of "Ecstasy" (MDMA or 3,4 Methylenedioxymethamphetamine). Intelligence suggests the true chemical makeup of "Molly" varies depending on manufacturer, dealer, and location. In Florida, "Molly" is most often composed of Methylone (3,4-methylenedioxymethcathinone), 3,4-Methylenedioxypyrovalerone (MDPV), and Methylmethcathinone, which are sold as "bath salts" compounds and are similar in chemical structure to "Ecstasy." These substances pose significant health risks to users. These substances are commonly imported from overseas via the Internet and are purchased for use in the U.S., particularly with intent to be distributed at clubs, parties and other social gatherings.[16]

III. Effect of Proposed Changes:

The bill amends s. 893.03, F.S. (controlled substance schedules), to add four new synthetic cannabinoids and two new synthetic phenethylamines (hallucinogenic substances) to the list of Schedule I controlled substances:

- AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-lH-indazole-3-carboxamide);
- AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-lH-indazole-3-carboxamide);
- ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)-1H-indole-3-carboxamide);
- 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl) methyl]-benzeneethanamine); and
- 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

The bill amends s. 893.13, F.S. (unlawful acts involving controlled substances), to change the references to synthetic cannabinoids in s. 893.13(6)(b), F.S. (unlawful possession), due to the scheduling of new synthetic cannabinoids by the bill.

The bill amends s. 893.135, F.S. (drug trafficking), to add three currently scheduled phenethylamines to s. 893.135(1)(k), F.S., which punishes trafficking in phenethylamines:

- 3,4-Methylenedioxymethcathinone;
- 3,4-Methylenedioxypyrovalerone (MDPV); and
- Methylmethcathinone.[17]

The bill also amends s. 893.135(1)(k), F.S., to provide that s. 893.135(1)(k), F.S., covers analogs or isomers of a phenethylamine listed in this paragraph.

[16] Analysis of SB 780 (Feb. 7, 2014), Florida Department of Law Enforcement (on file the Senate Committee on Criminal Justice). This analysis is further referenced as "FDLE Analysis (SB 780)."
[17] These chemical substances are currently scheduled at s. 893.03(1)(c)40.-42., F.S.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE states CS/SB 780:

> … could potentially increase the number of evidence submissions into FDLE's Crime Laboratory System as well as local law enforcement crime laboratories. The laboratory system will be required to purchase all of the required standards necessary to test the proposed chemical substances.
>
> The bill will have minimal fiscal impact to FDLE. Any resulting increase in volume of evidence submissions to FDLE's Crime Laboratory system, as well as costs to acquire and maintain additional required chemical standards, will be assimilated as part of the laboratories' cost of doing business. FDLE will monitor submissions to the crime laboratories and if necessary, request an appropriation through a future legislative budget request.[18]

[18] FDLE Analysis (SB 780).

The FDLE also states that "[l]ocal agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a rise in submissions associated with the additions of the proposed chemical substances."[19]

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have an insignificant prison bed impact. According to information provided by the Legislature's Office of Economic and Demographic Research, in Fiscal Year 2012-13, the offense coded as "Other drug—S/M/D," which would include the new substances in the bill, resulted in about 29 new commitments, most of which were third degree felonies.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.03, 893.13, and 893.135.

The bill reenacts paragraphs (b), (c), (e), and (g) through (i) of section 921.0022, Florida Statutes, for the purpose incorporating the amendments made by the bill to sections 893.03 and 893.135, Florida Statutes, in references to those statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 3, 2014:
Corrects an error regarding referencing of newly-scheduled synthetic cannabinoids.

B. Amendments:

None.

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

[19] *Id.*
[20] E-mail from EDR staff to Senate Committee on Criminal Justice staff, dated Feb. 25, 2014 (on file with the Senate Committee on Criminal Justice).

By the Committee on Criminal Justice; and Senator Bradley

591-02084-14 2014780c1

A bill to be entitled

An act relating to controlled substances; amending s. 893.03, F.S.; adding to the list of Schedule I controlled substances specified materials, compounds, mixtures, or preparations that contain hallucinogenic substances, or any of their salts, isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; reenacting and amending s. 893.13(1)-(6), F.S., relating to prohibited acts and penalties involving controlled substances, to incorporate the amendment made to s. 893.03, F.S., in a reference thereto; providing reduced penalties for possession of 3 grams or less of specified controlled substances; amending s. 893.135, F.S.; providing that a person who knowingly sells, purchases, manufactures, delivers, or brings into this state specified quantities of 3,4-Methylenedioxymethcathinone, 3,4-Methylenedioxypyrovalerone (MDPV), or Methylmethcathinone, or who is knowingly in actual or constructive possession of specified quantities of 3,4-Methylenedioxymethcathinone, 3,4-Methylenedioxypyrovalerone (MDPV), or Methylmethcathinone, commits the offense of trafficking in Phenethylamines, a felony of the first degree; providing that a person who knowingly sells, purchases, manufactures, delivers, or brings into this state specified quantities of 3,4-Methylenedioxymethcathinone, 3,4-

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Methylenedioxypyrovalerone (MDPV), or Methylmethcathinone, or who is knowingly in actual or constructive possession of specified quantities of 3,4-Methylenedioxymethcathinone, 3,4-Methylenedioxypyrovalerone (MDPV), or Methylmethcathinone, commits the offense of capital manufacture or importation of Phenethylamines, a capital felony; providing criminal penalties; reenacting s. 921.0022(3)(b), (c), (e), and (g)-(i), F.S., relating to the Criminal Punishment Code, to incorporate the amendment made to ss. 893.03 and 893.135, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt

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

Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Alpha-ethyltryptamine.
2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex).
3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
4. 4-Bromo-2,5-dimethoxyamphetamine.
5. 4-Bromo-2,5-dimethoxyphenethylamine.
6. Bufotenine.
7. Cannabis.
8. Cathinone.
9. Diethyltryptamine.
10. 2,5-Dimethoxyamphetamine.
11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
12. Dimethyltryptamine.
13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine analog of phencyclidine).

14. N-Ethyl-3-piperidyl benzilate.
15. N-ethylamphetamine.
16. Fenethylline.
17. N-Hydroxy-3,4-methylenedioxyamphetamine.
18. Ibogaine.
19. Lysergic acid diethylamide (LSD).
20. Mescaline.
21. Methcathinone.
22. 5-Methoxy-3,4-methylenedioxyamphetamine.
23. 4-methoxyamphetamine.
24. 4-methoxymethamphetamine.
25. 4-Methyl-2,5-dimethoxyamphetamine.
26. 3,4-Methylenedioxy-N-ethylamphetamine.
27. 3,4-Methylenedioxyamphetamine.
28. N-Methyl-3-piperidyl benzilate.
29. N,N-dimethylamphetamine.
30. Parahexyl.
31. Peyote.
32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine analog of phencyclidine).
33. Psilocybin.
34. Psilocyn.
35. *Salvia divinorum*, except for any drug product approved by the United States Food and Drug Administration which contains *Salvia divinorum* or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
36. Salvinorin A, except for any drug product approved by

the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

37. Tetrahydrocannabinols.

38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP) (Thiophene analog of phencyclidine).

39. 3,4,5-Trimethoxyamphetamine.

40. 3,4-Methylenedioxymethcathinone.

41. 3,4-Methylenedioxypyrovalerone (MDPV).

42. Methylmethcathinone.

43. Methoxymethcathinone.

44. Fluoromethcathinone.

45. Methylethcathinone.

46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8) homologue.

47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol, also known as HU-210.

48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.

49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.

50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also known as JWH-200.

51. BZP (Benzylpiperazine).

52. Fluorophenylpiperazine.

53. Methylphenylpiperazine.

54. Chlorophenylpiperazine.

55. Methoxyphenylpiperazine.

56. DBZP (1,4-dibenzylpiperazine).

57. TFMPP (3-Trifluoromethylphenylpiperazine).

58. MBDB (Methylbenzodioxolylbutanamine).

59. 5-Hydroxy-alpha-methyltryptamine.

60. 5-Hydroxy-N-methyltryptamine.

61. 5-Methoxy-N-methyl-N-isopropyltryptamine.

62. 5-Methoxy-alpha-methyltryptamine.

63. Methyltryptamine.

64. 5-Methoxy-N,N-dimethyltryptamine.

65. 5-Methyl-N,N-dimethyltryptamine.

66. Tyramine (4-Hydroxyphenethylamine).

67. 5-Methoxy-N,N-Diisopropyltryptamine.

68. DiPT (N,N-Diisopropyltryptamine).

69. DPT (N,N-Dipropyltryptamine).

70. 4-Hydroxy-N,N-diisopropyltryptamine.

71. N,N-Diallyl-5-Methoxytryptamine.

72. DOI (4-Iodo-2,5-dimethoxyamphetamine).

73. DOC (4-Chloro-2,5-dimethoxyamphetamine).

74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).

76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).

77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).

78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).

79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).

80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).

81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).

82. Ethcathinone.

83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).

84. Naphyrone (naphthylpyrovalerone).
85. N-N-Dimethyl-3,4-methylenedioxycathinone.
86. N-N-Diethyl-3,4-methylenedioxycathinone.
87. 3,4-methylenedioxy-propiophenone.
88. 2-Bromo-3,4-Methylenedioxypropiophenone.
89. 3,4-methylenedioxy-propiophenone-2-oxime.
90. N-Acetyl-3,4-methylenedioxycathinone.
91. N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone.
92. N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone.
93. Bromomethcathinone.
94. Buphedrone (alpha-methylamino-butyrophenone).
95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
96. Dimethylcathinone.
97. Dimethylmethcathinone.
98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
99. (MDPPP) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone.
100. (MDPBP) 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone.
101. Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).
103. Benocyclidine (BCP) or benzothiophenylcyclohexylpiperidine (BTCP).
104. Fluoromethylaminobutyrophenone (F-MABP).
105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).
107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
108. Methylethylaminobutyrophenone (Me-EABP).
109. Methylamino-butyrophenone (MABP).

110. Pyrrolidinopropiophenone (PPP).
111. Pyrrolidinobutiophenone (PBP).
112. Pyrrolidinovalerophenone (PVP).
113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone).
116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-yl)methanone).
117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-yl)methanone).
119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone).
120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole).
123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone).
125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone).
126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone).
127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone).
128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).

129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).

130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).

132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).

133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone).

134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).

135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).

136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).

137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone).

138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone).

139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-yl)methanone).

140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenylethanone).

141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).

144. Fluoroamphetamine.

145. Fluoromethamphetamine.

146. Methoxetamine.

147. Methiopropamine.

148. 4-Methylbuphedrone (2-Methylamino-1-(4-methylphenyl)butan-1-one).

149. APB ((2-aminopropyl)benzofuran).

150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).

151. UR-144 ((1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone).

152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone).

153. (1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone.

154. AKB48 (1-pentyl-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indazole-3-carboxamide).

155. AM-2233((2-iodophenyl)[1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl]-methanone).

156. STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide).

157. URB-597 ((3’-(aminocarbonyl)[1,1’-biphenyl]-3-yl)-cyclohexylcarbamate).

158. URB-602 ([1,1’-biphenyl]-3-yl-carbamic acid, cyclohexyl ester).

159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-

benzoxazin-4-one).

160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).

161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).

162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).

163. 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine).

164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

165. 3,4-Methylenedioxymethamphetamine (MDMA).

166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid).

167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-fluoropentyl)-1H-indole-3-carboxylic acid).

168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid).

169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide).

170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide).

171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide).

172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide).

173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).

174. 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

175. 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

Section 2. For the purpose of incorporating the amendment

made by this act to section 893.03, Florida Statutes, in reference thereto, subsections (1) through (6) of section 893.13, Florida Statutes, are reenacted and amended to read:

893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, a ~~it is unlawful for any~~ person may not ~~to~~ sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. A ~~Any~~ person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~,~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not ~~it is unlawful to~~ sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A ~~Any~~ person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, a ~~it is unlawful~~

~~for any~~ person may not ~~to~~ sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. As used in ~~For the purposes of~~ this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. A ~~Any~~ person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~,~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine

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and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

(d) Except as authorized by this chapter, a ~~it is unlawful for any~~ person may not ~~to~~ sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational institution. A ~~Any~~ person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~,~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any

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other penalty prescribed by law.

(e) Except as authorized by this chapter, a ~~it is unlawful for any~~ person may not ~~to~~ sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. A ~~Any~~ person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~,~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, a ~~it is unlawful for any~~ person may not ~~to~~ sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. As used in ~~For purposes of~~ this section, the term "real property

comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. A ~~Any~~ person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~,~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(g) Except as authorized by this chapter, a ~~it is unlawful for any~~ person may not ~~to~~ manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If a ~~any~~ person violates this paragraph and:

1. The commission or attempted commission of the crime occurs in a structure or conveyance where any child younger than ~~under~~ 16 years of age is present, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child younger than ~~under~~ 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, a ~~it is unlawful for any~~ person may not ~~to~~ sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. A ~~Any~~ person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) Except as authorized by this chapter and chapter 499, a ~~it is unlawful for any~~ person may not ~~to~~ purchase, or possess with intent to purchase, a controlled substance. A ~~Any~~ person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~,~~ commits a felony of the second degree, punishable as provided in

s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not ~~it is unlawful to~~ purchase more than ~~in excess of~~ 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A ~~Any~~ person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A ~~Any~~ person who delivers, without consideration, ~~not more than~~ 20 grams or less of cannabis, as defined in this chapter, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. As used in ~~For the purposes of~~ this paragraph, the term "cannabis" does not include the resin extracted from the plants of the genus *Cannabis* or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(4) Except as authorized by this chapter, a ~~it is unlawful for any~~ person 18 years of age or older may not ~~to~~ deliver any controlled substance to a person younger than ~~under the age of~~ 18 years of age, ~~or to~~ use or hire a person younger than ~~under the age of~~ 18 years of age as an agent or employee in the sale

or delivery of such a substance, or ~~to~~ use such person to assist in avoiding detection or apprehension for a violation of this chapter. A ~~Any~~ person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~,~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence may not be suspended or deferred, and ~~nor shall~~ the person so convicted may not be placed on probation.

(5) A ~~It is unlawful for any~~ person may not ~~to~~ bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. A ~~Any~~ person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~,~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of

the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6)(a) A ~~It is unlawful for any~~ person may not ~~to~~ be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. A ~~Any~~ person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is the possession of ~~not more than~~ 20 grams or less of cannabis, as defined in this chapter, or 3 grams or less of a controlled substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173. ~~166.-169.~~, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. As used in ~~For the purposes of~~ this subsection, the term "cannabis" does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin, and a controlled substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173. ~~166.-169.,~~ does not include the substance in a powdered form.

(c) Except as provided in this chapter, a person may not ~~it~~

~~is unlawful to~~ possess more than ~~in excess of~~ 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A ~~Any~~ person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law enforcement officer may arrest without warrant any person who the officer has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

Section 3. Paragraph (k) of subsection (1) of section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(k)1. A ~~Any~~ person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any of the following substances described in s. 893.03(1)(c):

a. 3,4-Methylenedioxymethamphetamine (MDMA);

b. 4-Bromo-2,5-dimethoxyamphetamine;

c. 4-Bromo-2,5-dimethoxyphenethylamine;

d. 2,5-Dimethoxyamphetamine;

e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. 4-methoxyamphetamine;

j. 4-methoxymethamphetamine;

k. 4-Methyl-2,5-dimethoxyamphetamine;

l. 3,4-Methylenedioxy-N-ethylamphetamine;

m. 3,4-Methylenedioxyamphetamine;

n. N,N-dimethylamphetamine; ~~or~~

o. 3,4,5-Trimethoxyamphetamine~~;~~,

p. 3,4-Methylenedioxymethcathinone;

q. 3,4-Methylenedioxypyrovalerone (MDPV); or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r. ~~a.-o.~~, commits a felony of the first degree, which felony shall be known as "trafficking in Phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years~~,~~ and ~~the defendant~~ shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years~~,~~ and ~~the defendant~~ shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 ~~calendar~~ years

and shall be ordered to pay a fine of $250,000.

3. A ~~Any~~ person who knowingly manufactures or brings into this state 30 kilograms or more of any of the following substances described in s. 893.03(1)(c):

a. 3,4-Methylenedioxymethamphetamine (MDMA);

b. 4-Bromo-2,5-dimethoxyamphetamine;

c. 4-Bromo-2,5-dimethoxyphenethylamine;

d. 2,5-Dimethoxyamphetamine;

e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. 4-methoxyamphetamine;

j. 4-methoxymethamphetamine;

k. 4-Methyl-2,5-dimethoxyamphetamine;

l. 3,4-Methylenedioxy-N-ethylamphetamine;

m. 3,4-Methylenedioxyamphetamine;

n. N,N-dimethylamphetamine; ~~or~~

o. 3,4,5-Trimethoxyamphetamine;~~,~~

p. 3,4-Methylenedioxymethcathinone;

q. 3,4-Methylenedioxypyrovalerone (MDPV); or

r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r. ~~a.-o.~~, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss.

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775.082 and 921.142. A ~~Any~~ person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Section 4. For the purpose of incorporating the amendment made by this act to sections 893.03 and 893.135, Florida Statutes, in a reference thereto, paragraphs (b), (c), (e), and (g) through (i) of subsection (3) of section 921.0022, Florida Statutes, are reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in

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		weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.

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810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.

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817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.

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831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.

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843.08	3rd	Falsely impersonating an officer.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.

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316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or

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		counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a

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		violation of the Marine Turtle Protection Act.
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.

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626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.

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812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or

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		fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting driver ~~drivers'~~ licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.

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860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,

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		(2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.

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893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the

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practitioner.

918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.

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322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation

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		coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.

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790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

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812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.

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817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more individuals.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly

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		person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious

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		exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a),

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		(2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or

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		other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

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893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic

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			medicine without a license.
839			
	460.411(1)	3rd	Practicing chiropractic medicine without a license.
840			
	461.012(1)	3rd	Practicing podiatric medicine without a license.
841			
	462.17	3rd	Practicing naturopathy without a license.
842			
	463.015(1)	3rd	Practicing optometry without a license.
843			
	464.016(1)	3rd	Practicing nursing without a license.
844			
	465.015(2)	3rd	Practicing pharmacy without a license.
845			
	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
846			
	467.201	3rd	Practicing midwifery without a license.

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847			
	468.366	3rd	Delivering respiratory care services without a license.
848			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
849			
	483.901(9)	3rd	Practicing medical physics without a license.
850			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
851			
	484.053	3rd	Dispensing hearing aids without a license.
852			
	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
853			
	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments

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		exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual

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		predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or

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		disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or

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		employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.

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790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation;

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		consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.

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810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

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812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims

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		with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly

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		person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.

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838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

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893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

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893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering,

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		financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual

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		offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of

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a digitized photograph.

985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.

777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to

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		render aid or give information.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity.
787.06(3)(c)	1st	Human trafficking using coercion for labor and services of an unauthorized alien.
787.06(3)(f)	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause

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		serious injury.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
800.04(4)	2nd	Lewd or lascivious battery.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.

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812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.

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817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $100,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital

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		felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s.

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			893.03(1)(a) or (b).
996			
	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
997			
	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
998			
	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
999			
	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
1000			
	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
1001			
	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.

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1002			
	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
1003			
	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
1004			
	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
1005			
	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
1006			
	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
1007			
	895.03(1)	1st	Use or invest proceeds

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		derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

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

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter

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		business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
775.0844	1st	Aggravated white collar crime.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
782.051(1)	1st	Attempted felony murder

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		while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd

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		or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.
787.06(3)(g)	1st,PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
787.06(4)	1st	Selling or buying of minors into human trafficking.
790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less

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		than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
796.035	1st	Selling or buying of minors into prostitution.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less

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		than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or

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		subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into

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		food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135	1st	Trafficking in

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

(1)(f)1.c.		amphetamine, more than 200 grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

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

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The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 4, 2014

I respectfully request that **Senate Bill # 780**, relating to Controlled Substances, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/22/14
Meeting Date

Topic Controlled Substances

Bill Number SB780 *(if applicable)*

Name Tom Tatum

Amendment Barcode *(if applicable)*

Job Title Sergeant

Address 2617 Mahan Dr. *Street*

Phone 922-2165

Tallahassee FL 32308 *City State Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Sheriff's Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 798
INTRODUCER:	Appropriations Committee; Judiciary Committee; Regulated Industries Committee; and Senator Ring
SUBJECT:	Residential Properties
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Davis	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 798 relates to the operation and regulation of condominium associations, cooperative associations, homeowners' associations, and timeshare projects.

For homeowners' associations, the bill clarifies the notice requirements for the preservation of association covenants and restrictions under the Marketable Record Title Act.

For timeshare projects, the bill:

- Defines the term "timeshare project" to mean any timeshare property as defined in ch. 721, F.S., which is located in this state and that is also a transient public lodging establishment;
- Provides that public lodging units that are classified as timeshare projects are not subject to the requirement of at least biannual inspections by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (DBPR or department);
- Exempts timeshare projects from the requirements that public lodging establishments maintain public bathroom facilities, provide in the main public bathroom soap and clean towels or other approved hand-drying devices, and provide guests with clean pillowslips and under and top sheets; and
- Removes timeshare plans from the definition of a "vacation rental," and provides that a vacation rental is a transient public lodging establishment that is not a timeshare project.

The provisions related to condominium associations include:

- Authorizes the associations to enter an abandoned unit to inspect the unit and adjoining common elements, to make specific repairs, and to maintain the unit, and permits the association to charge the unit owner for expenses incurred by the association;
- Provides that the insurance responsibility of the association or unit owners for reconstruction, repair, or replacement in the absence of an insurable event shall be determined by the provisions of the declaration or bylaws;
- Permits board and committee members to participate, including voting, in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication, and for such participation to count towards a quorum;
- Repeals the Community Association Living Study Council; and
- Extends the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

For cooperative associations, the bill:

- Revises the financial reporting requirements by increasing to 90 from 60 days the time to prepare a financial statement, or to contract with a third party to prepare the financial statement;
- Specifies the type of financial reporting required based on the association's total annual revenue amounts;
- Limits the financial reporting requirement, for associations of fewer than 50 units, regardless of the association's annual revenues, to the preparation of a report of cash receipts and expenditures, unless otherwise required by the declaration or other recorded governing documents;
- Provides that persons who have been suspended or removed by the division or who are delinquent in the payment of any monetary obligation due to the association are not eligible to be a candidate for board membership and may not be listed on the ballot; and
- Provides for the removal from office of a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property.

In regard to homeowners' associations, the bill provides that an association does not have to provide members with copies of an amendment to the governing documents after it is approved by the membership if a copy of the proposed amendment was previously provided to the members before the vote on the amendment and the proposed amendment was not changed before the vote. In lieu of providing copies of the amendment, the bill also specifies the notice that must be provided to members after an amendment has been adopted.

In regard to condominium and cooperative associations, the bill requires outgoing board or committee members to relinquish all official records and property of the association in their possession or control to the incoming board within five days after the election. The bill provides that an outgoing board or committee member who violates this requirement is personally subject to a civil penalty by the Division of Florida Condominiums, Timeshares, and Mobile Homes. It also prohibits a board member from voting by e-mail.

For cooperative and homeowners' associations, the bill authorizes boards to exercise specified emergency powers in response to the declaration of a state of emergency, including the authority to implement a disaster plan, mitigate damages, and borrow money with the approval of the membership.

Finally, with regard to condominium, cooperative, and homeowners' associations, the bill provides that unit owners may consent in writing to the disclosure of contact information to which other owners are prohibited from having access.

The bill has an indeterminate, but insignificant fiscal impact.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Public Lodging Establishments

The Division of Hotels and Restaurants (HR division) within the Department of Business and Professional Regulation is the state agency authorized with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the department, there are more than 37,155 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.[1]

Section 509.013(4)(b)9., F.S., provides several exemptions from the definition of "public lodging establishment," including, in relevant part:

> Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242[, F.S].

Section 509.013(4)(a)1., F.S., defines a "transient public lodging establishment" to mean:

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Section 509.013(4)(a)2., F.S., defines a "nontransient public lodging establishment" to mean:

[1] *See Annual Report, Fiscal Year 2012-2013*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2012_13.pdf (Last visited March 8, 2014).

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.242(1)(c), F.S., defines the term "vacation rental" to mean:

> A vacation rental is any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.

Timeshares

A timeshare interest is a form of ownership of real and personal property.[2] Timeshares are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH division) within the department in accordance with ch. 721, F.S.

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

Marketable Record Title Act

The Marketable Record Title Act (MRTA or act),[3] may cause covenants to lapse by operation of law if the covenants are silent as to expiration, or if the 30-year period in the act is shorter than the stated expiration time.

Sections 712.02, F.S., provides that:

> Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03[, F.S]. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:
> (1) The person claiming such estate; or
> (2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing

[2] *See* s. 721.05(36), F.S.
[3] Chapter 712, F.S.,

> appearing of record, in either case, purporting to divest such claimant of the estate claimed.

Sections 712.05 and 712.06, F.S., provide the process, including notice requirements, for the recording of interest in land and the preservation of covenants and restrictions for community associations which may be extinguished under operation of the act.

Section 712.05, F.S., requires that a written notice must be recorded to claim an interest in land and to preserve and protect from extinguishment any covenants or restrictions. Section 712.05(1), F.S., provides:

> Any person claiming an interest in land or a homeowners' association desiring to preserve any covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right or such covenant or restriction or portion of such covenant or restriction for a period of no longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:
> (a) Under a disability,
> (b) Unable to assert a claim on his or her behalf, or
> (c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.
>
> Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b),[F.S.,] was mailed or hand delivered to members of the homeowners' association not less than seven days prior to such meeting.

For covenants that have expired, residents in these communities have the option to revive the covenants after the expiration by following the procedure in ss. 720.403 - 720.407, F.S. The covenant revitalization procedures in ss. 720.403 - 720.407, F.S., are not available to homeowners' associations not governed by ch. 720, F.S., e.g., associations governing communities that are comprised of property primarily intended for commercial, industrial, or other non-residential use.[4] Non-mandatory associations may not revive covenants pursuant to

[4] Section 720.301(8) and (11), F.S.

ss. 702.403 - 702.407, F.S., because ch. 720, F.S., relates to residential homeowners' associations where membership is a mandatory condition for the owners of property.

Section 712.06, F.S., specifies the contents of the notice required under s. 712.05, F.S. Section 712.06(3), F.S., also provides for the service of the notice by the clerk of the circuit court. Section 712.06(3), F.S., provides:

> (3) The person providing the notice referred to in s. 712.05[, F.S.,] shall:
> (a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8)[, F.S.,] and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12)[, F.S]. If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:
>
> I hereby certify that I did on this_____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:
>
> _____
> (Clerk of the circuit court)
> of County, Florida,
> By (Deputy Clerk)
>
> The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or
>
> (b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05,[F.S.,] with the official record book and page number in which such notice was recorded, in a newspaper as defined in ch. 50[, F.S.,] in the county in which the property is located.

The Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL), s. 712.06(3), F.S., requires the clerk of court to mail and publish notice of the preservation of homeowners' association covenants and restrictions. According to RPPTL, compliance with the notice required under s. 712.06(3), F.S., in the context of the preservation of homeowners' association covenants and restrictions is impracticable because of the large amount of space required to publish the notice, which may include tens or hundreds of pages of recorded instruments.

Condominium

A condominium is a "form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."[5] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[6] A declaration is like a constitution in that it:

> Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[7]

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."[8] A declaration of condominium may be amended as provided in the declaration.[9] If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.[10] Condominiums are administered by a board of directors referred to as a "board of administration."[11]

Section 718.103(8), F.S., defines the term "common elements" to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term "condominium parcel" to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

Section 718.103(19), F.S., defines the term "limited common elements" to mean those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Section 718.103(23), F.S., defines the term "residential condominium" to mean:

> …a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a

[5] Section 718.103(11), F.S.
[6] Section 718.104(2), F.S.
[7] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[8] Section 718.104(5), F.S.
[9] See s. 718.110(1)(a), F.S.
[10] Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.
[11] Section 718.103(4), F.S.

> condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35)[, F.S.,] shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404[, F.S].

Cooperative Associations

Section 719.103(12), F.S., defines a "cooperative" to mean:

> …that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[12]

Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[13]

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[14] Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.[15]

[12] *See* ss. 719.106(1)(g) and 719.107, F.S.
[13] *See* s. 720.302(1), F.S.
[14] Section 720.301(9), F.S.
[15] Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.[16] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.[17] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[18]

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the FCTMH division in accordance with ch. 718, F.S. The FCTMH division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S. with respect to associations that are still under developer control.[19] The FCTMH division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the FCTMH division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.[20]

As part of the FCTMH division's authority to investigate complaints, s. 718.501(1), F.S., authorizes the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Chapters 718, 719, and 720, F.S.

Although condominiums and cooperatives are regulated by the FCTMH division, homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,[21] recordkeeping requirements, including which records are accessible to the members of the association,[22] and financial reporting.[23] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

[16] *See* ss. 720.303 and 720.307, F.S.
[17] *See* ss. 720.301 and 720.303, F.S.
[18] Section 720.303(1), F.S.
[19] Section 718.501(1), F.S.
[20] Section 718.501(1), F.S. *See* Peter M. Dunbar, The Condominium Concept: *A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.
[21] *See* s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.
[22] *See* s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.
[23] *See* s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

Rental of Condominium Units

Section 718.110(13), F.S., provides that any amendment of the declaration of condominium that prohibits unit owners from renting their units, alters the duration of the rental term, specifies or limits the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

Insurance – Condominiums

Section 718.111(11), F.S., sets forth the insurance responsibilities of condominium associations and unit owners. Section 718.111(11)(j), F.S., requires the association to reconstruct, repair, or replace as necessary, as a common expense, any portion of the condominium property that it must insure against property loss and is damaged by an insurable event. Section 718.111(11)(f), F.S., specifies the property of the condominium for which the association must provide primary coverage. This section provides:

> (f) Every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium must provide primary coverage for:
> 1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.
> 2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2)[, F.S].
> 3. The coverage must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.

Right of Access to Units – Condominiums and Cooperatives

Section 718.111(5), F.S., provides that condominium associations have an irrevocable right of access to each unit during reasonable hours. They have the right to access units when necessary to maintain, repair, or replace any common elements or of any portion of a unit that the association must maintain in accordance with the declaration or as necessary to prevent damage to the common elements or to a unit or units.

Section 719.104(1), F.S., provides a comparable provision for cooperative associations.

Official Records Chapters 718, 719, and 720, F.S.

Section 718.111(12)(c), F.S., for condominium associations, s. 719.104(2), F.S., for cooperative associations, and s. 720.303(5), F.S., for homeowners' associations, provide for the maintenance of the official records of the associations. These provisions delineate the types of records that the associations must maintain and identify types of records that are accessible to their members.

Section 718.111(12)(c), F.S., prohibits unit owner access to certain official records or information in the possession of the condominium association, including:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, including but not limited to disciplinary, health, insurance, and personnel records of the association's employees;
- Medical records of unit owners;
- Social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements, and any personal identifying information of a unit owner;
- Electronic security measures used to safeguard data, including passwords; and
- Software and operating systems used by the association to allow manipulation of data.

Condominium unit owners may consent in writing to the disclosure of information that is not accessible to the other unit owners.

The official records provisions for condominiums and homeowners' associations are substantively similar, particularly in regards to the list of the types of information that are not accessible to members.[24] For example, members of condominium associations and homeowners' associations do not have access to the addresses, telephone numbers, and other identifying personal information of the members. Chapter 719, F.S., does not provide a similar limitation on the types of records that are accessible to the members of a cooperative association.

Condominium Bylaws-Meetings of the Board

Section 718.112(2)(b)5., F.S., allows members of the condominium board to meet by telephone conference. Members who appear by teleconference may be counted toward obtaining a quorum and may vote as if physically present. A telephone speaker must be used to permit the conversation to be heard by other board members and any unit owners who may be present.

Condominiums and Cooperatives – Assessments and Foreclosures

Current law defines an "assessment" as a "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."[25]

[24] *See* ss. 718.111(12)(c) and 720.303(5), F.S.
[25] Section 718.103(1), F.S.

"Special assessment" is defined to mean, "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[26]

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is *without prejudice*[27] to any right the owner may have to recover from the previous owner the amounts paid by the owner."[28]

Section 719.108, F.S., provides a comparable liability provision for cooperative associations.

If a first mortgagee, (e.g., the mortgage lending institution) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.[29] However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.[30] In the foreclosure action, the association may defend its claims for unpaid assessments. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.[31] The successor or assignee, with respect to the first mortgagee, includes only a subsequent holder of the first mortgage.[32]

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.[33] If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year.[34] The association may also charge an administrative late fee of up to the greater of $25 or five percent of each installment of the assessment for each delinquent installment for which the payment is late.[35] Payments are applied first to the interest accrued, then the administrative late fee, then to any costs and attorney's fees incurred in collection, and then to the delinquent assessment.[36]

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act" in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

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[26] Section 718.103(24), F.S.
[27] The term "without prejudice" means "[w]ithout loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY (9th ed. 2009).
[28] Section 718.116(1)(a), F.S.
[29] Section 718.116(1)(b), F.S.
[30] *Id.*
[31] Section 718.116(1)(e), F.S.
[32] Section 718.116(1)(g), F.S.
[33] Section 687.02(2), F.S., prohibits usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.
[34] Section 718.116(3), F.S.
[35] *Id.*
[36] *Id.*

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels are acquired prior to July 1, 2015. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Financial Reporting for Cooperatives

Section 719.104(4), F.S., sets forth the financial reporting responsibilities of cooperative associations. Cooperative associations have 60 days after the end of the fiscal year or calendar year to prepare and complete a financial report for the preceding fiscal year. The report must be mailed or furnished by personal delivery to each unit owner. The report must be a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures (GAAP).

Section 719.104(4)(a), F.S., specifies the accounts and expenses that must be shown in the report. It provides in pertinent part:

> The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:
> 1. Costs for security;
> 2. Professional and management fees and expenses;
> 3. Taxes;
> 4. Costs for recreation facilities;
> 5. Expenses for refuse collection and utility services;
> 6. Expenses for lawn care;
> 7. Costs for building maintenance and repair;
> 8. Insurance costs;
> 9. Administrative and salary expenses; and

10. Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.

Section 719.104(4)(b), F.S., requires that the FCTMH division adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year.[37] The financial statements must be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The FCTMH division's rules may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j), F.S.[38]

Cooperative associations may waive the requirement to have financial statements compiled, reviewed, or audited at a duly called meeting of the association.[39] In an association that is under developer control, the developer may vote to waive the audit requirement for the first two years of the operation of the association, after which time waiver of an applicable audit requirement requires the approval of a majority of voting interests other than the developer. The meeting must be held prior to the end of the fiscal year, and the waiver is effective for only one fiscal year.

The reporting requirements in s. 719.104(4)(b), F.S., do not apply to a cooperative that consists of 50 or fewer units.[40]

Financial Reporting for Condominium and Homeowners' Associations

Section 718.111(13), F.S., sets forth the financial reporting responsibilities of homeowners' associations. Homeowners' associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

Section 718.111(13)(a), F.S., provides, in part, that if the association has a total annual revenue of $150,000 or more, but less than $300,000, the association must prepare compiled financial statements.[41] If the association has a total annual revenue of at least $300,000 and not less than $500,000, the association must prepare reviewed financial statements.[42] If the total annual

[37] *See* rule 61B-76.006, F.A.C., for the division's financial reporting requirements for cooperative associations.
[38] Section 719.501(1)(j), F.S., authorizes the division to adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by ch. 719, F.S. The principles, policies, and standards must take into consideration the size of the association and the total revenue collected by the association.
[39] Section 719.104(4)(b), F.S.
[40] *Id.*
[41] A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).
[42] A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

revenue is $500,000 or more, the association must prepare audited financial statements.[43] If the total annual revenue is less than $150,000, then a report of cash receipts must be prepared.[44] An association having less than 50 parcels, regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.[45]

The amounts of total annual revenue and the type of financial statement requirements are identical to the financial reporting requirements for homeowners' associations in s. 720.303(7), F.S.

Community Association Living Study Council

Section 718.50151, F.S., creates the Community Association Living Study Council. The council consists of seven appointed members. The council's function is to receive public input regarding issues of concern with respect to community association living. The council must make recommendations for changes in the law related to community association living and must advise the FCTMH division concerning revisions and adoptions of rules affecting condominium and cooperatives.

Homeowners' Associations – Amendments

Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents.

Section 720.306(1)(c), F.S., prohibits amendments that materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment.

III. Effect of Proposed Changes:

Timeshare Projects

Section 509.013, F.S., excludes a "timeshare project" from the definition of "public lodging establishments."

Section 509.032, F.S., provides that public lodging units that are classified as timeshare projects are not subject to the requirement of at least biannual inspections by the division.

[43] An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*
[44] Section 718.111(13)(b)1., F.S.
[45] Section 718.111(13)(b)2., F.S.

Section 509.221(9), F.S., exempts timeshare projects from the requirements that public lodging establishments maintain public bathroom facilities, provide in the main public bathroom soap and clean towels or other approved hand-drying devices, and provide each bed, bunk, cot, or other sleeping place for the use of guests with clean pillowslips and under and top sheets. Current law exempts vacation rentals and transient apartments from these requirements.

Section 509.241(2), F.S., provides that a condominium association that does not own any units classified as timeshare projects is not required to apply for or receive a public lodging establishment license. Current law exempts from the license requirement condominium associations that do not own any units classified as vacation rentals.

Section 509.242(1)(c), F.S., removes timeshare plans from the definition of a "vacation rental." It also provides that a vacation rental is a transient public lodging establishment that is not a timeshare project.

Section 509.242(1)(g), F.S., defines the term "timeshare project" to mean "a timeshare property, as defined in chapter 721, [F.S.] that is located in this state and that is also a transient public lodging establishment."

Section 509.251(1), F.S., allows a single public lodging establishment license to cover all the buildings of a timeshare project which are managed by the same licensed agent even if the buildings are at separate locations. Thus, timeshare projects with respect to aggregating buildings for licensure will be treated the same way as vacation rentals.

Marketable Record Title Act

Section 712.05(1), F.S., provides that the homeowners' association or the clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3), F.S., in order to preserve association covenants and restrictions under the Marketable Record Title Act The bill also provides that this provision is intended to clarify existing law.

Right of Access to Units – Condominiums

Section 718.111(5)(b), F.S., expands the authority of an association's board to enter abandoned condominium units. Section 718.111(5)(b)1., F.S., provides that, at the sole direction of the board, the association may enter an abandoned unit to inspect it and adjoining common elements, to make specific repairs, and to maintain the unit. This includes repairs to the unit or common elements serving the unit. The bill permits the board to enter an abandoned unit to repair damage from mold, to determine if any mold or deterioration is present, to turn on the power for the unit, and to otherwise maintain, preserve, and protect the unit and adjoining common elements.

Section 718.111(5)(b)1., F.S., provides that a unit is presumed to be abandoned if all tenants or unit owners have been absent from the unit for at least two consecutive months without notice to the association and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry, unless the unit owner is current on all assessments or notified the association, in writing of an intended absence. The bill does not define what efforts to determine the whereabouts of the owner would constitute reasonable inquiry.

Section 718.111(5)(b)2., F.S., provides that, except in the case of an emergency, an association may not enter a unit until after two days' notice of intent to enter has been mailed or delivered to the owner at the address of the owner as reflected in the records of the association. It permits the association to give notice by electronic transmission to unit owners who have consented to receive notice by electronic transmission.

Section 718.111(5)(b)3., F.S., permits the association to charge the unit owner for any reasonable expense incurred by the association. The charge is enforceable as an assessment pursuant to s. 718.116, F.S., and the association may use its lien authority provided in s. 718.116, F.S., to enforce collection of the expense. This provision does not provide guidance as to the type of expenses that the association may incur and assign to the unit owner, e.g., it does not distinguish between the actual cost to repair mold or deterioration of the property and administrative expenses incurred by the association in its efforts to contact the unit owner.

Section 718.111(5)(b)4., F.S., authorizes the association to petition a court to appoint a receiver to rent an abandoned unit for the benefit of the association to offset the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs of collection, and attorney fees against the rental income.

Condominium – Insurance

Section 718.111(11)(j), F.S., provides that the insurance responsibility of the association or unit owners for reconstruction, repair, or replacement in the absence of an insurable event is determined by the declaration or bylaws.

Section 718.111(11)(j), F.S., deletes uninsured losses from the list of items that are a common expense of the association. As provided in the bill, whether an uninsured loss is considered a common expense would be determined by the declaration or bylaws.

Condominiums – Official Records

Section 718.111(12)(c)5., F.S., provides that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph.

Section 718.111(12)(f), F.S., requires an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill requires that the division impose a civil penalty as set forth in s. 718.501(1)(d)6., F.S.,[46] against an outgoing board or committee member who willfully and knowingly fails to relinquish such records or property. The requirement that the records and property must be relinquished within five days after an election may not apply, or may be vague, in circumstances in which an election is not held to fill a

[46] Section 718.501(1)(d)6., F.S., authorizes the division to impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division. The civil penalty may not exceed $5,000.

vacancy on the board, e.g., s. 718.112(2)(d)2., F.S., provides that an election is not required if the number of vacancies equals or exceeds the number of candidates.

The bill provides a comparable provision for cooperative associations in s. 719.104(2)(e), F.S.

Condominiums - Bylaws-Meetings of the Board

Section 718.112(2)(b)5., F.S., permits a board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication to count towards a quorum and that the member can vote as if present. There is a comparable provision in current law for meetings of the board of cooperative associations.[47]

Section 718.112(2)(c), F.S., provides a board member may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

Community Association Living Study Council

The bill repeals s. 718.50151, F.S., to eliminate the Community Association Living Study Council.

Condominiums-Assessments

Section 718.116(1)(a), F.S., provides that the previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for the costs associated with the collection process is limited to the amounts that accrued before the association acquired the title to the delinquent property. Current law provides a comparable provision for homeowners' associations in s. 720.3085(2)(b), F.S. The bill provides a comparable provision for cooperative associations in s. 719.108(1), F.S.

Distressed Condominium Relief Act

Section 718.707, F.S., extends the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015, to July 1, 2016.

Cooperatives - Official Records

Section 719.104(2)(c)5., F.S., provides that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph. The bill provides comparable provisions for cooperative associations in s. 719.104(2)(c)5., F.S., and homeowners' associations in s. 720.303(5)(c)5., F.S.

The bill also creates s. 719.104(2)(e), F.S., to require an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill requires that the

[47] Section 719.106(1)(b)5., F.S.

division impose a civil penalty as set forth in s. 719.501(1)(d), F.S.,[48] against an outgoing board or committee member who willfully and knowingly fails to relinquish such records or property.

The bill provides a comparable provision for condominium associations in s. 718.111(12)(f), F.S.

Cooperatives – Financial Reporting

Section 719.104(4), F.S., specifies the type of financial reporting that a cooperative association must prepare. The bill increases the time the board has to prepare a financial statement from 60 to 90 days. Within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to complete the financial statements. It provides that within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge. The bylaws may provide for different time frames for the financial report. The bill requires the division adopt rules setting forth uniform accounting principles, standards, and reporting requirements.

The bill replaces existing law which requires a complete financial report of receipts and expenditures for the previous 12 months or a complete set of financial statements for the preceding fiscal year prepared by generally accepted accounting procedures. It provides that the new financial reports must conform to generally accepted accounting principles. The type of reporting is based on the association's total annual revenue.

Section 719.104(4), F.S., provides that cooperative associations may not waive the financial reporting requirements of this section for more than three consecutive years.

An association having total annual revenues between $150,000 and $299,000 must prepare compiled financial statements. An association having total annual revenues of at least $300,000 but less than $499,999 must prepare reviewed financial statements. An association having total revenues of $500,000 or more must prepare audited financial statements.

Section 719.104(4)(c)1., F.S., provides that an association with total annual revenue of less than $150,000 must prepare a report of cash receipts and expenditures.

These financial reporting thresholds are comparable to those required under the division's current financial reporting rule for cooperatives.[49] The thresholds are also comparable to the financial reporting thresholds for condominiums in s. 718.111(13), F.S., and for homeowners' associations in s. 720.303(7), F.S.

Section 719.104(4)(c)2., F.S., provides that an association of fewer than 50 units, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures, unless otherwise required by the declaration or other recorded governing documents.

[48] Section 719.501(1)(d)4., F.S., authorizes the division to impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division. The civil penalty may not exceed $5,000.
[49] *See* rule 61B-76.006, F.A.C.

Section 719.104(4)(c)3., F.S., specifies the receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications that must be disclosed in the report of cash receipts and expenditures.

Section 719.104(4)(d)., F.S., provides that, if at least 20 percent of the unit owners petition the board for a greater level of financial reporting than required under s. 719.104, F.S., the association must duly notice and hold a meeting of the members within 30 days after receipt of the petition. Upon approval by a majority of the voting interests present at the meeting, the association must prepare an amended budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. Section 719.104(4)(d)., F.S., also requires that the association provide the following within 90 days after the meeting or the end of the fiscal year, whichever occurs later:

- Compiled, reviewed, or audited financial statements if the association is otherwise required to prepare a report of cash receipts and expenditures;
- Reviewed or audited financial statements if the association is otherwise required to prepare compiled financial statements; or
- Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

Section 719.104(4)(e), F.S., provides that, if approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Cooperatives – Officers and Directors

Section 719.106(1)(a)2., F.S., provides that a person who has been suspended or removed by the division under ch. 719. F.S.,[50] or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. Section 718.112(2)(d)2., F.S., provides a comparable provision for condominium associations in current law.

Section 719.106(1)(a)2., F.S., also provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first.[51] While the criminal charge is pending, the officer or director may not be

[50] Section 719.501(1)(d)6., F.S., authorizes the division to order the removal of an officer or board member who has willfully and knowingly violated a provision of ch. 719, F.S., adopted rule, or a final order of the division.

[51] Section 719.106(1)(d)6., F.S., provides for the filling of a vacancy, unless otherwise provided in the bylaws. If a vacancy occurs on the board before the expiration of a term, it may be filled by the affirmative vote of the majority of the remaining

appointed or elected to a position as a director or officer. The director or officer must be reinstated for the remainder of his or her term of office, if any, if the charges are resolved without a finding of guilt. Section 718.112(2)(o), F.S., provides a comparable provision in current law for condominium associations.

This provision also provides that a person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least five years as of the date such person seeks election to the board. The bill provides that the validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. Section 718.112(2)(d)2., F.S., provides a comparable provision in current law for condominium associations.

Emergency Powers for Cooperative Boards

Section 719.128, F.S., is created to authorize the boards of cooperative associations, to the extent allowed by law, to exercise certain emergency powers in response to the declaration of a state of emergency in accordance with s. 252.36(2), F.S.,[52] or a mandatory evacuation order issued by civil or law enforcement authorities.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. The exercise of authority must also be consistent with the standards of s. 617.0830, F.S., which sets forth the general standards for directors of a corporation not for profit, including acting in good faith, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and acting in a manner that he or she reasonably believes to be in the best interests of the corporation.

The bill authorizes the board to:

- Conduct board or membership meetings with notice of the meetings and the board's decisions by any means the board deems appropriate and practical under the circumstances;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;
- Enter into agreements with counties and municipalities for debris removal;

directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. Alternatively, a board may hold an election to fill the vacancy. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being filled.

[52] Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

- Implement a disaster plan prior to, or after, a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems, or air conditioners for association buildings;
- Based on the advice of emergency management officials or licensed professionals retained by the board, declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons;
- Based on the advice of emergency management officials or licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such evaluation is not conclusive as to any determination of habitability pursuant to the declaration; and
- Require the evacuation of the property. The association is immune from liability for injury to persons or property arising from the failure to follow an evacuation required by the board.

It is unclear whether the disaster plan may include provisions related to shutting down elevators, electricity, water, sewer, security systems, or air conditioners for association buildings or will permit the disaster plan to include shutting down the electricity, water, and sewer systems for both members' units and for association buildings. A comparable provision for condominium associations is in s. 718.1265, F.S.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures, even if the unit owner is obligated by the declaration or law to insure or replace such items, and remove personal property from a unit;
- Contract, on behalf of the unit owner, for services which are necessary to prevent further damage to the cooperative property, including:
  - drying of units,
  - boarding of broken windows or doors, and
  - replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.
- Levy special assessments without a vote of the owners; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The bill provides that the grant of authority to condominium boards to borrow money is not intended to limit the general authority of the association to borrow money.

The bill provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Current law provides a comparable provision for condominium associations in s. 718.1265, F.S. The bill provides a comparable provision for cooperative associations in s. 720.316, F.S.

Homeowners' Associations – Official Records

Section 720.303(5)(c)5., F.S., provides unit owners may consent in writing to the disclosure of other contact information described in this subparagraph. The bill provides comparable provisions for condominium associations is s. 718.111(12)(c)5., F.S., and cooperative associations in s. 719.104(2)(c)5., F.S.

Homeowners' Associations – Amendments

Section 720.306(1)(b), F.S., provides that an association does not have to provide members with copies of an amendment to the governing documents after it is approved by the membership if a copy of the proposed amendment was previously provided to the members before the vote of the members on the amendment and the proposed amendment was not changed before the vote of the members. Instead, the association must provide notice that the amendment was adopted. The notice must provide the official book and page number or instrument number of the recorded amendment, and state that a copy of the amendment is available at no charge to the member upon written request to the association. The association may also provide the copies and notice electronically to those owners who have consented to receive notice electronically.

Emergency Powers for Homeowners' Association Boards

Section 720.316, F.S., authorizes the boards of homeowners' associations, to the extent allowed by law, to exercise the following emergency powers in response to the declaration of a state of emergency in accordance with s. 252.36(2), F.S.,[53] or a mandatory evacuation order is issued by civil or law enforcement authorities.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. The exercise of authority must also be consistent with the standards of s. 617.0830, F.S., which sets forth the general standards for directors of a corporation not for profit, including acting in good faith, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and acting in a manner that he or she reasonably believes to be in the best interests of the corporation.

The bill authorizes the board to:

- Conduct board meetings with notice given only to directors with whom it is practicable to communicate;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;

[53] Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

- Enter into agreements with counties and municipalities for debris removal;
- Implement a disaster plan prior to, or after, a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems, or air conditioners for association buildings;
- Based on the advice of emergency management officials or licensed professionals retained by the board, declare any portion of the association property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons; and
- Based on the advice of emergency management officials or licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such evaluation is not conclusive as to any determination of habitability pursuant to the declaration.

It is unclear whether the disaster plan may include provisions related to shutting down elevators, electricity, water, sewer, security systems, or air conditioners for association buildings or will permit the disaster plan to include shutting down the electricity, water, and sewer systems for both members' units and for association buildings.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures on or within association property;
- Levy special assessments without a vote of the owners; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The bill provides that the grant of authority to homeowners' association boards to borrow money is not intended to limit the general authority of the association to borrow money.

The bill provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Current law provides a comparable provision for condominium associations in s. 718.1265, F.S. The bill provides a comparable provision for cooperative associations in s. 719.128, F.S.

Effective Date

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/CS/SB 798 provides that a unit owner in a condominium association is jointly and severally liable with the previous owner for all unpaid assessments.

C. Government Sector Impact:

The new public lodging license classification for timeshare projects requires information system program changes to the DBPR's Versa system, OnBase document management system, and the Interactive Voice Response system. The department indicates the additional programming costs can be handled within existing resources.

The Office of the State Courts Administrator indicates that the bill may result in an increase in workload for the court system. This increase is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Relating to financial reports required of cooperative association, it is unclear under the bill whether the board has 90 days to contract with a third party to prepare the financial statement or whether the third party must complete the financial statement within the 90 days.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013, 509.032, 509.221, 509.241, 509.242, 509.251, 712.05, 718.111, 718.112, 718.116, 718.707, 719.104, 719.106, 720.303, and 720.306.

This bill creates the following sections of the Florida Statutes: 719.128 and 720.316.

This bill repeals section 718.50151 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 24, 2014:
The Committee Substitute:

- Removes a condition to determine when a unit is presumed to be abandoned and provides that a unit is presumed abandoned if "all tenants and the unit owner" (instead of "all tenants") have been absent from the unit for at least two consecutive months without notice to the association and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry, unless the owner is current on all assessments or has notified the association of an intended absence. Provides for the collection of reasonable expenses incurred by the association.
- Amends s. 718.111(11)(j), F.S., to delete uninsured losses from the list of items which are a common expense of the association.
- Specifies that a unit owner in a condominium association is jointly and severally liable with the previous owner for all unpaid assessments; however the committee substitute removes additional liability that included interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process.

CS/CS by Judiciary Committee on April 1, 2014:
The committee substitute no longer exempts timeshare projects from the definition of "public lodging establishment." The committee substitute does not specify requirements for amendments to condominium documents affecting the rental of condominium units. The committee substitute repeals s. 718.50151, F.S., to eliminate the Community Association Living Study Council. The committee substitute deletes provisions revising the liabilities of a cooperative unit owner to include interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. Additionally, the committee substitute does not alter the liabilities of a parcel owner in a homeowners' association for interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process.

CS by Regulated Industries Committee on March 6, 2014:
The committee substitute (CS) differs from SB 798 as follows:

- Changes the title from an act relating to "real and personal property" to an act relating to "residential property."
- Amends s. 509.013(4)(b)9., F.S., to exempt timeshare projects from the definition of "public lodging establishment."
- Amends s. 509.032, F.S., to provide that public lodging units that are classified as timeshare projects are not subject to the requirement of at least biannual inspections by the division.
- Amends s. 509.221(9), F.S., to exempt timeshare projects from the requirements that public lodging establishments must maintain public bathroom facilities, provide in the

main public bathroom soap and clean towels or other approved hand-drying devices, and provide each bed, bunk, cot, or other sleeping place for the use of guests with clean pillowslips and under and top sheets.

- Amends s. 509.241(2), F.S., to provide that a condominium that does not own any units that classified as a timeshare project is not required to apply for or receive a public lodging establishment license.
- Amends s. 509.242(1)(c), F.S., to define the term "timeshare project" to mean any timeshare property as defined in ch. 721, F.S., that is located in this state and that is also a transient public lodging establishment.
- Amends s. 509.242(1)(d), F.S., to remove timeshare plans from the definition of a "vacation rental." It also provides that a vacation rental is a transient public lodging establishment that is not a timeshare project.
- Amends s. 509.251(1), F.S., to include timeshare projects, in addition vacation rental units, that are within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and requires that the division charge a license fee as if all units in the application are in a single licensed establishment.
- Amends s. 712.05(1), F.S., to provide that the homeowners' association or the clerk of the circuit court is not be required to provide additional notice pursuant to s. 712.06(3), F.S., It removes the provision that the homeowners' association or the clerk of the circuit court is required to provide notice other than as provided under s. 712.06(3), F.S.
- Amends s. 718.111(5)(b)2., F.S., to reference a 2-day wait instead of a 48-hour wait after the notice of intent to enter a property that has been abandoned. It provides that the notice of intent to enter must have been mailed or delivered, and it permits the association to give notice by electronic transmission to unit owners who have consented to receive notice by electronic transmission.
- Amends s. 718.111(11)(j), F.S., to provide that the insurance responsibility of the association or unit owners for reconstruction, repair, or replacement in the absence of an insurable event shall be determined by the provisions of the declaration or bylaws.
- Amends s. 718.111(12)(c)5., F.S., to provide that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph.
- Does not amend s. 718.111(12)(f), F.S., to provide that outgoing board or committee member who violates this requirement is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S. The CS amends this provision to require the division to impose a civil penalty as set forth in s. 718.501(1)(d)6., F.S., against an outgoing board or committee member who willfully and knowingly fails to relinquish such records or property.
- Amends s. 718.112(2)(b)5., F.S., to provide that members of the board of administration may participate by real-time electronic or video communication.
- Amends s. 719.104(2)(c)5., F.S., to provide that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph.
- Does not amend s. 719.104(2)(e), F.S., to provide that outgoing board or committee member who violates this requirement is personally subject to a civil penalty pursuant to s. 719.501(1)(d), F.S. The CS amends this provision to require the division to impose a civil penalty as set forth in s. 719.501(1)(d), F.S., against an outgoing board

or committee member who willfully and knowingly fails to relinquish such records or property.

- Does not amend s. 719.106(1)(c), F.S., to require that notice of board meetings must specifically identify all agenda items. The CS also does not provide that, if 20 percent of the voting interests petition the board to address an item of business, the board must place the item on the agenda at its next regular board meeting or at a special meeting of the board no later than 60 days after the petition is received.
- Does not amend s. 719.106(1)(d)6., F.S., to provide that the term of a board member who was appointed or elected to fill a vacancy on the board expires at the next annual meeting, and it does not delete the current provision that appointed or elected member shall fill the unexpired term of the seat being filled.
- Amends s. 719.128(1)(f), F.S., to provide that the association's implementation of a disaster plan includes shutting off air conditioners for association buildings.
- Amends s. 720.303(5)(c)5., F.S., to provide that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph.
- Amends s. 720.306(1)(b), F.S., to provide that an association does not have to provide members with copies of an amendment to the governing documents after it has been approved by the membership if a copy of the proposed amendment had been previously provided to the members before the vote of the members on the amendment and the proposed amendment was not changed before the vote of the members. In lieu of providing copies of the amendment, the CS also specifies the notice that must be provided to members after an amendment has been adopted.
- Amends s. 720.316(1)(f), F.S., to provide that the association's implementation of a disaster plan includes shutting off air conditioners for association buildings.

B. Amendments:

None.

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

949318

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment

Delete lines 348 - 371
and insert:
presumed to be abandoned if all tenants and the unit owner have been absent from the unit for 2 consecutive months and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry. However, this presumption does not apply if the unit owner is current on all assessments or the unit owner or a tenant has notified the

949318

association, in writing, of an intended absence.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission.

3. Any reasonable expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use the lien authority provided under s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver to lease out an

775078

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete line 394

and insert:

insurance deductibles~~, uninsured losses,~~ and other damages in

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

And the title is amended as follows:

Delete line 32

and insert:

775078

repairs; removing uninsured losses as a common expense of a condominium; providing that an owner may consent in

582410

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/24/2014	.	
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	.	
	.	

The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 668 - 691
and insert:
(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of

582410

transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

Section 11. Subsection (1) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(1) A unit owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all rents and assessments coming due while the unit owner is in exclusive possession of a unit. In a voluntary transfer, the unit owner in exclusive possession shall be jointly and severally liable with the previous unit owner for all unpaid rents and assessments against the previous unit owner for his or her share of the common expenses up to the time of the transfer, without prejudice to the rights of the unit owner in exclusive possession to recover from the previous unit owner the amounts paid by the unit owner in exclusive possession therefor. For the purposes of this paragraph, the term "previous unit owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid

582410

assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

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

And the title is amended as follows:

Delete lines 46 - 51

and insert:

F.S.; clarifying the meaning of the term "previous owner"; limiting the present owner's liability for unpaid assessments to those that accrued before the association acquired title; amending s. 719.108, F.S.; clarifying the meaning of the term "previous unit owner"; limiting the present unit owner's liability for unpaid assessments to those that accrued before the association acquired title;

929482

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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	.	
	.	

The Committee on Appropriations (Ring) recommended the following:

Senate Substitute for Amendment (582410) (with title amendment)

Delete lines 668 - 691
and insert:
(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner

929482

for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

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

And the title is amended as follows:

Delete lines 46 - 51

and insert:

F.S.; clarifying the meaning of the term "previous owner"; limiting the present owner's liability for unpaid assessments to those that accrued before the association acquired title;

By the Committees on Judiciary; and Regulated Industries; and Senator Ring

590-03532-14 2014798c2

A bill to be entitled

An act relating to residential properties; amending s. 509.013, F.S.; revising the definition of the term "public lodging establishment"; amending s. 509.032, F.S.; providing that timeshare projects are not subject to annual inspection requirements; amending s. 509.221, F.S.; providing nonapplicability of certain public lodging establishment requirements to timeshare projects; amending s. 509.241, F.S.; providing that a condominium association that does not own any units classified as timeshare projects is not required to apply for or receive a public lodging establishment license; amending s. 509.242, F.S.; revising the definition of the term "public lodging establishment" to include a "timeshare project"; deleting reference to the term "timeshare plan" in the definition of "vacation rental"; defining the term "timeshare project"; amending s. 509.251, F.S.; providing that timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application; amending s. 712.05, F.S.; clarifying existing law relating to notification for purposes of preserving marketable title; amending s. 718.111, F.S.; authorizing an association to inspect and repair abandoned condominium units; providing conditions to determine if a unit is abandoned; providing a mechanism for an association to recover costs associated with maintaining an abandoned unit;

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

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providing that in the absence of an insurable event, the association or unit owners are responsible for repairs; providing that an owner may consent in writing to the disclosure of certain contact information; requiring an outgoing condominium association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; amending s. 718.112, F.S.; providing that a board or committee member's participation in a meeting via real-time videoconferencing, Internet-enabled videoconferencing, or similar electronic or video communication counts toward a quorum and that such member may vote as if physically present; prohibiting the board from voting via e-mail; amending s. 718.116, F.S.; providing that a unit owner is jointly and severally liable with the previous owner for certain costs; providing an exception; defining the term "previous owner"; limiting costs and fees incurred by the association incident to the collection process to those incurred before the association acquired title; repealing s. 718.50151, F.S., relating to the Community Association Living Study Council and its membership functions; amending s. 718.707, F.S.; extending the date by which a condominium parcel must be acquired in order for a person to be classified as a bulk assignee or bulk buyer; amending s. 719.104, F.S.; providing that an owner may consent in writing

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to the disclosure of certain contact information; requiring an outgoing cooperative association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; providing dates by which financial reports for an association must be completed; specifying that members must receive copies of financial reports; requiring specific types of financial statements for associations of varying sizes; providing exceptions; providing a mechanism for waiving or increasing financial reporting requirements; amending s. 719.106, F.S.; providing for suspension from office of a director or officer who is charged with one or more of certain felony offenses; providing procedures for filling such vacancy or reinstating such member under specific circumstances; providing a mechanism for a person who is convicted of a felony to be eligible for board membership; creating s. 719.128, F.S.; providing emergency powers of a cooperative association; amending s. 720.303, F.S.; providing that an owner may consent in writing to the disclosure of certain contact information; amending s. 720.306, F.S.; providing for specified notice to members in lieu of copies of an amendment; creating s. 720.316, F.S.; providing emergency powers of a homeowners' association; providing an effective date.

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

Section 1. Subsection (4) of section 509.013, Florida Statutes, is amended to read:

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

(4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity

acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

Section 2. Paragraph (a) of subsection (2) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has responsibility and jurisdiction for all inspections required by this chapter. The division has responsibility for quality assurance. Each licensed establishment shall be inspected at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as vacation rentals or timeshare projects are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102,

or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

Section 3. Subsection (9) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(9) Subsections (2), (5), and (6) do not apply to any facility or unit classified as a vacation rental, ~~or~~ nontransient apartment, or timeshare project as described in s. 509.242(1)(c), ~~and~~ (d), and (g).

Section 4. Subsection (2) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division prior to the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive

a public lodging establishment license.

Section 5. Subsection (1) of section 509.242, Florida Statutes, is amended to read:

509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental if the establishment satisfies the following criteria:

(a) *Hotel.*—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) *Motel.*—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) *Vacation rental.*—A vacation rental is any unit or group of units in a condominium or~~,~~ cooperative~~, or timeshare plan~~ or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.

(d) *Nontransient apartment.*—A nontransient apartment is a building or complex of buildings in which 75 percent or more of

the units are available for rent to nontransient tenants.

(e) *Transient apartment.*—A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

(f) *Bed and breakfast inn.*—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

(g) *Timeshare project.*—A timeshare project is a timeshare property, as defined in chapter 721, which is located in this state and which is also a transient public lodging establishment.

Section 6. Subsection (1) of section 509.251, Florida Statutes, is amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment shall not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be

combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months prior to the next such renewal period and one-half of the fee if application is made 6 months or less prior to such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division within 30 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law. A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $100, in addition to the renewal fee and any other fees required by law.

Section 7. Subsection (1) of section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A ~~Any~~ person claiming an interest in land or a homeowners' association desiring to preserve a ~~any~~ covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a written notice~~, in writing,~~ in accordance with this chapter. Such ~~the provisions hereof, which~~ notice preserves ~~shall have the effect of so preserving~~ such claim of right or such covenant or restriction or portion of such covenant or restriction for up to ~~a period of not longer than~~ 30 years after filing the notice ~~same~~ unless the notice is filed again ~~filed~~ as required in this chapter ~~herein~~. A person's ~~No~~ disability or lack of knowledge of any kind may not ~~on the part of anyone shall~~ delay the commencement of or suspend the running of the ~~said~~ 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of a ~~any~~ claimant who is:

(a) Under a disability~~;~~,

(b) Unable to assert a claim on his or her behalf~~;~~, or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of

marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association at least ~~not less than~~ 7 days before ~~prior to~~ such meeting. The homeowners' association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3). The preceding sentence is intended to clarify existing law.

Section 8. Subsection (5), paragraph (j) of subsection (11), and paragraph (c) of subsection (12) of section 718.111, Florida Statutes, are amended, and paragraph (f) is added to subsection (12) of that section, to read:

718.111 The association.—

(5) RIGHT OF ACCESS TO UNITS.—

(a) The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit ~~or units~~.

(b)1. In addition to the association's right of access in paragraph (a) and regardless of whether authority is provided in the declaration or other recorded condominium documents, an association, at the sole discretion of the board, may enter an abandoned unit to inspect the unit and adjoining common elements; make repairs to the unit or to the common elements serving the unit, as needed; repair the unit if mold or deterioration is present; turn on the utilities for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. For purposes of this paragraph, a unit is presumed to be abandoned if:

a. The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or

b. No tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission.

3. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use its lien authority provided by s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver and may lease out an abandoned unit for the benefit of the association to offset against the rental income the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney fees.

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement, as determined by the provisions of the declaration or bylaws. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the

financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(12) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records

within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a

smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone numbers ~~number~~ from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or

her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Section 9. Paragraphs (b) and (c) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(b) *Quorum; voting requirements; proxies.*—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. A voting interest or consent right allocated to a unit owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with

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subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a proxy, limited or general, may not be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given and may be revoked~~. Every proxy is revocable~~ at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum.

5. A ~~If any of the~~ board or committee member's participation in a meeting via telephone, real-time

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videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~members meet by telephone conference, those board or committee members may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must be used so that the conversation of such ~~those~~ members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose ~~of the board, but not later than 60 days after the receipt of the~~

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~~petition, shall place the item on the agenda~~. An ~~Any~~ item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. However, written notice of a ~~any~~ meeting at which a nonemergency special assessment ~~assessments,~~ or an ~~at which~~ amendment to rules regarding unit use~~,~~ will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must ~~are to~~ be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting ~~to the owner of each unit~~. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section.

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If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered ~~for any reason~~ must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

Section 10. Paragraph (a) of subsection (1) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process, except that in the case of a foreclosure sale, the interest, late charges, and reasonable attorney fees and costs may not exceed 10 percent of the winning bid amount. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid assessments, interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process is limited to those amounts that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure. This paragraph does not affect the liability of a first mortgagee or its successor or assignees as provided in paragraph (b).

Section 11. Section 718.50151, Florida Statutes, is repealed.

Section 12. Section 718.707, Florida Statutes, is amended to read:

718.707 Time limitation for classification as bulk assignee

or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2016 ~~2015~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 13. Paragraph (c) of subsection (2) and subsection (4) of section 719.104, Florida Statutes, are amended, and paragraph (e) is added to subsection (2) of that section, to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's

willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative

with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit

owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone numbers ~~number~~ from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(e) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 719.501(1)(d) against an

outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(4) FINANCIAL REPORT.—

(a) Within 90 ~~60~~ days following the end of the fiscal or calendar year or annually on such date as ~~is otherwise~~ provided in the bylaws of the association, the board of administration ~~of the association~~ shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The division shall adopt rules setting forth uniform accounting principles, standards, and reporting requirements ~~mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures~~. ~~The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:~~

~~1. Costs for security;~~

~~2. Professional and management fees and expenses;~~

~~3. Taxes;~~

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~~4. Costs for recreation facilities;~~

~~5. Expenses for refuse collection and utility services;~~

~~6. Expenses for lawn care;~~

~~7. Costs for building maintenance and repair;~~

~~8. Insurance costs;~~

~~9. Administrative and salary expenses; and~~

~~10. Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.~~

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between $150,000 and $299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between $300,000 and $499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement ~~The division shall adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year~~. ~~The financial statements shall be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the~~

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~~bylaws. The rules of the division may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j).~~

4. The requirement to have the financial statement~~s~~ compiled, reviewed, or audited does not apply to an association ~~associations~~ if a majority of the voting interests of the association present at a duly called meeting of the association have voted ~~determined for a fiscal year~~ to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of ~~the~~ operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years ~~This subsection does not apply to a cooperative that consists of 50 or fewer units~~.

(c)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.

3. A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

(d) If at least 20 percent of the unit owners petition the board for a greater level of financial reporting than that required by this section, the association shall duly notice and hold a membership meeting within 30 days after receipt of the petition to vote on raising the level of reporting for that fiscal year. Upon approval by a majority of the voting interests represented at a meeting at which a quorum of unit owners is present, the association shall prepare an amended budget or shall adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. In addition, the association shall provide within 90 days after the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements, if the association is otherwise required to prepare reviewed financial statements.

(e) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 14. Paragraph (a) of subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) *Administration.*—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In the absence of provisions to the

contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board

membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3.~~2.~~ When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

Section 15. Section 719.128, Florida Statutes, is created to read:

719.128 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with s. 617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the cooperative, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine whether the cooperative property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the area where the cooperative is located. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually

responsible, but which are necessary to prevent further damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 719.108 to enforce collection of the charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, and the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property.

(l) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 16. Paragraph (c) of subsection (5) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association

funds; recalls.—

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the

inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative

proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone numbers ~~number~~ from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is

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not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Section 17. Paragraph (b) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the

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member upon written request to the association. The copies and notice described in this paragraph may be provided electronically to those owners who previously consented to receive notice electronically.

Section 18. Section 720.316, Florida Statutes, is created to read:

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with s. 617.0830, the board of directors, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.

(j) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the declaration or other recorded governing documents, levy special assessments without a vote of the owners.

(k) Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are

insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 19. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING
29th District

April 2, 2014

Honorable Senator Joe Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron,

I am writing to respectfully request your cooperation in placing Senate Bill 798, relating to Residential Properties, on the Appropriations Committee agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

Jeremy Ring

Jeremy Ring
Senator District 29

cc: Cindy Kynoch, Staff Director

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☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Residential Properties

Bill Number 798 *(if applicable)*

Name Yeline Goin → Ye-leer-nee

Amendment Barcode 929482 *(if applicable)*

Job Title Executive Director

Address 204 S Monroe St
Street
Tall FL 32301
City *State* *Zip*

Phone 850-284-2460

E-mail Ygoin@bplegal.com

Speaking: ☒ For ☐ Against ☐ Information

Representing OAL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Residential Properties

Bill Number 798 *(if applicable)*

Name Yelire Goin → Ye-lee-nee

Amendment Barcode 775078 *(if applicable)*

Job Title Executive Director

Address 204 S Monroe St
Street
Tall FL 32301
City *State* *Zip*

Phone 850-284-2460

E-mail ygoin e bplegal.com

Speaking: ☒ For ☐ Against ☐ Information

Representing CALL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Residential Properties Bill Number 798 *(if applicable)*

Name Travis Moore Amendment Barcode 775078 *(if applicable)*

Job Title

Address P.O. Box 781 Phone 727.421.6902
Street

Largo FL 33779 E-mail mooreT@Tampabay.rr.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Community Associations Institute (CAI)

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Residential Properties

Bill Number 798 *(if applicable)*

Name Yelina Goin → Ye-lee-nee

Amendment Barcode [redacted] *(if applicable)*

Job Title Executive Director

Address 204 S. Monroe St. Ste 203
Street
Tallahassee, FL 32312
City *State* *Zip*

Phone 850-284-2460

E-mail ygoin@bplegal.com

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

Representing Community Association Leadership Lobby (CALL)

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14
Meeting Date

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

Topic _____ Bill Number 798 *(if applicable)*

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Speaking: ☑ For ☐ Against ☐ Information

Representing Community Advocacy Network

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 810
INTRODUCER:	Regulated Industries Committee and Senator Galvano
SUBJECT:	Pugilistic Exhibitions
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	McKay	McVaney	GO	**Favorable**
3.	Munroe	Cibula	JU	**Favorable**
4.	Davis	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 810 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department). The significant policy changes include:

- Eliminating requirements that a promoter provide the commission with gross price charged for broadcast rights to an event if the promoter pays the commission the maximum tax of $40,000 on the broadcast rights.
- Exempting from the five percent gross receipts tax the face value of tickets to an event which are given away free of charge and which generally may not exceed five percent of the tickets to the event.
- Authorizing the commission to exempt complimentary tickets from the gross receipts tax exceeding five percent of the tickets to an event if those tickets are given to military servicemembers, veterans, or nonprofit organizations.
- Exempting the proceeds from the sale of souvenirs and programs from a five percent gross receipts tax.
- Clarifying the commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state.
- Eliminating the requirement of licensure for concessionaires, booking agents, and foreign co-promoters.

- Requiring an event promoter to maintain records relating to its payments of the gross receipts tax and authorizing the commission to audit those records.
- Expressly providing that disciplinary action by the commission must comply with the Administrative Procedure Act.

The bill appropriates $111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this Act.

II. Present Situation:

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department). Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held Florida must meet the requirements for holding the match included in ch. 548, F.S., and the rules adopted by the commission.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval, of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.[1] Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.[2] This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

According to the department, the commission's primary duty is to ensure all matches comply with the laws and rules and the matches are competitive and physically safe for the participants. For the most recent periods for which data is available, the commission licensed 1,224 professionals in Fiscal Year 2011-2012 and processed 51 live event permits.[3] According to the department, it licensed 1,056 professionals and processed 39 live permits in Fiscal Year 2012-2013.

In addition to its processing of applications for licensure and the approval or denial of live event permits, the commission coordinates live event schedules and evaluates proposed fight cards. It also evaluates the assignment of officials (referees, judges, physicians) and event staff (event coordinator, chief inspector, inspectors, and timekeeper).

A department representative or commission representative is assigned to attend each official weigh-in and live event. This person attends the official weigh-in during which the application is processed, license fees are collected, the results of participant medical examinations are verified, pre-fight physicals are conducted by physicians, the promoter/participant contracts are collected,

[1] Section 548.006(3), F.S.
[2] Section 548.002(2), F.S.
[3] *See Annual Report, Fiscal Year 2011-2012*, Florida State Boxing Commission, Department of Business and Professional Regulation. A copy is available at: http://www.myfloridalicense.com/dbpr/os/documents/SBCAR2012v6.pdf (Last visited March 8, 2014).

participants' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter is collected, and the required accidental death and health insurance for each of the participants is verified. The department or commission representative is also accompanied to the event by the department's OPS event staff; i.e., the event coordinator, timekeeper, and inspector. The OPS event staff and the representative from the department or commission also inspect the ring for safety standards, verify that emergency medical personnel and an ambulance are on-site, assign inspectors to each of the fighters, conduct match timekeeping, verify assigned officials are present, distribute officials' pay following the event, and conduct participant drug tests, if necessary.

Definitions

Section 548.002(3), F.S., defines the term "boxing" to mean "to compete with the fists."

Section 548.002(5), F.S., defines the term "concessionaire" to mean:

> …any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.

Section 548.002(6), F.S., defines the term "contest" to mean "a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head."

Section 548.002(9), F.S., defines the term "exhibition" to mean:

> …a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(10), F.S., defines the term "foreign copromoter" to mean "a promotor who has no place of business within this state."

Section 548.002(12), F.S., defines the term "kickboxing" to mean to "compete with the fists, feet, legs, or any combination thereof, and includes "punchkick" and other similar competitions."

Section 548.002(16), F.S., defines the term "mixed martial arts" to mean:

> …unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Section 548.006(19), F.S., defines the term "professional" to mean:

> …a person who has received or competed for any purse or other article of a value greater than $50, either for the expenses of training or for participating in any match.

Section 548.002(20), F.S., defines the term "promoter" to mean:

> …any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Section 548.002(21), F.S., defines the term "purse" to mean:

> …the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional's share of any payment received for radio broadcasting, television, and motion picture rights.

Executive Director

Section 548.004(1), F.S., requires the department, with the approval of the commission, to employ an executive director. The duties and responsibilities of the executive director include:

- Keeping a record of all proceedings of the commission;
- Preserving all books, papers, and documents pertaining to the business of the commission;
- Preparing any notices and papers required;
- Appointing judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Performing any other duties as the department or commission directs.

Recording of Commission Proceedings

Section 548.004(2), F.S., requires the commission to electronically record all of its scheduled proceedings. Section 455.203(7), F.S., also requires the department to electronically record all of its proceedings.

Licenses

Several professions are licensed by the commission. A license is required to be the promoter of a match.[4] Before acting in any capacity in a match, a license is required to be a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.[5] Prior to working as the ringside physician, a physician must be licensed under ch. 458, F.S., or ch. 459, F.S., must maintain an unencumbered license in good standing, and must demonstrate satisfactory medical

[4] *See* s. 548.012(1), F.S.
[5] Section 548.017, F.S.

training or experience in boxing, or a combination of both, to the executive director. The commission also licenses the concessionaires.[6]

Exceptions

The commission's jurisdiction does not extend to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;
- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.[7]

Revocation and Suspension of a License

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license.

Withholding of Purses

Section 548.054, F.S., provides the procedure for the withholding of prize purses. A member of the commission, a commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant, or to withhold the share of any manager, if it appears that:

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.[8]

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.[9] Within ten days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.[10] Upon receipt of the application, the commission must set the date for a hearing. Within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the commission is required to meet and determine the disposition of the withheld purse.[11] If the commission finds the charges sufficient, it may decide

[6] *See* s. 548.015, F.S.
[7] *See* s. 548.007, F.S.
[8] Section 548.054(1), F.S.
[9] Section 548.054(2), F.S.
[10] *Id.*
[11] *Id.*

that all or a part of the funds be forfeited.[12] Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.[13]

Reporting and Tax Requirement

Within 72 hours after a match, the promoter of that match must file a written report with the commission.[14] The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.[15] Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.[16]

According to the department, the current definition of "gross receipts" has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.[17]

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.[18]

Any written report required to be filed with the commission must be postmarked within 72 hours after the conclusion of the match; an additional five days is allowed for mailing.[19] According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

[12] *Id.*
[13] *Id.*
[14] Section 548.06(1), F.S.
[15] *Id.*
[16] Section 548.06(1), F.S.
[17] Section 548.06(2), F.S.
[18] Section 548.06(3), F.S.
[19] Section 548.06(4), F.S.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of five percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed $40,000 for any single event.[20]

Commission Hearings

Notwithstanding, the provisions of ch. 120, F.S., the Administrative Procedures Act, any member of the commission may conduct a hearing.[21] Before any adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order.

Emergency Suspensions

Section 120.60(6), F.S., permits agencies to order the emergency suspension, restriction, or limitation of a license upon a finding of immediate serious danger to the public health, safety, or welfare. An agency may take such action by any procedure that is fair under the circumstances if:

> (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
> (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
> (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

III. Effect of Proposed Changes:

This bill revises the laws relating to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, administered by the commission.

Section 1 amends s. 548.002, F.S., to provide definitions or redefine terms to clarify legislative intent, ensure the Department of Business and Professional Regulation (department) is able to enforce ch 548, F.S., and to conform the chapter to current industry standards. This section:

- Amends the definition of "boxing" to mean the unarmed combat sport of fighting by striking with fists.

[20] Section 548.06(5), F.S.
[21] Section 548.073, F.S.

- Repeals the definition of "concessionaire."
- Amends the definition of "contest" and "exhibition" to include the participants' use of other full-contact maneuvers.
- Creates a definition of the term "face value" to mean the dollar value which is equal to what the customer is required to pay, or would be required to pay, if it is a complimentary ticket. Taxes are not included in the face value if the ticket specifies the amount of admission charges attributable to state or federal taxes.
- Creates a definition of the term "full contact" to mean the use of strikes and blows during a match in which the strikes and blows are intended to break the plane of the participant's body, are delivered to the head, face, neck, or body of the receiving participant's body, or cause the receiving participant to move in response to the strikes and blows.
- Repeals the definition of "foreign copromoter."
- Amends the definition of "judge" to provide that the judge is licensed by the Florida State Boxing Commission (commission) and scores a match using a designated scoring system.
- Amends the definition of "kickboxing" to include the act, activity, or sport of fighting with the use of fists, hands, feet, legs or any combination thereof in a roped ring. It provides that the term does not include any form of ground fighting techniques.[22]
- Amends the definition of "mixed martial arts" to mean the act, activity, or sport of unarmed combat involving the use of a combination of techniques, including, but not limited to, wrestling, grappling, kicking, and striking, and other techniques from different disciplines of the martial arts. The term may include, but is not limited to, boxing, kickboxing, Muay Thai,[23] jujitsu, and wrestling.
- Amends the definition of "physician" to mean a person licensed to practice medicine under ch. 458, F.S, or ch. 459, F.S., whose license is unencumbered and in good standing.
- Amends the definition of "promoter" to include "any entity" in addition to "any person" in current law. It also amends the definition to include the trustee or partner of a corporate partner or any promoter partnership. Current law does not reference promoter partnerships.
- Amends the definition of "purse" to include the professional's share of any payment from pay-per-view or closed circuit. Current law is limited to payment from radio broadcasts and television.
- Amends the definition of "second" or cornerman" to mean a person who assists a participant in preparing for a match and between rounds. Current law limits the definition to a person who assists the match participant between rounds.
- Creates a definition of "unarmed combat" in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

Section 2 amends s. 548.004(1), F.S., modify the duties and responsibilities to be performed by the executive director of the commission, as set forth by the commission. Pursuant to the bill, the executive director must:

- Conduct the functions of the commission office.

[22] Ground fighting involves hand-to-hand combat with the combatants are on the ground. This type of combat generally involving grappling. *See* http://en.wikipedia.org/wiki/Ground_fighting [Last visited March 8, 2014].
[23] Muay Thai is a combat sport from the muay martial arts of Thailand. *See* http://www.wmcmuaythai.org/about (Last visited March 25, 2014).

- Appoint event and commission officials.
- Approve licenses, permits, and matches.
- Perform other duties as the department or commission deems necessary to fulfill the duties of the position.

The bill authorizes the executive director to issue subpoenas and administer oaths to witnesses, permitholders, record custodians, and licensees.

In addition, the bill repeals the requirement that the commission require electronic recording of all its scheduled proceedings. Section 455.203(7), F.S., also requires all proceedings conducted by the department be electronically recorded.

Section 3 amends s. 548.006(3), F.S., to clarify the commission's existing jurisdiction over professional and amateur boxing, kickboxing, and mixed martial arts matches as well as amateur mixed martial arts matches held in the state.

As with boxing and kickboxing, these changes clarify that the commission has oversight over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for mixed martial arts matches held in Florida. Nothing in the bill affects the commission's exclusive jurisdiction over amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state.

Section 4 amends s. 548.007, F.S., clarify existing exemptions to ch. 548, F.S., as well as create new exemptions from ch. 548, F.S. The exemptions include:

- A match that does not allow full contact, if the match is limited to amateurs.
- A match conducted or sponsored by a company or detachment of the Florida National Guard or the United States Armed Forces, if the match is limited to amateurs who are members of a company or detachment of the Florida National Guard or United States Armed Forces.
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateurs and is held in conjunction with a charitable event.
- A match conducted by or between a public postsecondary education institution or public K-12 school as defined in s. 1000.04, F.S., if the match is limited to amateurs who are members of a school-sponsored club or team.
- A match conducted by the International Olympic Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics.
- A professional or amateur "martial arts activity." As used in this exemption, the term "martial arts" means one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination, including, but not limited to, karate, aikido, judo, and kung fu; however the term does not include mixed martial arts.

The bill eliminates the existing exemption found in s. 548.007(1), F.S., for a bona fide non-profit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing, if the match held, in conjunction with the instruction, is limited to amateur

participants who are students of the school or instructional program. Instead, that exemption is replaced by s. 548.007(6), F.S., which encompasses a larger group of businesses and individuals.

Section 5 repeals s. 548.013, F.S., to eliminate the requirement that foreign copromoters be licensed by the commission. Foreign copromoters are promoters with their licenses located outside of the state of Florida. The commission issues licenses to promoters, regardless of the location of their licensure, and therefore has no licensed foreign copromoters. The also deletes the definition for the term "foreign copromoter" in s. 548.002(10), F.S.

Section 6 amends s. 548.014, F.S., to delete references to the term "foreign copromoters."

Section 7 repeals s. 548.015, F.S., which authorizes the commission to require that concessionaires file a surety bond as a condition for a license.

Section 8 amends s. 548.017, F.S., to delete the requirement that concessionaires must be licensed by the commission. Additionally, the bill adds promoters to the list of individuals or entities who directly or indirectly act in specific capacities in connection with any match involving a participant and who are required to obtain a license under s. 548.017, F.S.

Section 9 amends s. 548.046(3)(c), F.S., to provide that a participant's failure or refusal to provide a urine sample immediately upon request constitutes an immediate, serious danger to the health, safety, and welfare of the person's opponent. This results in the immediate suspension of the participant's license, rather than a revocation of that license under current law.

The bill also deletes provisions that provide that the loser of a match who subsequently does not provide a urine sample forfeits his or her share of the purse. The bill provides that the decision shall be changed to a no decision result, which under current law requires the distribution of the purse as though the participant who failed to provide a urine sample had lost the match.

The bill creates s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule,[24] the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. The participants shall be immediate suspended under s. 120.60(6), F.S., and subject to additional disciplinary action.

Section 10 amends s. 548.052, F.S., to delete references to the term "foreign copromoter."

The bill also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

Section 11 amends s. 548.054(2), F.S., to provide that, within 10 days after the match, a person who has had a purse withheld is entitled to submit a petition for a hearing to the commission pursuant to s. 120.569, F.S. Additionally, the bill requires the commission to hold the hearing pursuant to ss. 120.569 and 120.57, F.S.

[24] *See* rule 61K1-1.0043, F.A.C.

Section 12 amends s. 548.06(1)(a), F.S., to provide that promoters must report and pay the five percent tax on gross receipts within 72 hours after a match except as provided in s. 548.06(4), F.S. The bill also amends s. 548.06, F.S., to use the term "gross receipts" instead of "total gross receipts."

The bill deletes the requirement in s. 548.06(1)(b), F.S., that the promoter report and pay the five percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill amends s. 548.06(1)(b), F.S., to provide that the amount of gross receipts reported to the commission must include the face value of all tickets sold and complimentary tickets issued, provided, or given above five percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2).

The bill creates s. 548.06(2), F.S., to provide for the authorization of complimentary tickets by the commission. It permits promoters to issue, provide, or give, complimentary tickets for up to five percent of the seats in the house designated for use in the event, equally distributed between or among the price categories for which they were issued, without the commission's written authorization. Promoters do not have to include the face value of these complimentary tickets when calculating the gross receipts tax in s. 548.06(4), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than five percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The bill creates s. 548.06(2)(a), F.S., to provide that the commission may not consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The bill creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than five percent of the seats in the house without written authorization. However, the promoter must include the face value of such tickets when calculating the gross receipts tax.

The bill creates s. 548.06(2)(c), F.S., to provide the classes of persons to whom the commission may authorize promoters to give complimentary tickets. If authorized by the commission, complimentary tickets provided to reserve or active members of the United States Armed Forces and the National Guard, military veterans, and not for profit organizations would not be included in the calculation of the gross receipts tax.

The bill creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization from the commission for giving "more than 5 percent complimentary tickets". A promoter must submit an application, on a form adopted by the commission, no later than two business days before the date of the professional event. The bill requires that the application must include, at a minimum, the date, time, and location of the event, the number of complimentary tickets being requested, the percentage of total tickets issued for the seats in the house designated for use in the event being requested as complimentary tickets, and which individuals or entities will receive the complimentary tickets.

Section 548.06(2)(d)2., F.S., requires that the promoter maintain the documentation that evidences that the tickets were given to individuals or entities that fall into the categories listed in s. 548.06(2)(c), F.S., and provides that the commission may audit these records, as provided in s. 548.06(7), F.S.

Section 548.06(2)(e), F.S., requires that the commission, executive director, or his or her designee, must deny or approve the application. The commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above five percent. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed five percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2)(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for setting limits on complimentary tickets or determining which portion of the requested percentage above five percent it may authorize.

The bill requires that the commission, executive director, or his or her designee must provide the decision in writing to the promoter at least one business day before the start of the event, with an explanation for the denial, approval, or any limitation on the approval. A promoter remains responsible for complying with other reporting and taxation requirements as set forth in ch. 548, F.S.

The bill deletes the provision in s. 548.06(2), F.S., that classifies promoters as the persons who have rights to telecast a match or matches held in this state, that requires that they must be licensed as a promoter, and requires that they file with the commission a written report of the number of tickets sold, the amount of gross receipts within 72 hours after the sale, transfer, or extension of such rights in whole or in part.

The bill deletes the provision in s. 548.06(3), F.S., that requires concessionaires to file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.

The bill amends s. 548.06(4), F.S., to include pay-per-view rights in place of motion picture rights. It also limits the provision to matches occurring within the state. The bill provides that, if a promoter remits the maximum tax amount of $40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of $40,000 has been remitted for such taxes on a form provided by the commission. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The bill creates s. 548.06(6), F.S., to require the promoter to keep a copy of certain records for one year, including records necessary to justify and support the reports submitted to the commission, copies of independently prepared ticket manifests, and records to verify compliance with the complimentary tickets requirements. It is not clear if one year is sufficient for the commission to be able to conduct audits of the records. Current law does not require promoters to retain records relating to the reporting of gross receipts under s. 548.06, F.S.

The bill creates s. 548.06(7), F.S., to provide that compliance with the reporting requirements in s. 548.06, F.S., is subject to verification by department or commission audit. The commission is authorized to audit a promoter's books and records relating to the promoter's operations upon reasonable notice.

The bill creates s. 548.06(8), F.S., to direct the commission to adopt rules establishing a procedure for auditing a promoter's records, for resolving any inconsistencies revealed in the audit, and imposing a late fee if taxes are owed.[25]

Section 13 amends s. 548.07, F.S., to provide an emergency license suspension procedure. The bill authorizes the commission, any commissioner, the executive director or his or her designee, or any commission designee to issue an emergency suspension of a licensee's license when the licensee poses an immediate and serious danger to the health, safety, and welfare of the public, a licensee, or a participant.

In addition, the bill requires the general counsel of the department to review the grounds for each emergency suspension order and to file an administrative complaint against the licensee within 21 days after issuance of an emergency suspension order. The bill repeals the current suspension procedure, including the requirement that the commission must hold a hearing within ten days after the date on which the license or permit is suspended.

The disciplinary process would proceed under ch. 120, F.S., after the administrative complaint is served on the licensee as provided in s. 455.275, F.S.[26]

Section 14 amends s. 548.073, F.S., to provide the hearing held under ch. 548, F.S., must be held in accordance with the Administrative Procedure Act (ch. 120, F.S.). The bill repeals the provision authorizing any member of the commission to hold a hearing and the requirement that, before any adjudication is rendered, a majority of the members of the commission must examine the record and approve the adjudication and order.

Section 15 provides an appropriation of $111,000 in recurring funds from the General Revenue Fund to the department for the implementation of the act during the 2014-2015 fiscal year.

Section 16 provides bill takes effect on July 1, 2014.

[25] Section 548.075(1), F.S., authorizes the commission to impose a fine of not more than $5,000 for any violation of ch. 548, F.S., in lieu of or in addition to any other punishment provided for such violation.

[26] Section 455.275, F.S., provides the procedure for service of a compliant on a licensee of the department. For administrative complaints, s. 455.275(3), F.S., the department is required to serve the licensee by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail. If the department is unable to serve the license by these methods, the department must call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and must also send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In section 12 of the bill, s. 548.06(2), F.S., is amended to allow promoters to issue complimentary tickets for up to five percent of the seats in the house for an event. If the promoter wants to give or issue additional complimentary tickets, the commission, executive director, or his or her designee must approve any amount in excess of the five percent threshold. The bill's only criteria for the commission's authorization of additional complimentary tickets are for those classes of persons specified in ss. 548.06(2 (c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for the setting of limits on the number or percentage of complimentary tickets or to determine which portion of the requested percentage above five percent that may be authorized. To the extent that this paragraph authorizes the commission to set limitations on complimentary tickets or approve or deny issuance of complimentary tickets other than as specified in ss. 548.06(2)(a)-(c), F.S., the authority may constitute an unconstitutional delegation of legislative authority.

An invalid delegation of authority violates the principle of separation of powers in Article II, s. 3, Florida Constitution.[27] When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when delegating the duties.[28] The executive branch must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed.[29] The bill may constitute and unconstitutional delegation of authority because it fails to provide the commission with any standards by which to judge the appropriateness of its actions.

[27] *Gallagher v. Motors Insurance Corp.*, 605 So. 2d 62 (Fla. 1992).
[28] *Askew v. Cross Key Waterways*, 372 So. 2d. 913 (Fla. 1978); *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So. 2d 357 (Fla. 1st DCA 1996).
[29] *Florida Home Builders Association v. Division of Labor*, 367 So. 2d 219 (Fla. 1979).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under CS/SB 810, the deregulation of concessionaires and booking agents, and lower post-event tax payments is anticipated to reduce the commission's revenues by $95,750.[30] That revenue, in part, currently supports the commission's operations. Any additional revenues from late fees on post-event taxes and pay-per-view taxes are indeterminate, but expected to be insignificant.

Late Fees

The bill directs the commission to adopt a rule imposing a late fee on taxes owed the commission. Any revenue collections based on imposing a late fee on post-event taxes are expected to be insignificant. The commission estimated in 2013 that had a late fee been imposed in Fiscal Year 2011-2012, the fee revenues collected would have been approximately $6,915.[31] The fee revenue estimate is based on total post-event taxes collected of $115,258, a 10 percent penalty imposed, with 60 percent of estimated tax reports being filed late. The commission indicated with the implementation of accountability measures in 2013, the amount of post-event tax collections which are received late will likely decline in future years, thereby reducing any late fee revenues from the estimated Fiscal Year 2011-2012 collection amount.

Pay-Per-View Tax

The bill provides that gross receipts includes the gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. The bill effectively reinstates part of the "pay-per-view tax" for in-state matches, which was eliminated in 2012. However, the bill only reinstates the tax on matches held within the state of Florida, not the tax on pay-per-view for matches held outside of Florida.

The commission indicated that pay-per-view matches occurring within the state of Florida generated $1,484 in Fiscal Year 2009-2010 and $2,138 in Fiscal Year 2010-2011.[32] The expected fiscal impact of this tax reinstatement is positive, but indeterminate at this time.

Deregulation of Booking Agents

The bill provides that booking agents and concessionaires would no longer need to obtain licensure from the Commission in order to practice in their field. The department

[30] *2014 Legislative Bill Analysis for CS/SB 810*, Department of Business and Professional Regulation (April 4, 2014 on file with the General Government Appropriations Subcommittee).
[31] Department of Business and Professional Regulation, Estimated post-event tax penalties for late fees, correspondence with staff of the General Government Appropriations Subcommittee, March 14, 2013, (on file with the subcommittee).
[32] Department of Business and Professional Regulation, total revenue from pay-per-view matches occurring within the state of Florida, FY 2009-10 and 2010-11, correspondence with staff of the Business & Professional Regulation Subcommittee, March 7, 2014, (on file with the General Government Appropriations Subcommittee).

estimates a reduction in revenue from loss of licensure fees for booking agents to be approximately $150 per year.[33]

Concessions

The bill eliminates receipts from concessions from the calculation of gross receipts for the promoters' tax liability purposes. Additionally, the bill deregulates concessionaires. The department estimates a reduction to post-event taxes related to concessions of approximately $55,000 per year.[34] Furthermore, the department estimates a reduction in revenue from loss of licensure fees for concessionaires to total approximately $600 per year.[35]

Complimentary Tickets

The bill provides that complimentary tickets for up to five percent of the seating capacity of the house are not included in gross receipts or the corresponding post-event taxes. The department estimates, based on a review of prior year data, that the commission would collect $40,000 less in post-event taxes related to the issuance of complimentary tickets.[36] The department's estimate is based on the assumption that promoters would not issue complimentary tickets in excess of that percentage. The department did not provide an estimate to cover any complimentary tickets granted over the five percent, if the promoter obtains authorization from the commission to issue more.

Promoters often issue complimentary tickets when the tickets have not sold prior to the event in order to recoup some cost through the sales of concessions to the individuals who receive the complimentary tickets. Often the complimentary tickets issued would never have sold prior to the event date. The commission would not have included the unsold tickets in the gross receipts and would not have received the five percent post-event tax for the sale of the tickets.

B. Private Sector Impact:

The bill deletes the licensure requirements for concessionaires and booking agents. The current license fee for concessionaires is $100; the fee is $75 for booking agents. Concessionaires would also not be required to report and pay taxes on gross receipts.

Additionally, permitting five percent of seats in a house be issued as complimentary tickets without being included in gross receipts or paying post-event taxes on the tickets lowers the costs of holding events in the state of Florida.

[33] *2014 Legislative Bill Analysis for CS/SB 810*, Department of Business and Professional Regulation (April 4, 2014 on file with the General Government Appropriations Subcommittee).
[34] *Id*.
[35] *Id*.
[36] *Id.*

C. Government Sector Impact:

The department anticipates a loss in taxation and licensure fee revenue of $95,750.[37] In addition, as a result of the estimated $95,750 reduction in taxes and license fees, there will be a $7,660 annual reduction in the service charge paid to the General Revenue Fund.[38] The bill appropriates $111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2014-2015 fiscal year in order to offset this expected revenue loss.

VI. Technical Deficiencies

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 548.002, 548.004, 548.006, 548.007, 548.014, 548.017, 548.046, 548.052, 548.054, 548.06, 548.07, and 548.073.

This bill repeals the following sections of the Florida Statutes: 548.013 and 548.015.

IX. Additional Information:

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

CS by Regulated Industries on March 13, 2014:
The committee substitute differs from the underlying bill in that it makes:

- Technical changes throughout the bill.
- Removes the concept of foreign copromoters from chapter 548, F.S.
- Expressly provides that disciplinary action by the Florida State Boxing Commission must comply with chapter 120, F.S., the Administrative Procedure Act.
- Establishes procedures for a promoter to seek the approval of the commission to issue complimentary tickets to an event in excess of a five percent threshold and avoid liability for gross receipts taxes that would otherwise apply to the tickets.
- Provides that a promoter who pays the maximum tax applicable to the sale or lease of broadcast rights is not required to disclose to the commission the price charged for the sale of the broadcast rights.

[37] *Id*.
[38] *Id*.

B. Amendments:

None.

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

By the Committee on Regulated Industries; and Senator Galvano

580-02556A-14 2014810c1

A bill to be entitled

An act relating to pugilistic exhibitions; amending s. 548.002, F.S.; revising definitions; amending s. 548.004, F.S.; revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of commission proceedings; amending s. 548.006, F.S.; clarifying the commission's exclusive jurisdiction over approval of amateur and professional boxing, kickboxing, and mixed martial arts matches; amending s. 548.007, F.S.; revising applicability of ch. 548, F.S.; repealing s. 548.013, F.S.; relating to foreign copromoter license requirement; amending s. 548.014, F.S.; deleting references to foreign copromoters; repealing s. 548.015, F.S., relating to the authority of the commission to require a concessionaire to file a form of security with the commission; amending s. 548.017, F.S.; deleting a requirement for the licensure of concessionaires; amending s. 548.046, F.S.; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; amending s. 548.052, F.S.; deleting a reference to foreign copromoters; amending s. 548.054, F.S.; revising procedures and requirements for requesting a hearing following the withholding of a purse; amending s. 548.06, F.S.; specifying a circumstance under which a report is not

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required to be filed with the commission; revising the calculation of gross receipts that are required to be filed in a report to the commission; requiring promoters to retain specified documents and records; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter; requiring the commission to adopt rules; amending s. 548.07, F.S.; revising the procedure for suspension of licensure; amending s. 548.073, F.S.; requiring that commission hearings be held in accordance with ch. 120, F.S.; providing an appropriation; providing an effective date.

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

Section 1. Section 548.002, Florida Statutes, is amended to read:

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

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for the expenses of training or for participating in a match, other than a prize of $50 or less in value ~~or less~~.

(2) "Amateur sanctioning organization" means a ~~any~~ business entity organized for sanctioning and supervising matches involving amateurs.

(3) "Boxing" means the unarmed combat sport of fighting by striking with fists ~~to compete with the fists~~.

(4) "Commission" means the Florida State Boxing Commission.

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~~(5) "Concessionaire" means any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.~~

(5)~~(6)~~ "Contest" means a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive ~~earnestly~~ to win using~~, but not necessarily being limited to,~~ strikes and blows to the head or other full-contact maneuvers.

(6)~~(7)~~ "Department" means the Department of Business and Professional Regulation.

(7)~~(8)~~ "Event" means one or more matches comprising a show.

(8)~~(9)~~ "Exhibition" means a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using~~, but not necessarily being limited to,~~ strikes and blows to the head or other full-contact maneuvers.

(9) "Face value" means the dollar value of a ticket equal to the dollar amount that a customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the event. If the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes are not included in the face value.

(10) "Full contact" means the use of strikes and blows during a match which:

(a) Are intended to break the plane of the receiving participant or amateur's body;

(b) Are delivered to the head, face, neck, or body of the

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receiving participant or amateur; and

(c) Cause the receiving participant or amateur to move in response to the strike or blow.

~~(10) "Foreign copromoter" means a promoter who has no place of business within this state.~~

(11) "Judge" means a person licensed by the commission who evaluates and scores a match using a designated scoring system ~~who has a vote in determining the winner of any contest~~.

(12) "Kickboxing" means the unarmed combat sport of fighting by striking ~~to compete~~ with the fists, hands, feet, legs, or any combination thereof~~, and includes "punchkick" and other similar competitions~~. The term does not include any form of ground fighting techniques.

(13) "Manager" means a ~~any~~ person who, directly or indirectly, controls or administers the boxing, kickboxing, or mixed martial arts affairs of a ~~any~~ participant.

(14) "Match" means a ~~any~~ contest or exhibition.

(15) "Matchmaker" means a person who brings together professionals or arranges matches for professionals.

(16) "Mixed martial arts" means the unarmed combat sport involving the use~~, subject to any applicable limitations set forth in this chapter,~~ of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from different disciplines of the martial arts, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling ~~grappling, kicking, and striking~~.

(17) "Participant" means a professional competing in a boxing, kickboxing, or mixed martial arts match.

(18) "Physician" means a person who is approved by the

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commission, who is ~~an individual~~ licensed to practice medicine under chapter 458 or chapter 459, and whose license is unencumbered and in good standing ~~to practice medicine and surgery in this state~~.

(19) "Professional" means a person who has received or competed for a ~~any~~ purse or other article of a value greater than $50, either for the expenses of training or for participating in a ~~any~~ match.

(20) "Promoter" means a ~~any~~ person or entity, including an ~~and includes any~~ officer, director, trustee, partner ~~employee~~, or owner ~~stockholder~~ of a corporate promoter or promoter partnership, who produces, arranges, or stages a ~~any~~ match involving a professional.

(21) "Purse" means the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional's share of any payment received for radio broadcasting and~~,~~ television, including pay-per-view or closed circuit ~~and motion picture rights~~.

(22) "Second" or "cornerman" means a person who assists a ~~the match~~ participant in preparing for a match and between rounds, and who maintains the corner of a ~~the~~ participant during a ~~the~~ match.

(23) "Secretary" means the Secretary of Business and Professional Regulation.

(24) "Unarmed combat" means a form of competition in which a strike or blow is struck which may reasonably be expected to inflict injury.

Section 2. Section 548.004, Florida Statutes, is amended to read:

548.004 Executive director; duties, compensation, administrative support.—

(1) The department shall employ an executive director with the approval of the commission. The executive director shall serve at the pleasure of the secretary. The executive director or his or her designee shall perform the duties specified by the commission, including conducting the functions of the commission office; appointing event and commission officials; approving licenses, permits, and matches; and performing any ~~keep a record of all proceedings of the commission; shall preserve all books, papers, and documents pertaining to the business of the commission; shall prepare any notices and papers required; shall appoint judges, referees, and other officials as delegated by the commission and pursuant to this chapter and rules of the commission; and shall perform such~~ other duties as the department or commission deems necessary to fulfill the duties of the position ~~directs~~. The executive director may issue subpoenas and administer oaths to witnesses, permitholders, record custodians, and licensees.

~~(2) The commission shall require electronic recording of all scheduled proceedings of the commission.~~

(2)~~(3)~~ The department shall provide assistance in budget development and budget submission for state funding requests. The department shall submit an annual balanced legislative budget for the commission which is based upon anticipated revenue. The department shall provide technical assistance and administrative support, if requested or determined necessary ~~needed~~, to the commission and its executive director on issues relating to personnel, contracting, property management, or

other issues identified as important to performing the duties of this chapter and to protecting the interests of the state.

Section 3. Section 548.006, Florida Statutes, is amended to read:

548.006 Power of commission to control professional and amateur boxing, kickboxing, and mixed martial arts matches ~~pugilistic contests and exhibitions~~; certification of competitiveness of professional mixed martial arts and kickboxing matches.—

(1) The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held within the state which involves a professional.

(2) As to professional mixed martial arts and kickboxing, until a central repository of match records for each exists and is approved by the commission, the matchmaker shall certify as to the competitiveness of each match.

(3) The commission has exclusive jurisdiction over approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, ~~and~~ kickboxing, and mixed martial arts matches held in this state.

(4) Professional and amateur matches shall be held in accordance with this chapter and the rules adopted by the commission.

Section 4. Section 548.007, Florida Statutes, is amended to read:

548.007 Exemptions.—This chapter does ~~Applicability of provisions to amateur matches and certain other matches or events.—Sections 548.001-548.079 do~~ not apply to any of the

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following:

(1) A match that does not allow full contact ~~conducted or sponsored by a bona fide nonprofit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing~~, if the match ~~held in conjunction with the instruction~~ is limited to amateur participants. ~~who are students of the school or instructional program;~~

(2) A match conducted or sponsored by a ~~any~~ company or detachment of the Florida National Guard or the United States Armed Forces, if the match is limited to amateurs ~~participants~~ who are members of a ~~the~~ company or detachment of the Florida National Guard or United States Armed Forces.~~; or~~

(3) A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateurs ~~amateur participants~~ and is held in conjunction with a charitable event.

(4) A match conducted by or between public postsecondary educational institutions or public K-12 schools, as defined in s. 1000.04, if the match is limited to amateurs who are members of a school-sponsored club or team.

(5) A match conducted by the International Olympic Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics.

(6) A professional or amateur martial arts activity. As used in this subsection, the term "martial arts" means one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination, including, but not limited to, karate, aikido, judo, and kung fu. The term

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does not include mixed martial arts.

Section 5. Section 548.013, Florida Statutes, is repealed.

Section 6. Subsections (1) and (2) of section 548.014, Florida Statutes, are amended to read:

548.014 Promoters ~~and foreign copromoters~~; bonds or other security.—

(1)(a) Before any license is issued or renewed to a promoter ~~or foreign copromoter~~ and before any permit is issued to a promoter ~~or foreign copromoter~~, she or he must file a surety bond with the commission in such reasonable amount, but not less than $15,000, as the commission determines.

(b) All bonds must be upon forms approved and supplied by the commission.

(c) The sufficiency of any surety is subject to approval of the commission.

(d) The surety bond must be conditioned upon the faithful performance by the promoter ~~or foreign copromoter~~ of her or his obligations under this chapter and upon the fulfillment of her or his contracts with any other licensees under this chapter. However, the aggregate annual liability of the surety for all obligations and fees may not exceed the amount of the bond.

(2) In lieu of a surety bond, the promoter ~~or foreign copromoter~~ may deposit with the commission cash or a certified check, in an equivalent amount and subject to the same conditions as the bond. Such security may not be returned to the promoter until 1 year after the date on which it was deposited with the commission unless a surety bond is substituted for it. If no claim against the deposit is outstanding, it shall be returned to the depositor 1 year after the date it was

deposited.

Section 7. Section 548.015, Florida Statutes, is repealed.

Section 8. Subsection (1) of section 548.017, Florida Statutes, is amended to read:

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

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

Section 9. Paragraph (c) of subsection (3) of section 548.046, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

548.046 Physician's attendance at match; examinations; cancellation of match.—

(3)

(c) A participant who fails or refuses ~~Failure or refusal~~ to provide a urine sample immediately upon request shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. If a participant fails or refuses to provide a urine sample, his or her license shall be immediately suspended pursuant to

s.120.60(6), and such failure or refusal is grounds for additional disciplinary action ~~result in the revocation of the participant's license~~. ~~Any participant who has been adjudged the loser of a match and who subsequently refuses to or is unable to provide a urine sample shall forfeit his or her share of the purse to the commission~~. A ~~Any~~ participant who is adjudged the winner of a match and who subsequently refuses to or is unable to provide a urine sample forfeits ~~shall forfeit~~ the win ~~and shall not be allowed to engage in any future match in the state~~. The decision shall be changed to a no-decision result and ~~shall be~~ entered into the official record ~~as the result of the match~~. The purse shall be redistributed as though the participant found to be in violation of this subsection had lost the match. ~~If redistribution of the purse is not necessary or after redistribution of the purse is completed, the participant found to be in violation of this subsection shall forfeit his or her share of the purse to the commission.~~

(d) If a participant tests positive for a prohibited substance as specified by commission rule, the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. The participant's license shall be immediately suspended pursuant to s. 120.60(6), and subject to additional disciplinary action.

Section 10. Section 548.052, Florida Statutes, is amended to read:

548.052 Payment of advances by promoter ~~or foreign copromoter~~ regulated.—A promoter ~~or foreign copromoter~~ may not pay, lend, or give a participant an advance against her or his purse before a contest, except with the prior written permission

of the commission or the executive director, or his or her designee ~~a commissioner~~; and, if permitted, such advance may be made only for expenses for transportation and maintenance in preparation for a contest.

Section 11. Subsection (2) of section 548.054, Florida Statutes, is amended to read:

548.054 Withholding of purses; hearing; disposition of withheld purse forfeiture.—

(2) Any purse so withheld shall be delivered by the promoter to the commission upon demand. Within 10 days after the match, the person from whom the sum was withheld may submit a petition for a hearing to the commission pursuant to s. 120.569 ~~apply in writing to the commission for a hearing~~. Upon receipt of the petition ~~application~~, the commission shall hold ~~shall fix a date for~~ a hearing pursuant to ss. 120.569 and 120.57. ~~Within 10 days after the hearing or after 10 days following the match,~~ If no petition ~~application~~ for a hearing is filed, the commission shall meet and determine the disposition ~~to be made~~ of the withheld purse. If the commission finds the charges sufficient, it may declare all or ~~any~~ part of the funds forfeited. If the commission finds the charges insufficient ~~not sufficient upon which to base a withholding order~~, it shall immediately distribute the withheld funds to the appropriate persons ~~entitled thereto~~.

Section 12. Section 548.06, Florida Statutes, is amended to read:

548.06 Payments to state; exemptions; audit of records.—

(1) Except as provided in subsection (4), a promoter holding a match shall, within 72 hours after the match, file

with the commission a written report that ~~which~~ includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require. For the purposes of this chapter, ~~total~~ gross receipts include each of the following:

(a) The gross price charged for the sale or lease of broadcasting, television, and pay-per-view ~~motion picture~~ rights of any match occurring within the state without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses or charges.~~;~~

~~(b) The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;~~

(b) ~~(c)~~ The face value of all tickets sold and complimentary tickets issued, provided, or given above 5 percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2).~~; and~~

(c) ~~(d)~~ The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promotion of an event.

(2) A promoter may issue, provide, or give complimentary tickets for up to 5 percent of the seats in the house designated for use in the event, equally distributed between or among the price categories for which complimentary tickets are issued, without including the face value of such tickets issued, provided, or given, in gross receipts, and without paying the taxes required in subsection (4). If a promoter wishes to issue, provide, or give complimentary tickets for more than 5 percent of the seats in the house designated for use in the event without including the face value of such tickets issued, provided, or given, in gross receipts, the promoter must obtain

written authorization from the commission or the executive director, or his or her designee ~~Where the rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission are in whole owned by, sold to, acquired by, or held by any person who intends to or subsequently sells or, in some other manner, extends such rights in part to another, such person is deemed to be a promoter and must be licensed as such in this state. Such person shall, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.~~

(a) The commission may not consider complimentary tickets that it authorizes under this subsection as part of the total gross receipts from admission fees.

(b) A promoter may issue, provide, or give complimentary tickets for more than 5 percent of the seats in the house designated for use in the event without obtaining written authorization from the commission, the executive director, or his or her designee if the promoter includes the face value of such tickets issued, provided, or given over 5 percent of the seats in the house designated for use in the event in gross receipts and pays the taxes as required in subsection (4).

(c) The commission, the executive director, or his or her designee, may authorize more than 5 percent of the tickets to be issued as complimentary tickets to the following:

1. Reserve or active members of the United States Armed Forces or National Guard;

2. A veteran, as defined in s. 1.01(14). The veteran need

not have served during wartime periods of service as listed under s. 1.01(14) or in a campaign or expedition for which a campaign badge has been authorized; and

3. Not-for-profit organizations with tax-exempt status pursuant to s. 501(c)(3) of the United States Internal Revenue Code.

(d) A promoter who wishes to obtain authorization to issue more than 5 percent complimentary tickets shall:

1. Submit an application adopted by the commission no later than 2 business days before the date of the professional event. The application must include, at a minimum, the date, time, and location of the event, the number of complimentary tickets being requested, the percentage of total tickets issued for the seats in the house designated for use in the event being requested as complimentary tickets, and which individuals or entities will receive the complimentary tickets.

2. Maintain documentation evidencing that the tickets were given to individuals or entities that fall into the categories listed in paragraph (c). These documents are subject to auditing requirements as set forth in subsection (7).

(e) The commission, executive director, or his or her designee shall deny or approve the application. The commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent. The commission, executive director, or his or her designee shall provide the decision in writing to the promoter at least 1 business day before the start of the event, with an explanation for the denial or approval and an explanation for any limitation on the approval. The promoter

remains responsible for complying with other reporting and taxation requirements as set forth in this chapter.

~~(3) A concessionaire shall, within 72 hours after the match, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.~~

(3)~~(4)~~ A ~~Any~~ written report required to be filed with the commission under this section must ~~shall~~ be postmarked within 72 hours after the conclusion of the match, and an additional 5 days is ~~shall be~~ allowed for mailing.

(4)~~(5)~~ Each ~~the~~ written report must ~~shall~~ be accompanied by a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes, except that the tax payment derived from the gross price charged for the sale or lease of broadcasting, television, and pay-per-view ~~motion picture~~ rights of any match occurring within the state may ~~shall~~ not exceed $40,000 for a ~~any~~ single event. If a promoter remits the maximum tax amount of $40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of $40,000 has been remitted for such taxes on a form provided by the commission. The promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

(5)~~(6)~~(a) A ~~Any~~ promoter who willfully makes a false and fraudulent report under this section commits ~~is guilty of~~ perjury and, upon conviction, is subject to punishment as provided by law. Such penalty is ~~shall be~~ in addition to any

other penalties imposed under ~~by~~ this chapter.

(b) A ~~Any~~ promoter who willfully fails, neglects, or refuses to make a report or to pay the taxes as prescribed or who refuses to allow the commission to examine the books, papers, and records of a ~~any~~ promotion commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) A promoter shall retain a copy of the following records for 1 year and provide a copy of the following records to the commission upon request:

(a) Records necessary to support each report submitted to the commission, including a copy of any report filed with the commission.

(b) A copy of each independently prepared ticket manifest.

(c) Documentation verifying the issuance of complimentary tickets approved by the commission pursuant to subsection (2) to individuals or entities which meet the requirements as set forth in paragraph (2)(c).

(7) Compliance with this section is subject to verification by department or commission audit. The commission may, upon reasonable notice to the promoter, audit a promoter's books and records relating to the promoter's operations under this chapter.

(8) The commission shall adopt rules establishing a procedure for auditing a promoter's records and resolving any inconsistencies revealed by an audit and shall adopt a rule imposing a late fee in the event of taxes owed.

Section 13. Section 548.07, Florida Statutes, is amended to read:

548.07 Suspension of license or permit by commissioner; hearing.—

(1) The commission or the executive director, or his or her designee, may issue an emergency suspension order pursuant to s. 120.60(6), suspending the license of any person or entity licensed under this chapter who poses an immediate, serious danger to the health, safety, and welfare of the public or the participants in a match.

(2) The department's Office of General Counsel shall review the grounds for each emergency suspension order issued and, if sufficient, shall file an administrative complaint against the licensee within 21 days after the issuance of the emergency suspension order.

(3) After service of the administrative complaint pursuant to the procedure of s. 455.275, the disciplinary process shall proceed pursuant to chapter 120. ~~Notwithstanding any provision of chapter 120, any member of the commission may, upon her or his own motion or upon the verified written complaint of any person charging a licensee or permittee with violating this chapter, suspend any license or permit until final determination by the commission if such action is necessary to protect the public welfare and the best interests of the sport. The commission shall hold a hearing within 10 days after the date on which the license or permit is suspended.~~

Section 14. Section 548.073, Florida Statutes, is amended to read:

548.073 Commission hearings.—All hearings held under this chapter shall be held in accordance with chapter 120. ~~Notwithstanding the provisions of chapter 120, any member of the~~

~~commission may conduct a hearing~~. ~~Before any adjudication is rendered, a majority of the members of the commission shall examine the record and approve the adjudication and order.~~

Section 15. The sum of $111,000 in recurring funds is appropriated from the General Revenue Fund to the Department of Business and Professional Regulation for the implementation of this act by the Florida State Boxing Commission during the 2014-2015 fiscal year.

Section 16. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 10, 2014

Senator Joe Negron
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/SB 810, Pugilistic Exhibitions, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Cindy Kynoch, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 810 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 872
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senators Richter and Soto
SUBJECT:	Alzheimer's Disease
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Fav/CS**
2.	McVaney	McVaney	GO	**Favorable**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 872 makes a number of changes related to Alzheimer's disease that implement recommendations of the Purple Ribbon Task Force that was created by the Legislature in 2012.

The bill requires the Division of Emergency Management (DEM), in coordination with local emergency management agencies, to maintain a registry of persons with special needs using an electronic registration form and database. The bill requires memory disorder clinics and aging and disability resource centers, and authorizes licensed physicians and pharmacies, to provide information and assistance to individuals with special needs and their caregivers regarding special needs shelter registration.

The bill requires county health departments to staff special needs shelters with a person who is familiar with the needs of persons with Alzheimer's disease and requires that all special needs shelters establish sheltering areas for persons with Alzheimer's disease or related dementia.

The bill creates the Ed and Ethel Moore Alzheimer's Disease Research Program (Moore program) to fund research for the prevention and cure of Alzheimer's disease. The bill requires the Department of Elder Affairs to develop performance standards for memory disorder clinics and to condition contract funding on compliance with the standards.

The Department of Health would experience a negative fiscal impact of approximately $140,000 in recurring general revenue to implement the Moore program; however, the bill provides that implementation of the Moore program is subject to legislative appropriation. See Section V.

II. Present Situation:

Alzheimer's Disease

Alzheimer's disease is a progressive, degenerative disorder that attacks the brain's nerve cells and results in loss of memory, loss of cognitive and language skills, and behavioral changes.[1] Alzheimer's disease was named after Dr. Alois Alzheimer, a German physician who, in the early 1900's, cared for a 51-year-old woman suffering from severe dementia. Upon the woman's death, Dr. Alzheimer conducted a brain autopsy and found bundles of neurofibers and plaques in her brain which are distinguishing characteristics of what we call Alzheimer's disease today.[2]

More than five million Americans currently live with Alzheimer's disease, and that number is projected to rise to 16 million by 2050.[3] As the life expectancy for Americans has continued to rise, so has the number of new cases of Alzheimer's disease. For instance, in 2000 there were an estimated 411,000 new cases of Alzheimer's disease in the United States, and in 2010 that number was estimated to be 454,000 – a 10 percent increase.[4] The number is expected to rise to 959,000 new cases of Alzheimer's disease by 2050, a 130 percent increase from 2000.[5] Specifically in Florida, approximately 360,000 people age 65 or older had Alzheimer's disease in 2000, and in 2010 that number had risen to 450,000.[6]

As the number of people with Alzheimer's disease increases, so does the cost of caring for these individuals. In 2013, the aggregate cost for health care, long-term care, and hospice for persons with Alzheimer's and other dementia was estimated to be $203 billion. That number is projected to be $1.2 trillion by 2050.[7] A major contributing factor to the cost of care for persons with Alzheimer's disease is the fact that these individuals have more hospital stays, skilled nursing home stays, and home health care visits than older persons who do not have Alzheimer's disease. Research shows that 29 percent of individuals with Alzheimer's disease who have Medicare also have Medicaid coverage, which pays for nursing home care and other long-term care services.[8] The total Medicaid spending for people with Alzheimer's disease and other dementia in 2013 is projected to be $37 billion.[9]

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[1] Alzheimer's Foundation of America, *About Alzheimer's, Definition of Alzheimer's,* http://www.alzfdn.org/AboutAlzheimers/definition.html (last visited Feb. 25, 2014).
[2] Michael Plontz, *A Brief History of Alzheimer's Disease*, TODAY'S CAREGIVER, http://www.caregiver.com/channels/alz/articles/a_brief_history.htm (last visited Feb. 25, 2014).
[3] Alzheimer's Association., *Fact Sheet: 2013 Alzheimer's Disease Facts and Figures* (March 2013), *available at* http://www.alz.org/documents_custom/2013_facts_figures_fact_sheet.pdf (last visited Feb. 25, 2014).
[4] Alzheimer's Association., *2013 Alzheimer's Disease Facts and Figures*, 9 ALZHEIMER'S & DEMENTIA (Issue 2) at 20, *available at* http://www.alz.org/downloads/facts_figures_2013.pdf (last visited Feb. 25, 2014).
[5] *Id*.
[6] *Id*. at 21.
[7] *Id*. at 49.
[8] *Id*. at 39.
[9] *Id*. at 49.

In addition to the cost of health care, there is a significant cost associated with unpaid caregivers. An unpaid caregiver is primarily a family member but can also be other relatives or friends. These caregivers often provide assistance with daily activities, such as shopping for groceries, preparing meals, bathing, dressing, grooming, assisting with mobility, helping the person take medications, making arrangements for medical care, and performing other household chores. In 2012, 15.4 million unpaid caregivers provided an estimated 17.5 billion hours of unpaid care, valued at $216.4 billion.[10] In 2010, there were 1,015,000 million caregivers in Florida who provided an estimated value of unpaid care reaching nearly $14.3 million.[11]

Florida Purple Ribbon Task Force

In 2012, the Legislature established the Purple Ribbon Task Force (task force) within the Department of Elder Affairs (DOEA) to submit a report to the governor, the president of the Senate, and the Speaker of the House of Representatives on a comprehensive set of issues related to Alzheimer's disease and related forms of dementia. Specifically, the task force was required to: [12]

- Submit an interim study on state trends on persons with Alzheimer's disease and their needs;
- Assess the current and future impact of Alzheimer's disease and related forms of dementia on the state;
- Examine the existing industries, services, and resources addressing the needs of persons with Alzheimer's disease or a related form of dementia and their family caregivers;
- Examine the needs of persons of all cultural backgrounds having Alzheimer's disease or a related form of dementia and how their lives are affected by the disease from younger-onset, through mid-stage, to late-stage;
- Develop a strategy to mobilize a state response to Alzheimer's disease; and
- Hold public meetings and employ technological means to gather feedback on the recommendations submitted by persons having Alzheimer's disease or a related form of dementia and their family caregivers and by the general public.

Other issues required to be addressed by the task force included:

- The role of the state in providing community-based care, long-term care, family caregiver support, and assistance to persons who are in the early stages of Alzheimer's disease, who have younger-onset Alzheimer's disease, or who have a related form of dementia;
- The development of state policy with respect to persons having Alzheimer's disease or a related form of dementia;
- Surveillance of persons having Alzheimer's disease or a related form of dementia for the purpose of accurately estimating the number of such persons in the state;
- Existing services, resources, and capacity; including:
  - The type, cost, and availability of dementia services in the state;
  - Policy requirements and effectiveness for dementia-specific training for professionals providing care;
  - Quality care measures employed by providers of care;

[10] This number was established by using an average of 21.9 hours of care a week with a value of $12.33 per hour. (*Id.* at 30).
[11] *Id*. at 32.
[12] Ch. 2012-172, Laws of Fla.

- The capability of public safety workers and law enforcement officers to respond to persons having Alzheimer's disease or a related form of dementia;
- The availability of home and community-based services and respite care for persons having Alzheimer's disease or a related form of dementia and education and support services to assist their families and caregivers;
- An inventory of long-term care facilities and community-based services serving persons having Alzheimer's disease or a related form of dementia;
- The adequacy and appropriateness of geriatric-psychiatric units for persons having behavior disorders associated with Alzheimer's disease or other dementia;
- Residential assisted living options for persons having Alzheimer's disease or a related form of dementia;
- The level of preparedness of service providers before, during, and after a catastrophic emergency involving a person having Alzheimer's disease or a related form of dementia; and
- Needed state policies or responses.

As its final responsibility, the task force was required to submit final, date-specific recommendations in the form of an Alzheimer's disease state plan to the governor and Legislature by August 1, 2013.

The task force has issued its final report and recommendations.[13] Pertinent to this bill are the following recommendations:

- To allocate $10 million annually to support Alzheimer's disease research through a peer-reviewed grant program;[14]
- To develop a well-coordinated and dementia-capable emergency management system, including reforms to the special needs shelter and registry function;[15] and
- To fund memory disorder clinics according to performance standards and benchmark goals related to base level and incentive funding.[16]

Alzheimer's Research Funding

The U.S. budget bill passed by Congress and signed into law by President Barack Obama on January 17, 2014, contains increased funding for Alzheimer's disease initiatives. The new federal funding includes a $100 million increase for the National Institute on Aging (NIA)[17] for Alzheimer's research, which will be added to what the National Institutes of Health (NIH) estimates will be $484 million in Alzheimer's research funding across NIH in the 2013 federal fiscal year.[18]

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[13] Florida Department of Elder Affairs, *Purple Ribbon Task Force Final Report and Recommendations* (2013), *available at* http://elderaffairs.state.fl.us/doea/purple_ribbon/PRTF_final_report.pdf (last visited Feb. 26, 2014).
[14] *Id*. at 30.
[15] *Id*. at 64 – 66.
[16] *Id*. at 72 – 73.
[17] NIA is one of the 27 institutes and centers of the National Institutes of Health. NIA is the primary federal agency supporting and conducting Alzheimer's research.
[18] Alzheimer's Association, *Record $122 million increase for Alzheimer's disease signed into law by President Obama*, http://www.alz.org/news_and_events_law_by_obama.asp (last visited Feb. 26, 2014).

The NIA funds Alzheimer's Disease Centers (ADC) at major medical institutions with the goal of improving diagnosis and care and ultimately finding a way to cure and possibly prevent Alzheimer's disease. Although each center has its own unique area of emphasis, a common goal of the ADCs is to enhance research on Alzheimer's disease by providing a network for sharing new ideas and research results. Collaborative studies draw upon the expertise of scientists from many different disciplines. Currently, there are 29 NIA-funded centers, including one at the Mayo Clinic in Jacksonville.[19]

In 2002, the Legislature created the Florida Alzheimer's Center and Research Institute (institute) at the University of South Florida (USF).[20] The institute was governed by a not-for-profit corporation, acting as an instrumentality of the state, under the direction of its 16-member Board of Directors. Its mission related to research, education, treatment, prevention, and early detection of Alzheimer's disease.[21] In 2004, the Legislature renamed the institute the Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute (Byrd Institute) and funded it with a $15 million distribution from alcoholic beverage tax collections for the purposes of conducting research, developing and operating integrated data projects, and providing assistance to memory disorder clinics.[22] The 2006 Legislature replaced the automatic distribution with a recurring appropriation from general revenue and clarified that researchers from any university or established research institution were eligible for funding from the Byrd Institute.[23] The recurring appropriation was reduced to $13.5 million in 2007[24] and eliminated in 2008.[25] In 2009, the statute authorizing the Byrd Institute was substantially revised to establish the Institute as an entity within and operated by the USF and provided that its budget included any money specifically appropriated in the General Appropriations Act, or otherwise provided to it from private, local, state, or federal sources, or income generated by activities at the Byrd Institute.[26]

Section 430.501, F.S., creates the Alzheimer's Disease Advisory Committee, whose members are appointed by the governor, to advise the DOEA in the performance of its duties. The committee also has responsibility for awarding research grants to qualified entities from any funds made available to the DOEA through gifts, grants, or other sources.

Special Needs Shelters

The Comprehensive Emergency Management Plan (CEMP) is the master operations document for the state in responding to all catastrophic disasters and all emergencies, whether major or minor.[27] The CEMP, which is developed and maintained by the Division of Emergency Management (DEM), in coordination with local governments and agencies and organizations with emergency management responsibilities, defines the responsibilities of all levels of

[19] U.S. Department of Health & Human Services, National Institute on Aging, *Alzheimer's Disease Research Centers*, http://www.nia.nih.gov/alzheimers/alzheimers-disease-research-centers#florida (last visited Feb. 26, 2014).
[20] Ch. 2002-387, s. 191, Laws of Fla.; ch. 2002-389, s. 2, Laws of Fla.
[21] *Id.*
[22] Ch. 2004-2, ss. 3 & 5, Laws of Fla.
[23] Ch. 2006-182, s.12, Laws of Fla.
[24] Ch. 2007-332, Laws of Fla.
[25] Ch. 2008-113, Laws of Fla. The Institute received $1.25 million in FY 2013–2014 funding via an allocation to the USF Medical Center in the Department of Education's budget.
[26] Ch. 2009-60, s. 5, Laws of Fla.
[27] Section 252.35(2)(a), F.S.

government and private, volunteer, and non-governmental organizations that make up the State Emergency Response Team. In general, the CEMP assumes that all emergencies and disasters are local, but local governments may require state assistance.[28]

The CEMP includes a shelter component which provides policy guidance for sheltering people with special needs.[29] Specifically, it states:[30]

> All shelters must meet physical and programmatic accessibility requirements as defined by the Americans with Disabilities Act and Florida Accessibility Codes. Special Needs Shelters provide a higher level of attendant care than general population shelters. Any facility designated as a shelter must meet minimum safety requirements. To ensure consistency with state and national standards, guidelines and best practices, the Division has adopted the American Red Cross (ARC) 4496 Standards for Hurricane Evacuation Shelter Selection.[31]

Each local emergency management agency is required to maintain a registry of persons with special needs.[32] The information is used to identify people with special needs, people who may need assistance with transportation to the shelters, and to ensure that any area affected by an emergency or disaster has adequate special needs shelter capacity, staffing, equipment, and supplies.[33]

The DEM has lead responsibility for community outreach and education about registration and shelter stays.[34] However, community-based service providers, including home health agencies, hospices, nurse registries, and home medical equipment providers, and state agencies likely to serve individuals with special needs, including the Department of Children and Families, the Department of Health (DOH), the Agency for Health Care Administration, the Department of Education, the Agency for Persons with Disabilities, and the DOEA, are directed to provide registration information to all of their special needs clients and to collect registration information during the client intake process.[35]

The law further requires agencies that contract with providers for the care of people with disabilities or who are otherwise dependent on others for care, to include emergency and disaster

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[28] Florida Division of Emergency Management, *The State of Florida Comprehensive Emergency Management Plan*, 11, (Feb. 2012), *available at* http://floridadisaster.org/documents/CEMP/2012/2012%20State%20CEMP%20Basic%20Plan%20-%20Final.pdf (last visited Feb. 26, 2014). "Initial response is by local jurisdictions working with county emergency management agencies. It is only after local emergency response resources are exhausted, or local resources do not exist to address a given emergency or disaster that state emergency response resources and assistance may be requested by local authorities." (*Id.* at 19).

[29] A "person with special needs" means someone, who during periods of evacuation or emergency, requires sheltering assistance, due to physical impairment, mental impairment, cognitive impairment, or sensory disabilities. (Rule 64-3.010(1), F.A.C.)

[30] Florida Division of Emergency Management, *supra* note 28 at 35.

[31] *Available at* http://www.floridadisaster.org/Response/engineers/documents/newarc4496.pdf (last visited Feb. 26, 2014).

[32] Section 252.355(1), F.S.

[33] Florida Department of Health, *Senate Bill 872 Legislative Bill Analysis* (Feb. 5, 2014) (on file with the Senate Health Policy Committee).

[34] Section 252.355(2), F.S.

[35] Section 252.355(1) & (6), F.S.

planning conditions in their service contracts. Among other provisions, the contracts must include a requirement for the provider to have a procedure to help its clients register for special needs sheltering.[36]

The DOH, through county public health units, is tasked with lead responsibility, in coordination with the local emergency management agency, to recruit and staff special needs shelters with appropriate health care personnel, pursuant to a staffing plan developed at the local level.[37] Designation and operation of the shelter, however, remains the responsibility of the local emergency management agency, [38] although subject to operational standards established by rule of the DOH.[39]

Admission to a special needs shelter is subject to an assessment of the person's eligibility. A person is eligible if he or she:[40]

- Has special needs;
- Has care needs that exceed basic first aid that is available at the general emergency shelters; and
- Has impairments that are medically stable and do not exceed the capacity, staffing, and equipment of the shelter.

A shelter may accept someone whose needs exceed the eligibility criteria. Decisions related to shelter capacity, both available skills and equipment, are made by the local emergency management agency and the county public health department.[41]

Alzheimer's Disease Initiative

In 1985, the Florida Legislature created the Alzheimer's Disease Initiative (ADI) to provide a continuum of services to individuals with Alzheimer's disease and their families.[42] The ADI has four objectives: (1) to provide supportive services; (2) to establish memory disorder clinics; (3) to provide model day care programs to test new care alternatives; and (4) to establish a research database and brain bank to support research.[43] There are 15 memory disorder clinics throughout the state, 13 of which are state-funded.[44] The purpose of these clinics is to conduct research related to diagnostic technique, therapeutic interventions, and supportive services for persons with Alzheimer's disease and to develop caregiver-training materials.[45] According to the ADI, the memory disorder clinics are required to:

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[36] Section 252.356(3), F.S.
[37] Section 381.0303(1) & (2), F.S.
[38] Section 381.0303(2)(d), F.S.
[39] Section 381.0303(6), F.S., requires the DOH to adopt rules for the following: the definition of "person with special needs;" shelter services; practitioner and facility reimbursement; staffing levels; supplies and equipment; registration procedures; family and caretaker needs; and pre-event planning.
[40] Rule 64-3.020, F.A.C.
[41] *Id*.
[42] *See* ss. 430.501 – 430.504, F.S.
[43] Florida Department of Elder Affairs, *Summary of Programs & Services, Alzheimer's Disease Initiative* (Jan. 2013) at 91, *available at* http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS%20Section%20D.pdf (last visited Feb. 25, 2014).
[44] *Id*.
[45] Section 430.502(2), F.S.

- Provide services to persons suspected of having Alzheimer's disease or other related dementia;
- Provide four hours of in-service training during the contract year to all ADI respite and model day care service providers and develop and disseminate training models to service providers and the DOEA;
- Develop training materials and educational opportunities for caregivers and provide specialized training for caregivers and caregiver organizations;
- Conduct service-related applied research;
- Establish a minimum of one annual contact with each respite care and model day care service provider to discuss, plan, develop, and conduct service-related research projects; and
- Plan for the public dissemination of research findings through professional papers and to the general public.[46]

Individuals diagnosed with or suspected of having Alzheimer's disease are eligible for memory disorder clinic services. In Fiscal Year 2012-2013, Florida's memory disorder clinics received nearly $3 million in state funds and served an estimated 6,722 clients.[47]

Model day care programs have been established in conjunction with memory disorder clinics to test therapeutic models and provide day care services. These programs provide a safe environment where Alzheimer's patients can socialize with each other and receive therapeutic interventions designed to maintain or improve their cognitive functioning. Model day care programs also provide training for health care and social service personnel in the care of individuals with Alzheimer's disease or related memory disorders. There are currently four model day care programs in the state.[48]

The ADI also includes respite care services, which includes in-home, facility-based, emergency and extended care respite for caregivers who serve individuals with memory disorders.[49] In addition to respite care services, caregivers and consumers may receive supportive services essential to maintaining individuals with Alzheimer's disease or related dementia in their own homes. The supportive services may include caregiver training and support groups, counseling, consumable medical supplies, and nutritional supplements. Services are authorized by a case manager based on a comprehensive assessment. Alzheimer's Respite Care programs are established in all of Florida's 67 counties.[50]

Statutory Creation of Advisory Bodies, Commissions, or Boards

The statutory creation of any collegial body to serve as an adjunct to an executive agency is subject to certain provisions in s. 20.052, F.S. Such a body may only be created when it is found to be necessary and beneficial to the furtherance of a public purpose, and it must be terminated by the Legislature when it no longer fulfills such a purpose. The Legislature and the public must

[46] Florida Department of Elder Affairs, *supra* note 43 at 90-91.
[47] *Id*. at 96.
[48] *Id*. at 92.
[49] *Id*. at 91.
[50] *Id*.

be kept informed of the numbers, purposes, memberships, activities, and expenses of any collegial or advisory bodies.

Private citizen members of any advisory body (with exceptions for members of commissions or boards of trustees) may be appointed only by the governor, the head of the executive agency to which the advisory body is adjunct, the executive director of the agency, or a cabinet officer. Private citizen members of a commission or a board of trustees may be appointed only by the governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of section 5(a) of Article II of the State Constitution.

Members of agency advisory bodies serve four-year staggered terms and are ineligible for any compensation other than travel expenses, unless expressly provided otherwise in the State Constitution. Unless an exemption is specified by law, all meetings are public, and records of minutes and votes must be maintained.

III. Effect of Proposed Changes:

Section 1 requires the Division of Emergency Management (DEM) to develop a special needs shelter registration program by January 1, 2015, and to fully implement the program by March 1, 2015. The bill shifts responsibility for maintaining a special needs registry from the local emergency management agencies to the DEM, working in coordination with the local agencies. In effect, the bill centralizes the registry at the state level, although still providing access for local emergency management agencies. The bill directs the DEM to develop a uniform electronic registration form and database that may be used by local agencies to upload registration information they receive. The DEM is directed to develop and post on its website a brochure describing the registration procedures.

The bill adds memory disorder clinics and aging and disability resource centers to the existing list of providers and agencies that are required to: give registration information to their special needs clients; and assist emergency management by collecting registration information for persons with special needs during their program intake procedures and establishing education programs for their clients about the registration process and disaster preparedness. These duties are expanded under the bill to require the providers and agencies to also provide registration information to client caregivers and to register their special needs clients annually. The bill specifies that physicians and pharmacies may, but are not required to, perform all of these same duties.

Section 2 requires county health departments to ensure that special needs shelters are staffed with a person who is familiar with the needs of persons with Alzheimer's disease. In addition, the bill requires that all special needs shelters designate areas within the shelter for persons with Alzheimer's disease or related dementia in order to maximize their normal routines to the greatest extent possible. The bill specifies that the DOH must work in conjunction with the DEM to adopt rules related to the special needs shelters and includes forms within the scope of the DOH's rulemaking authority.

Section 3 creates the Ed and Ethel Moore Alzheimer's Disease Research Program (Moore program) within the DOH to fund research leading to prevention of or a cure for Alzheimer's disease. Long-term goals of the Moore program are to:

- Enhance the health of Floridians by researching improved prevention, diagnosis, treatment, and cure of Alzheimer's disease;
- Expand the foundation of knowledge relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease; and
- Stimulate activity in the state related to Alzheimer's disease research.

The program is modeled after the James and Esther King Biomedical Research Program that is established in s. 215.5602, F.S.

The bill specifies that:

- Moore program funds may be used only for grants and fellowships awarded through a competitive process and expenses related to program administration. Grants will be awarded by the state surgeon general on the basis of scientific merit.
- Funding applications may be submitted from any university or established research institute[51] in the state. Qualified investigators, regardless of institution, will have equal access to competitive funding.
- Implementation of the program is contingent upon a legislative appropriation.

In addition, the bill creates the 11-member Alzheimer's Disease Research Grant Advisory Board (board) within the DOH, as follows:

- The board consists of two gerontologists, two geriatric psychiatrists, two geriatricians, two neuroscientists, and three neurologists appointed by the state surgeon general to four-year terms, except that five of the initial appointees shall serve two-year terms. Initial appointments must be made by October 1, 2014. Appointees must have experience in Alzheimer's disease or related biomedical research. The board chair is elected by the members to serve as chair for two years. No board member may serve on the board more than two consecutive terms.
- The board must adopt internal organization procedures, as necessary, for its organization and establish and follow guidelines for ethical conduct to avoid conflicts of interest. A member may not participate in any discussion or decision related to a research proposal by any entity with which the member has a relationship, whether as governing board member, employee, or contracted party.
- Members of the board serve without compensation.
- The DOH must provide staff to the board.
- The board's role is to:
    - Advise the state surgeon general on the scope of the program and proposals to be funded;

[51] Currently, the DOH defines an "established research institute" as an organization that is any Florida nonprofit or foreign nonprofit covered under ch. 617, F.S., with a physical location in Florida, whose stated purpose and powers are scientific, biomedical or biotechnological research and/or development and is legally registered with the Florida Department of State, Division of Corporations. This includes federal government and non-profit medical and surgical hospitals including Veteran's Administration hospitals. Florida Department of Health, *James and Esther King Biomedical Research Program, Announcement of Funding Opportunity and Call for Applications* (2013-2014), *available at* http://www.research.fsu.edu/newsletters/2013/July/documents/2013-2014%20SUMMER%20CALL%20King%20Program.pdf (last visited Feb. 25, 2014).

  - Advise on program priorities and emphases;
  - Assist in the development of appropriate linkages to nonacademic entities; and
  - Develop and provide oversight of mechanisms for disseminating research results.
- The board must submit a fiscal year progress report to the governor, the president of the Senate, the speaker of the House of Representatives, and the state surgeon general by February 15 annually that includes:
  - A list of funded projects;
  - A list of funded researchers;
  - A list of publications in peer-reviewed journals involving research supported by grants or fellowships awarded under the Moore program;
  - The state ranking and total amount of Alzheimer's disease research funding received from the National Institutes of Health;
  - New grants for Alzheimer's disease research which were based on research funded by the Moore program;
  - Progress toward the goals of the Moore program; and,
  - Recommendations to further the mission of the Moore program.
- The activities of the board are exempt from ch. 120, F.S., the Administrative Procedure Act.
- The DOH is given rulemaking authority to implement the Moore program.

Section 4 changes the name of the memory disorder clinic operating in Brevard County from "The Memory Disorder Clinic, Inc." to "a memory disorder clinic operated by Health First."

The bill directs the DOEA to develop performance standards for memory disorder clinics; to include the standards as a condition of each clinic's funding contract; and to measure and score each clinic based on the standards.

Base-level funding standards must address, at a minimum, quality of care, comprehensiveness of services, and access to services.

Standards for incentive funding beyond base-level funding, subject to legislative appropriation, include:
- A significant increase in the volume of clinical services;
- A significant increase in public outreach to low-income and minority populations;
- A significant increase in the acceptance of Medicaid and commercial insurance policies; and
- Significant institutional financial commitments.

Section 5 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The research program created by CS/CS/SB 872, if funded, will have a positive fiscal impact on any private institutions or researchers who are awarded grants or fellowships under the program.

It is not clear, however, whether incentive funding for the memory disorder clinics, as contemplated by the bill, would be the result of a supplemental appropriation for the program or a redistribution of the existing appropriations.

C. Government Sector Impact:

The Division of Emergency Management (DEM) estimates the nonrecurring cost to develop, test, and implement the electronic registry at $400,000, and the recurring cost to maintain and house the system also at $400,000. The DEM has identified federal grant funding that will cover these costs.[52]

Local governments may incur costs related to facilities they now designate as special needs shelters due to the requirement to provide dedicated space at each for persons with Alzheimer's disease. Not all facilities may be able to accommodate the dedicated space requirement. The DOH suggests that the requirement may be addressed in those shelters that cannot provide dedicated secure shelter space that would prevent wandering and elopement, by providing increased security. The DOH estimates the cost at $480 per 24-hour period for each point of egress.[53]

The bill requires a minimum of one staff person at each special needs shelter who is familiar with the needs of patients with Alzheimer's disease. The DOH indicates that appropriate staffing would mean at least one nurse per facility and possibly a nurse's aide for any person who presents without a caregiver. Those county health departments whose special needs shelter personnel lack the expertise in Alzheimer's disease may need to contract for services through a nurse staffing company. The DOH estimates the cost per shelter for a 24-hour period at $1,560 for nurse coverage and an additional $432 for a nurse's aide to assist with any unaccompanied patients. Currently, there are 127 special

[52] Florida Department of Law Enforcement, *Senate Bill 872 Legislative Bill Analysis* (Feb. 26, 2014) (on file with the Senate Health Policy Committee).
[53] Florida Department of Health, *supra* note 33.

needs shelters statewide.[54] It is not possible to estimate how many shelters would be activated or for how long in any given year.

The Ed and Ethel Moore Alzheimer's Disease Research Program (Moore program) created under the bill, if funded, will have a positive fiscal impact on any public institutions or researchers employed at public institutions who are awarded grants or fellowships under the program.

The DOH anticipates recurring costs related to contract management, peer review, and support of the board under the Moore program. Total projected expenses are $129,503 in Fiscal Year 2014-2015 and $142,448 in Fiscal Year 2015-2016. Costs include two full-time equivalent positions and related expenses; peer review honoraria; and board support expenses.[55]

The bill provides that implementation of the Moore program is subject to legislative appropriation. The Senate has not included Moore program funding in its proposed budget bill[56] for Fiscal Year 2014-2015. The House of Representative included in its proposed budget bill[57] for Fiscal Year 2014-2015 an appropriation of $3 million from the General Revenue Fund for the Moore program, contingent on HB 709 or similar legislation becoming law.[58]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 252.355, 381.0303, and 430.502.

This bill creates section 381.82 of the Florida Statutes.

[54] *Id.*
[55] *Id.*
[56] *See* SB 2500.
[57] *See* HB 5001 as introduced, Specific Appropriation 474.
[58] CS/CS/HB 709 has been on second reading in the House of Representatives since April 1, 2014.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The CS:

- Moves the exemption from ch. 120, F.S., applicable to the Alzheimer's Disease Research Advisory Board, from ch. 120, F.S., to the section of law creating the Moore program and authorizes the DOH to adopt rules to implement the program;
- Removes specific authority for the DOH to use funds appropriated to the Moore program for peer review activities;
- Adds aging and disability resource centers to the list of providers that must assist in registering special needs clients;
- Makes a technical correction to provide for staggered terms of members of the Alzheimer's Disease Research Grant Advisory Board; and
- Updates the name of the memory disorder clinic in Brevard County.

CS by Health Policy on March 19, 2014:
The CS:

- Requires the Division of Emergency Management to have developed the special needs shelter registration program by January 1, 2015, with full implementation by March 1, 2015; and
- Reduces the Alzheimer's Disease Research Grant Advisory Board by one member, from 12 to 11, and revises the composition of the board by adding two neuroscientists and reducing the number of gerontologists, geriatric psychiatrists, and geriatricians each by one, from three to two.

B. Amendments:

None.

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

459540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 49 - 71.

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

An act relating to Alzheimer's disease; amending s.

196780

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment

Delete line 115
and insert:
service providers, including aging and disability resource centers, memory disorder clinics, home

795936

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment

Delete lines 253 - 254
and insert:
for the award of grants and fellowships through a competitive process for research relating to the prevention,

910388

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment

Delete line 279
and insert:
for staggered terms, five of the initial appointees shall serve

589436

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete line 334
and insert:
(5) Activities of the board provided in subsection (3) are exempt from chapter 120.
(6) The department may adopt rules to implement this section.
(7) Implementation of the Ed and Ethel Moore Alzheimer's

589436

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 37
and insert:
Legislature, and State Surgeon General; exempting certain activities of the board from the Administrative Procedures Act; authorizing the department to adopt rules; providing that

569584

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 343 and 344
insert:

(1) There is established:

(a) A memory disorder clinic at each of the three medical schools in this state;

(b) A memory disorder clinic at a major private nonprofit research-oriented teaching hospital, and may fund a memory disorder clinic at any of the other affiliated teaching

569584

hospitals;

(c) A memory disorder clinic at the Mayo Clinic in Jacksonville;

(d) A memory disorder clinic at the West Florida Regional Medical Center;

(e) A memory disorder clinic operated by Health First ~~The Memory Disorder Clinic, Inc., operating~~ in Brevard County;

(f) A memory disorder clinic at the Orlando Regional Healthcare System, Inc.;

(g) A memory disorder center located in a public hospital that is operated by an independent special hospital taxing district that governs multiple hospitals and is located in a county with a population greater than 800,000 persons;

(h) A memory disorder clinic at St. Mary's Medical Center in Palm Beach County;

(i) A memory disorder clinic at Tallahassee Memorial Healthcare;

(j) A memory disorder clinic at Lee Memorial Hospital created by chapter 63-1552, Laws of Florida, as amended;

(k) A memory disorder clinic at Sarasota Memorial Hospital in Sarasota County;

(l) A memory disorder clinic at Morton Plant Hospital, Clearwater, in Pinellas County; and

(m) A memory disorder clinic at Florida Atlantic University, Boca Raton, in Palm Beach County,

for the purpose of conducting research and training in a diagnostic and therapeutic setting for persons suffering from Alzheimer's disease and related memory disorders. However,

569584

memory disorder clinics funded as of June 30, 1995, shall not receive decreased funding due solely to subsequent additions of memory disorder clinics in this subsection.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete line 340

and insert:

are added to that section, and present subsections (1), (4), (5),

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

Delete line 39

and insert:

appropriation; amending s. 430.502, F.S.; updating the name of the memory disorder clinic established in Brevard County; requiring

By the Committee on Health Policy; and Senators Richter and Soto

588-02827-14 2014872c1

A bill to be entitled

An act relating to Alzheimer's disease; amending s. 120.80, F.S.; exempting grant programs administered by the Alzheimer's Disease Research Grant Advisory Board from the Administrative Procedure Act; amending s. 252.355, F.S.; requiring the Division of Emergency Management, in coordination with local emergency management agencies, to maintain a registry of persons with special needs; requiring the division to develop and maintain a special needs shelter registration program by a specified date; requiring specified agencies and authorizing specified health care providers to provide registration information to special needs clients or their caregivers and to assist emergency management agencies in registering persons for special needs shelters; amending s. 381.0303, F.S.; providing additional staffing requirements for special needs shelters; requiring special needs shelters to establish designated shelter areas for persons with Alzheimer's disease or related forms of dementia; authorizing the Department of Health, in coordination with the division, to adopt rules relating to standards for the special needs registration program; creating s. 381.82, F.S.; establishing the Ed and Ethel Moore Alzheimer's Disease Research Program within the department; requiring the program to provide grants and fellowships for research relating to Alzheimer's disease; creating the Alzheimer's Disease Research

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

588-02827-14 2014872c1

Grant Advisory Board; providing for appointment and terms of members; providing for organization, duties, and operating procedures of the board; requiring the department to provide staff to assist the board in carrying out its duties; requiring the board to annually submit recommendations for proposals to be funded; requiring a report to the Governor, Legislature, and State Surgeon General; providing that implementation of the program is subject to appropriation; amending s. 430.502, F.S.; requiring the Department of Elderly Affairs to develop minimum performance standards for memory disorder clinics to receive base-level annual funding; requiring the department to provide incentive-based funding, subject to appropriation, for certain memory disorder clinics; providing an effective date.

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

Section 1. Subsection (15) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(15) DEPARTMENT OF HEALTH.—

(a) Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the State Surgeon General, the Secretary of Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to the regulation of professions, as defined by chapter 456. Notwithstanding s.

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

120.57(1)(a), hearings conducted within the Department of Health in execution of the Special Supplemental Nutrition Program for Women, Infants, and Children; Child Care Food Program; Children's Medical Services Program; the Brain and Spinal Cord Injury Program; and the exemption from disqualification reviews for certified nurse assistants program need not be conducted by an administrative law judge assigned by the division. The Department of Health may contract with the Department of Children and Families ~~Family Services~~ for a hearing officer in these matters.

(b) This chapter does not apply to grant programs administered by the Alzheimer's Disease Research Grant Advisory Board pursuant to s. 381.82.

Section 2. Section 252.355, Florida Statutes, is amended to read:

252.355 Registry of persons with special needs; notice; registration program.—

(1) In order to meet the special needs of persons who would need assistance during evacuations and sheltering because of physical, mental, cognitive impairment, or sensory disabilities, the division, in coordination with each local emergency management agency in the state, shall maintain a registry of persons with special needs located within the jurisdiction of the local agency. The registration shall identify those persons in need of assistance and plan for resource allocation to meet those identified needs.

(2) In order to ensure that all persons with special needs may register, the division shall develop and maintain a special needs shelter registration program. The registration program

must be developed by January 1, 2015, and fully implemented by March 1, 2015.

(a) The registration program shall include, at a minimum, a uniform electronic registration form and a database for uploading and storing submitted registration forms which may be accessed by the appropriate local emergency management agency. The link to the registration form shall be easily accessible on each local emergency management agency's website. Upon receipt of a paper registration form, the local emergency management agency shall enter the person's registration information into the database.

(b) To assist ~~the local emergency management agency~~ in identifying ~~such~~ persons with special needs, home health agencies, hospices, nurse registries, home medical equipment providers, the Department of Children and Families ~~Family Services~~, the Department of Health, the Agency for Health Care Administration, the Department of Education, the Agency for Persons with Disabilities, the ~~and~~ Department of Elderly Affairs, and memory disorder clinics shall, and any physician licensed under chapter 458 or chapter 459 and any pharmacy licensed under chapter 465 may, annually ~~shall~~ provide registration information to all of their special needs clients or their caregivers ~~and to all persons with special needs who receive services~~. The division shall develop a brochure that provides information regarding special needs shelter registration procedures. The brochure shall be published on the division's website. All appropriate agencies and community-based service providers, including memory disorder clinics, home health care providers, hospices, nurse registries, and home

medical equipment providers shall, and any physician licensed under chapter 458 or chapter 459 may, assist emergency management agencies by annually registering persons with special needs for special needs shelters, collecting registration information for persons with special needs as part of the program intake process, and establishing programs to educate clients about the registration process and disaster preparedness safety procedures. A client of a state-funded or federally funded service program who has a physical, mental, or cognitive impairment or sensory disability and who needs assistance in evacuating or while in a shelter must register as a person with special needs. ~~The registry shall be updated annually.~~ The registration program shall give persons with special needs the option of preauthorizing emergency response personnel to enter their homes during search and rescue operations if necessary to ensure ~~assure~~ their safety and welfare following disasters.

(c) ~~(2)~~ The division shall be the designated lead agency responsible for community education and outreach to the public, including special needs clients, regarding registration and special needs shelters and general information regarding shelter stays.

(d) ~~(4) (a)~~ On or before May 31 of each year, each electric utility in the state shall annually notify residential customers in its service area of the availability of the registration program available through their local emergency management agency by:

1. An initial notification upon the activation of new residential service with the electric utility, followed by one annual notification between January 1 and May 31; or

2. Two separate annual notifications between January 1 and May 31.

~~(b)~~ The notification may be made by any available means, including, but not limited to, written, electronic, or verbal notification, and may be made concurrently with any other notification to residential customers required by law or rule.

(3) A person with special needs must be allowed to bring his or her service animal into a special needs shelter in accordance with s. 413.08.

(4) ~~(5)~~ All records, data, information, correspondence, and communications relating to the registration of persons with special needs as provided in subsection (1) are confidential and exempt from ~~the provisions of~~ s. 119.07(1), except that such information shall be available to other emergency response agencies, as determined by the local emergency management director. Local law enforcement agencies shall be given complete shelter roster information upon request.

~~(6) All appropriate agencies and community-based service providers, including home health care providers, hospices, nurse registries, and home medical equipment providers, shall assist emergency management agencies by collecting registration information for persons with special needs as part of program intake processes, establishing programs to increase the awareness of the registration process, and educating clients about the procedures that may be necessary for their safety during disasters. Clients of state or federally funded service programs with physical, mental, cognitive impairment, or sensory disabilities who need assistance in evacuating, or when in~~

~~shelters, must register as persons with special needs.~~

Section 3. Present subsections (3) through (7) of section 381.0303, Florida Statutes, are redesignated as subsections (4) through (8), respectively, paragraph (b) of subsection (2) and present subsection (6) are amended, and a new subsection (3) is added to that section, to read:

381.0303 Special needs shelters.—

(2) SPECIAL NEEDS SHELTER PLAN; STAFFING; STATE AGENCY ASSISTANCE.—If funds have been appropriated to support disaster coordinator positions in county health departments:

(b) County health departments ~~shall~~, in conjunction with the local emergency management agencies, have the lead responsibility for coordination of the recruitment of health care practitioners to staff local special needs shelters. County health departments shall assign their employees to work in special needs shelters when those employees are needed to protect the health and safety of persons with special needs. County governments shall assist the department with nonmedical staffing and the operation of special needs shelters. The local health department and emergency management agency shall coordinate these efforts to ensure appropriate staffing in special needs shelters, including a staff member who is familiar with the needs of persons with Alzheimer's disease.

(3) SPECIAL CARE FOR PERSONS WITH ALZHEIMER'S DISEASE OR RELATED FORMS OF DEMENTIA.—All special needs shelters must establish designated shelter areas for persons with Alzheimer's disease or related forms of dementia to enable those persons to maintain their normal habits and routines to the greatest extent possible.

(7)~~(6)~~ RULES.—The department, in coordination with the Division of Emergency Management, may ~~has the authority to~~ adopt rules ~~necessary~~ to implement this section. Rules shall include:

(a) The definition of a "person with special needs," including eligibility criteria for individuals with physical, mental, cognitive impairment, or sensory disabilities and the services a person with special needs can expect to receive in a special needs shelter.

(b) The process for special needs shelter health care practitioners and facility reimbursement for services provided in a disaster.

(c) Guidelines for special needs shelter staffing levels to provide services.

(d) The definition of and standards for special needs shelter supplies and equipment, including durable medical equipment.

(e) Standards for the special needs shelter registration program ~~process~~, including all necessary forms and guidelines for addressing the needs of unregistered persons in need of a special needs shelter.

(f) Standards for addressing the needs of families where only one dependent is eligible for admission to a special needs shelter and the needs of adults with special needs who are caregivers for individuals without special needs.

(g) The requirement of the county health departments to seek the participation of hospitals, nursing homes, assisted living facilities, home health agencies, hospice providers, nurse registries, home medical equipment providers, dialysis centers, and other health and medical emergency preparedness

stakeholders in pre-event planning activities.

Section 4. Section 381.82, Florida Statutes, is created to read:

381.82 Ed and Ethel Moore Alzheimer's Disease Research Program.—

(1) There is established the Ed and Ethel Moore Alzheimer's Disease Research Program within the Department of Health. The purpose of the program is to fund research leading to prevention of or a cure for Alzheimer's disease. The long-term goals of the program are to:

(a) Enhance the health of Floridians by researching improved prevention, diagnosis, treatment, and cure of Alzheimer's disease.

(b) Expand the foundation of knowledge relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease.

(c) Stimulate economic activity in the state in areas related to Alzheimer's disease research.

(2)(a) Funds appropriated for the Ed and Ethel Moore Alzheimer's Disease Research Program shall be used exclusively for the award of grants and fellowships through a competitive, peer-reviewed process for research relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease and for expenses incurred in the administration of this section. Priority shall be granted to research designed to prevent or cure Alzheimer's disease.

(b) Applications for Alzheimer's disease research funding under the program may be submitted from any university or established research institute in the state. All qualified

investigators in the state, regardless of institution affiliation, shall have equal access and opportunity to compete for research funding. The following types of applications may be considered for funding:

1. Investigator-initiated research grants.

2. Institutional research grants.

3. Predoctoral and postdoctoral research fellowships.

4. Collaborative research grants, including those that advance the finding of cures through basic or applied research.

(3) There is created the Alzheimer's Disease Research Grant Advisory Board within the Department of Health.

(a) The board shall consist of 11 members appointed by the State Surgeon General. The board shall be composed of two gerontologists, two geriatric psychiatrists, two geriatricians, two neuroscientists, and three neurologists. Initial appointments to the board shall be made by October 1, 2014. The board members shall serve 4-year terms, except that, to provide for staggered terms, six of the initial appointees shall serve 2-year terms and six shall serve 4-year terms. All subsequent appointments shall be for 4-year terms. The chair of the board shall be elected from the membership of the board and shall serve as chair for 2 years. An appointed member may not serve more than two consecutive terms. Appointed members must have experience in Alzheimer's disease or related biomedical research. The board shall adopt internal organizational procedures as necessary for its organization. The board shall establish and follow guidelines for ethical conduct and adhere to a policy established to avoid conflicts of interest. A member of the board may not participate in any discussion or decision

of the board or a panel with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.

(b) The department shall provide such staff, information, and other assistance as necessary to assist the board in carrying out its responsibilities. Members of the board shall serve without compensation and may not receive reimbursement for per diem or travel expenses.

(c) The board shall advise the State Surgeon General as to the scope of the research program and shall submit its recommendations for proposals to be funded to the State Surgeon General by December 15 of each year. Grants and fellowships shall be awarded by the State Surgeon General, after consultation with the board, on the basis of scientific merit. Other responsibilities of the board may include, but are not limited to, providing advice on program priorities and emphases; assisting in the development of appropriate linkages to nonacademic entities, such as voluntary organizations, health care delivery institutions, industry, government agencies, and public officials; and developing and providing oversight regarding mechanisms for the dissemination of research results.

(4) The board shall submit a fiscal-year progress report on the programs under its purview to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by February 15 of each year. The report must include:

(a) A list of research projects supported by grants or fellowships awarded under the program.

(b) A list of recipients of program grants or fellowships.

(c) A list of publications in peer-reviewed journals involving research supported by grants or fellowships awarded under the program.

(d) The state ranking and total amount of Alzheimer's disease research funding allocated to the state from the National Institutes of Health.

(e) New grants for Alzheimer's disease research which were funded based on research supported by grants or fellowships awarded under the program.

(f) Progress toward programmatic goals, particularly in the prevention, diagnosis, treatment, and cure of Alzheimer's disease.

(g) Recommendations to further the mission of the program.

(5) Implementation of the Ed and Ethel Moore Alzheimer's Disease Research Program is subject to legislative appropriation.

Section 5. Present subsections (3) through (9) of section 430.502, Florida Statutes, are redesignated as subsections (6) through (12), respectively, new subsections (3), (4), and (5) are added to that section, and present subsections (4), (5), (8), and (9) of that section are amended, to read:

430.502 Alzheimer's disease; memory disorder clinics and day care and respite care programs.—

(3) The department shall develop minimum performance standards for memory disorder clinics and include those standards in each memory disorder clinic contract as a condition for receiving base-level funding. The performance standards must address, at a minimum, quality of care, comprehensiveness of

services, and access to services.

(4) The department shall develop performance goals that exceed the minimum performance standards developed under subsection (3) which must be achieved in order for a memory disorder clinic to be eligible for incentive funding above the base level, subject to legislative appropriation. Incentive funding shall be based on criteria including, but not limited to:

(a) A significant increase in the volume of clinical services.

(b) A significant increase in public outreach to low-income and minority populations.

(c) A significant increase in the acceptance of Medicaid and commercial insurance policies.

(d) Significant institutional financial commitments.

(5) The department shall measure and score each memory disorder clinic based on minimum performance standards and incentive performance goals.

(7)~~(4)~~ Pursuant to ~~the provisions of~~ s. 287.057, the department ~~of Elderly Affairs~~ may contract for the provision of specialized model day care programs in conjunction with the memory disorder clinics. The purpose of each model day care program must be to provide service delivery to persons suffering from Alzheimer's disease or a related memory disorder and training for health care and social service personnel in the care of persons having Alzheimer's disease or a related memory disorder ~~disorders~~.

(8)~~(5)~~ Pursuant to s. 287.057, the department ~~of Elderly Affairs~~ shall contract for the provision of respite care. All

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funds appropriated for the provision of respite care shall be distributed annually by the department to each funded county according to an allocation formula. In developing the formula, the department shall consider the number and proportion of the county population of individuals who are 75 years of age and older. Each respite care program shall be used as a resource for research and statistical data by the memory disorder clinics established in this part. In consultation with the memory disorder clinics, the department shall specify the information to be provided by the respite care programs for research purposes.

(11)~~(8)~~ The department shall implement the waiver program specified in subsection (10) ~~(7)~~. The agency and the department shall ensure the selection of ~~that~~ providers who have a history of successfully serving persons with Alzheimer's disease ~~are selected~~. The department and the agency shall develop specialized standards for providers and services tailored to persons in the early, middle, and late stages of Alzheimer's disease and designate a level of care determination process and standard that is most appropriate to this population. The department and the agency shall include in the waiver services designed to assist the caregiver in continuing to provide in-home care. The department shall implement this waiver program subject to a specific appropriation or as provided in the General Appropriations Act.

(12)~~(9)~~ Authority to continue the waiver program specified in subsection (10) ~~(7)~~ shall be automatically eliminated at the close of the 2010 Regular Session of the Legislature unless further legislative action is taken to continue it before ~~prior~~

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

~~to~~ such time.

Section 6. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

April 3, 2014

The Honorable Joe Negron, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

CS/SB 872, Alzheimer's disease, has been referred to the Appropriations Committee. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Cindy Kynoch, Staff Director

REPLY TO:
❒ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
❒ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
❒ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 872 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

...of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic ALZHEIMER'S DISEASE

Bill Number SB 872 *(if applicable)*

Name NATALIE KELLY

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO BOX 923
Street
TALLAHASSEE FL 32302
City *State* *Zip*

Phone 850-570-5747

E-mail NATALIE@ACCLAIMSTRATEGIES.NET

Speaking: ☐ For ☐ Against ☐ Information

Representing ALZHEIMER'S ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 876
INTRODUCER:	Transportation Committee and Senator Galvano
SUBJECT:	Motor Vehicle Crash Reports
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Fav/CS**
2.	Carey	Martin	ATD	**Favorable**
3.	Carey	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 876 relates to motor vehicle crash reports, and requires a sworn statement from the requestor for *each* individual crash report which is requested within the 60-day confidential and exempt period.

The bill has no fiscal impact.

II. Present Situation:

Traffic Crash Reports

A Florida Traffic Crash Report Long Form must be completed and submitted to the Department of Highway Safety and Motor Vehicles (DHSMV) within ten days after law enforcement completes an investigation of a motor vehicle crash that:

- Resulted in death, personal injury or any indication of pain or discomfort of any passengers involved in the crash;
- Resulted in damage to a vehicle or other property;[1]
- Resulted in a driving under the influence violation;[2]
- Rendered a vehicle inoperable to a degree that required a wrecker to remove it from the crash scene; or

[1] Section 316.061(1)(a), Florida Statutes.
[2] Section 316.193, Florida Statutes.

- Involved a commercial motor vehicle.

If the circumstances of the crash, as described above, do not require completion of the long form crash report, the law enforcement officer is required to complete a short-form crash report or provide a driver exchange-of-information form. The driver exchange-of-information form is completed by all drivers and passengers involved in the crash and requires the identification of each vehicle involved in the incident.

The information included on a crash report (both long and short form) must include:
- Date, time, and location of crash;
- Description of vehicles involved;
- Names and addresses of parties involved, including all drivers and passengers, and the identification of vehicles;
- Names and addresses of witnesses;
- Name, badge number, and law enforcement agency of the investigating officer; and
- Respective parties insurance companies;

Both long and short form crash reports prepared by a law enforcement officer must be submitted to the DHSMV and may be maintained by the law enforcement officer's agency.

Section 316.066, (2)(a), F.S., provides that crash reports revealing identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and held by any agency regularly receiving or preparing information from or concerning parties to motor vehicle crashes are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, for a period of 60 days after the date the report is filed.

Crash reports held by an agency may be made immediately available to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.11 and 50.031, F.S.,[3],[4] and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.

Any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.

A person attempting to access a crash report within the 60 days after the date the report was filed must present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access, and file a written sworn statement with the state or local agency in possession of the information stating that information

[3] http://www.flsenate.gov/Laws/Statutes/2013/50.011
[4] http://www.flsenate.gov/Laws/Statutes/2013/50.031

from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt. In lieu of requiring a written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such a contract states that information from a crash report made confidential and exempt will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

The primary policy reason for closing access to crash reports for 60 days to persons or entities not specifically listed appears to be protection for crash victims and their families from illegal solicitation by attorneys. In its 2000 report on insurance fraud relating to personal injury protection coverage, the Fifteenth Statewide Grand Jury found that individuals called "runners" would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal solicitations and the commission of a variety of frauds, including insurance fraud.

According to the Attorney General's Second Interim Report of the Fifteenth Statewide Grand Jury:

> probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.

The Grand Jury found the access to crash reports, which provide individuals with the ability to contact large numbers of potential clients, is a violation of Florida's prohibition of crash report use for commercial solicitation purposes. According to the Grand Jury, virtually anyone involved in a car accident in the state is fair game to the intrusive and harassing tactics of solicitors.[5]

III. Effect of Proposed Changes:

Section 1 amends s. 316.066, F.S., to require a person who accesses a crash report within the required 60-day confidential and exempt period to file a written sworn statement with the state or local agency in possession of the requested information for *each* individual crash report that is being requested.

Section 2 provides that the bill shall be effective July 1, 2014.

[5] Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.066 of the Florida Statutes.

IX. Additional Information:

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

CS by Transportation on March 13, 2014:
The CS removes the requirement directing the department to design a notice to be delivered via first-class mail or in person to all parties involved in a motor vehicle crash, where a traffic crash report is filed.

B. Amendments:

None.

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

By the Committee on Transportation; and Senator Galvano

596-02559-14 2014876c1

A bill to be entitled

An act relating to motor vehicle crash reports; amending s. 316.066, F.S.; requiring a statement to be completed and sworn to for each confidential crash report requested within a certain time period; providing an effective date.

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

Section 1. Subsection (2) of section 316.066, Florida Statutes, is amended to read:

316.066 Written reports of crashes.—

(2)(a) Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

(b) Crash reports held by an agency under paragraph (a) may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal

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596-02559-14 2014876c1

Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.

(c) Any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.

(d) As a condition precedent to accessing a crash report within 60 days after the date the report is filed, a person must present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information~~,~~ and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt. Such written sworn statement must be completed and sworn to by the requesting

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party for each individual crash report that is being requested within 60 days after the report is filed. In lieu of requiring the written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section.

Section 2. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 876 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☒ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

...d for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

9.22.2014
Meeting Date

Topic Motor Vehicle Crash Reports Bill Number 876 *(if applicable)*

Name Captain Brian Schneering Amendment Barcode *(if applicable)*

Job Title Florida Sheriffs Association

Address 2617 Mahan Dr Phone 877 2165
Street

Tallahassee FL 32308 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Sheriffs Association

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 886
INTRODUCER:	Senator Montford
SUBJECT:	Florida Teachers Classroom Supply Assistance Program
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Letarte	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Favorable**
3.	Elwell	Kynoch	AP	**Favorable**

I. Summary:

SB 886 revises provisions of the Florida Teachers Classroom Supply Assistance Program (Program) and provides flexibility for school districts to distribute funds to classroom teachers sooner for the purchase of supplemental materials and supplies.

The bill requires school districts to calculate an identical amount from the funds available to the school districts for the program for each classroom teacher to be employed by the district or a charter school in the district on September 1st of each year. The district school board and each charter school board may provide a classroom teacher his or her proportional share of program funds by August 1st, if determined eligible for program funds by July 1st. A teacher determined eligible for Program funds after July 1st must be provided with his or her proportional share of Program funds by September 30th. At present, program funds must be disbursed by September 30th.

This bill does not affect the total funds allocated for the Program and does not have a fiscal impact to the state.

The bill takes effect on July 1, 2014.

II. Present Situation:

The Florida Teachers Classroom Supply Assistance Program

The Florida Teachers Classroom Supply Assistance Program (Program) provides funds for classroom teachers to purchase supplemental materials and supplies for public school students assigned to them.[1] Program funds are appropriated by the Legislature in the General

[1] Section 1012.71, F.S.

Appropriations Act and distributed to each school district by the Commissioner of Education based on each district's unweighted full-time equivalent student enrollment.[2] The district school board calculates and distributes each classroom teacher's proportionate share of funds by September 30th of each year.[3]

A signed statement acknowledging receipt of the funds is required of each classroom teacher.[4] Additionally, a teacher must keep receipts for at least four years to show that funds were spent in accordance with Program requirements.[5] Any unused funds must be returned to the district school board at the end of the school year.[6]

Senate Bill 2500, the 2014-2015 proposed General Appropriations Bill, appropriates $45,286,750 to the Program, which is the same as the 2013-2014 fiscal year appropriation.[7]

III. Effect of Proposed Changes:

The bill revises provisions of the Florida Teachers Classroom Supply Assistance Program to allow school districts to have the flexibility to distribute funds to classroom teachers sooner for the purchase of supplemental materials and supplies for public school students assigned to them.

The bill requires school districts to calculate an identical amount from the funds available to the school districts for the program for each classroom teacher who will be employed by the district or a charter school in the district on September 1st. As of July 1st, if a teacher is expected to be employed by a school district or a charter school in the district on September 1st, the district school board and each charter school board may provide the teacher with the teacher's proportionate share of funds by August 1st. If a teacher's expected employment is determined after July 1st, the district school board and each charter school board must provide the teacher with the teacher's proportionate share of funds by September 30th. At present, funds from the Florida Teachers Classroom Supply Assistance Program must be distributed by September 30th.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[2] Section 1012.71(2), F.S. Funds from the Program may not be used to purchase equipment. *Id.*
[3] Section 1012.71(3), F.S. The funds are distributed by any appropriate means as determined by the district school board. *Id.*
[4] Section 1012.71(4), F.S.
[5] *Id.*
[6] *Id.* "[F]unds that are returned to the district board shall be deposited into the school advisory council account of the school at which the classroom teacher returning the funds was employed when that teacher received the funds or deposited into the Florida Teachers Classroom Supply Assistance Program account of the school district in which a charter school is sponsored, as applicable." *Id.*
[7] Specific Appropriation 87, s. 2, ch. 2013-40, L.O.F. (providing the amount appropriated to the Teachers Lead Program under Specific Appropriations 7 and 87); *see also* Specific Appropriation 7, s. 1 ch. 2013-40, L.O.F. The Program was originally named the Florida Teachers Lead Program and was renamed the Florida Teachers Classroom Supply Assistance Program in 2013. Section 10, ch. 2013-185, L.O.F.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 886 does not have a fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1012.71 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Montford

3-00881A-14 2014886__

A bill to be entitled

An act relating to the Florida Teachers Classroom Supply Assistance Program; amending s. 1012.71, F.S.; revising procedures for distributing program funds to classroom teachers; providing an effective date.

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

Section 1. Subsection (3) of section 1012.71, Florida Statutes, is amended to read:

1012.71 The Florida Teachers Classroom Supply Assistance Program.—

(3) From the funds allocated to each school district and any funds received from local contributions for the Florida Teachers Classroom Supply Assistance Program, the district school board shall calculate an identical amount for each classroom teacher who is expected to be employed by the school district or a charter school in the district on September 1 of each year, which is that teacher's proportionate share of the total amount allocated to the district from state funds and funds received from local contributions. A job-share classroom teacher may receive a prorated share of the amount provided to a full-time classroom teacher. For a classroom teacher determined eligible on July 1, the district school board and each charter school board may provide the teacher with his or her total proportionate share by August 1 based on the estimate of the number of teachers who will be employed on September 1. For a classroom teacher determined eligible after July 1, the district school board and each charter school board shall provide the

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3-00881A-14 2014886__

~~each classroom~~ teacher with his or her total proportionate share by September 30. The proportionate share may be provided ~~of each year~~ by any means determined appropriate by the district school board or charter school board, including, but not limited to, direct deposit, check, debit card, or purchasing card. If a debit card is used, an identifier must be placed on the front of the debit card which clearly indicates that the card has been issued for the Florida Teachers Classroom Supply Assistance Program. Expenditures under the program are not subject to state or local competitive bidding requirements. Funds received by a classroom teacher do not affect wages, hours, or terms and conditions of employment and, therefore, are not subject to collective bargaining. Any classroom teacher may decline receipt of or return the funds without explanation or cause.

Section 2. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:
Select Committee on Indian River Lagoon and Lake Okeechobee Basin, *Vice Chair*

SENATOR BILL MONTFORD
Democratic Policy Chair
3rd District

April 14, 2014

Senator Joe Negron, Chair
Senate Committee on Appropriations
201 The Capitol
Tallahassee, Florida 32399-1100

Dear Chairman Negron:

I respectfully request that the following bill(s) be scheduled for a hearing before the Senate Full Appropriations Committee:

SB 628 Education Facilities Financing
SB 886 Florida Teachers Supply Assistance Program
SB 908 Education Funding
SB 1202 Career Centers and Charter Technical Career Centers
SB 1206 Agricultural Industry Certifications

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

Sincerely,

William "Bill" Montford
State Senator, District 3

Cc Cindy Kynoch Staff Director

WM/md

REPLY TO:
❒ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
❒ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656
❒ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/22/2019
Meeting Date

Topic _____ Bill Number 886 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Education

Bill Number 886 *(if applicable)*

Name Jim Horne

Amendment Barcode *(if applicable)*

Job Title Lobbyist

Address 200 W. College Ave
Street

Phone

Tallahassee FL
City *State* *Zip*

E-mail Jim@strategespublicaffairs.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/CS/SB 898 (933800)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; Communications, Energy, and Public Utilities Committee; and Senators Abruzzo and Soto
SUBJECT:	Communications Services Tax
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Hrdlicka	Hrdlicka	CM	**Fav/CS**
3.	Cote	Diez-Arguelles	AFT	**Fav/CS**
4.	Cote	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/CS/SB 898 excludes certain data processing services delivered by electronic transmission from the communications services tax by including such services in the definition of "information services." Information services are not included within the definition of "communication services," and are not subject to communications services tax.

The bill states that "the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.".

The bill has no revenue impact because the change is a clarification that aligns the statutes with current administrative practice.

II. Present Situation:

Chapter 202, F.S., imposes a communications services tax on "retail sales of communications services which originate and terminate in Florida, or originate or terminate in Florida and are

billed to a Florida address."[1] Communication services include telecommunications, cable, direct-to-home satellite, and related services.[2] The communication services tax includes a state tax rate of 6.65 percent and a gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent.[3] In addition, local governments impose a local tax rate of up to 7.12 percent.[4]

The communications services tax is applied to the retail sales price of each taxable communications service.[5] The definition of "communications services" specifically excludes "information services" and therefore they are not subject to the communication services tax.[6] "Information services" are defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services."[7] Information services include electronic publishing, web-hosting services, and end-user 900 number services.

The state taxes collected are deposited into the General Revenue Fund and a portion is distributed to local governments.[8] Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used to fund public schools', community colleges', and universities' capital projects. The Department of Revenue provides tax collection services for local governments, and local communication services taxes are distributed to local governments.

III. Effect of Proposed Changes:

The bill specifically excludes certain data processing services delivered by electronic transmission from the communications services tax by including such services in the definition of "information services."

Section 1 amends s. 202.11(5), F.S., to include in the definition of "information services" data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the data or information.

Section 2 states that "the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act."

Section 3 provides an effective date of upon becoming law.

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[1] Florida Revenue Estimating Conference, 2014 Florida Tax Handbook, at p. 55.
[2] Chapter 202, F.S.
[3] See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services. Local, long distance, and toll telephone services sold to a residential household are exempt from the 6.65 percent state tax and 0.15 percent gross receipts tax.
[4] Section 202.19, F.S.
[5] Section 202.12, F.S.
[6] Section 202.11(1)(a) and (5), F.S.
[7] Section 202.11(5), F.S.
[8] Section 202.18, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that PCS/CS/CS/SB 898 will have no revenue impact because the change is a clarification that aligns the statutes with current administrative practice.[9]

B. Private Sector Impact:

The fiscal impact of the bill on the private sector is indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 202.11 of the Florida Statutes.

This bill creates an undesignated section of Florida Law.

[9] Revenue Estimating Conference, HB 803 Draft Language, consensus estimate adopted 3/21/2014.

IX. Additional Information:

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

Recommended CS/CS/CS by Appropriations Subcommittee on Finance and Tax on April 2, 2014:
The committee substitute clarifies that "the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act."

CS/CS by Commerce and Tourism on March 24, 2014:
The committee substitute amends the definition of "information services" to include certain data processing services. This change excludes such services from the communications services tax, because information services are not communication services subject to the tax.

The bill previously had excluded from the definition of "sales price" for the communications services tax the sale of communications services between a franchisor and its franchisee, which excluded such services from the communications services tax.

CS by Communications, Energy, and Public Utilities on March 4, 2014:
The committee substitute completely rewrites the proposed exemption from the term "sales tax" for purposes of the Communications Services Tax. It exempts the sale of communications services between a franchisor and its franchisee, defining the term "franchisee" to mean any entity, including a related company, using the franchisor's service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor.

The bill also states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof described in s. 202.11(13)(b), F.S., as amended by this act, for periods before or after the effective date of this act.

B. Amendments:

None.

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

933800

576-03662-14

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to the communications services tax; amending s. 202.11, F.S.; revising the definition of the term "information services" to include certain data processing and other services; providing applicability; providing an effective date.

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

Section 1. Subsection (5) of section 202.11, Florida Statutes, is amended to read:

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

(5) "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

Section 2. The amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the assessment of any tax not paid or create a right to a refund or credit of any

933800

576-03662-14

tax paid before the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 898
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; Communications, Energy, and Public Utilities Committee; and Senators Abruzzo and Soto
SUBJECT:	Communications Services Tax
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Hrdlicka	Hrdlicka	CM	**Fav/CS**
3.	Cote	Diez-Arguelles	AFT	**Fav/CS**
4.	Cote	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 898 excludes certain data processing services delivered by electronic transmission from the communications services tax by including such services in the definition of "information services." Information services are not included within the definition of "communication services," and are not subject to communications services tax.

The bill states that "the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act."

The bill has no revenue impact because the change is a clarification that aligns the statutes with current administrative practice.

II. Present Situation:

Chapter 202, F.S., imposes a communications services tax on "retail sales of communications services which originate and terminate in Florida, or originate or terminate in Florida and are

billed to a Florida address."[1] Communication services include telecommunications, cable, direct-to-home satellite, and related services.[2] The communication services tax includes a state tax rate of 6.65 percent and a gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent.[3] In addition, local governments impose a local tax rate of up to 7.12 percent.[4]

The communications services tax is applied to the retail sales price of each taxable communications service.[5] The definition of "communications services" specifically excludes "information services" and therefore they are not subject to the communication services tax.[6] "Information services" are defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services."[7] Information services include electronic publishing, web-hosting services, and end-user 900 number services.

The state taxes collected are deposited into the General Revenue Fund and a portion is distributed to local governments.[8] Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used to fund public schools', community colleges', and universities' capital projects. The Department of Revenue provides tax collection services for local governments, and local communication services taxes are distributed to local governments.

III. Effect of Proposed Changes:

The bill specifically excludes certain data processing services delivered by electronic transmission from the communications services tax by including such services in the definition of "information services."

Section 1 amends s. 202.11(5), F.S., to include in the definition of "information services" data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the data or information.

Section 2 states that "the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act."

Section 3 provides an effective date of upon becoming law.

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[1] Florida Revenue Estimating Conference, 2014 Florida Tax Handbook, at p. 55.
[2] Chapter 202, F.S.
[3] See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services. Local, long distance, and toll telephone services sold to a residential household are exempt from the 6.65 percent state tax and 0.15 percent gross receipts tax.
[4] Section 202.19, F.S.
[5] Section 202.12, F.S.
[6] Section 202.11(1)(a) and (5), F.S.
[7] Section 202.11(5), F.S.
[8] Section 202.18, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that CS/CS/CS/SB 898 will have no revenue impact because the change is a clarification that aligns the statutes with current administrative practice.[9]

B. Private Sector Impact:

The fiscal impact of the bill on the private sector is indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 202.11 of the Florida Statutes.

This bill creates an undesignated section of Florida Law.

[9] Revenue Estimating Conference, HB 803 Draft Language, consensus estimate adopted 3/21/2014.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 22, 2014:
The committee substitute clarifies that "the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act."

CS/CS by Commerce and Tourism on March 24, 2014:
The committee substitute amends the definition of "information services" to include certain data processing services. This change excludes such services from the communications services tax, because information services are not communication services subject to the tax.

The bill previously had excluded from the definition of "sales price" for the communications services tax the sale of communications services between a franchisor and its franchisee, which excluded such services from the communications services tax.

CS by Communications, Energy, and Public Utilities on March 4, 2014:
The committee substitute completely rewrites the proposed exemption from the term "sales tax" for purposes of the Communications Services Tax. It exempts the sale of communications services between a franchisor and its franchisee, defining the term "franchisee" to mean any entity, including a related company, using the franchisor's service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor.

The bill also states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof described in s. 202.11(13)(b), F.S., as amended by this act, for periods before or after the effective date of this act.

B. Amendments:

None.

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

By the Committees on Commerce and Tourism; and Communications, Energy, and Public Utilities; and Senators Abruzzo and Soto

577-03119A-14 2014898c2

A bill to be entitled

An act relating to the communications services tax; amending s. 202.11, F.S.; revising the definition of the term "information services" to include certain data processing and other services; providing applicability; providing an effective date.

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

Section 1. Subsection (5) of section 202.11, Florida Statutes, is amended to read:

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

(5) "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

Section 2. This act is a clarification of existing law, and no tax may be assessed or collected with respect to any charge or portion thereof described in s. 202.11(5), Florida Statutes, as amended by this act, for periods before or after the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Communications Services Tax

Bill Number SB 898 *(if applicable)*

Name Brewster Bevis

Amendment Barcode *(if applicable)*

Job Title Senior Vice President

Address 516 N. Adams St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-224-7173

E-mail bbevis@aif.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 22, 2014
Meeting Date

Topic Communications Services Tax

Bill Number 898 *(if applicable)*

Name Richard Turner

Amendment Barcode *(if applicable)*

Job Title General Counsel

Address 230 S. Adams
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850.224-2250

E-mail RTurner@FRLA.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14
Meeting Date

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

Topic Communications Services Tax

Bill Number SB 898 *(if applicable)*

Name Carolyn Johnson

Amendment Barcode *(if applicable)*

Job Title Policy Director

Address 136 S. Bronough St
Street
Tallahassee FL 32304
City *State* *Zip*

Phone 850-521-1235

E-mail cjohnson@flchamber.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 914
INTRODUCER:	Senator Latvala
SUBJECT:	State Contracting
DATE:	April 23, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Favorable**
2.	Betta	DeLoach	AGG	**Favorable**
3.	Betta	Kynoch	AP	**Favorable**

I. Summary:

SB 914 requires state agencies to consider the prior relevant experience of a vendor when evaluating the responses to a request for proposal or invitation to negotiate. Currently, state agencies may consider prior relevant experience but are not required by law to do so.

The bill does not have a fiscal impact on the state.

II. Present Situation:

State Procurement of and Contracts for Personal Property and Services

Chapter 287, F.S., regulates state agency[1] procurement of personal property[2] and services.[3] The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[4] The Division of

[1] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

[2] Personal property" is not independently defined for purposes of ch. 287, F.S., but the chapter title for Chapter 287, F.S., is "Procurement of Personal Property and Services." Additionally, the definition of "commodity" in s. 287.012(5), F.S., is "any of the various supplies, materials, goods, merchandise, food, equipment, information technology, *and other personal property*, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies." This definition is used in Part I of Ch. 287, F.S., "Commodities, Insurance, and Contractual Services."

[3] Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

[4] *See* ss. 287.032 and 287.042, F.S.

State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals (RFP), which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN), which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.[5]

Criteria used to evaluate proposals received pursuant to a request for proposals must include, but are not limited to:

- Price;
- Renewal price, if renewal is contemplated; and
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.[6]

In invitations to negotiate, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN.[7]

Contracts for commodities or contractual services in excess of $35,000 must be procured utilizing a competitive solicitation process.[8] However, specified contractual services and commodities are not subject to competitive solicitation requirements.[9]

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or certain other agencies.[10]

[5] *See* ss. 287.012(6) and 287.057, F.S.
[6] Section 287.057(1)(b)3., F.S.
[7] Section 287.057(1)(c)3., F.S.
[8] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[9] *See* s. 287.057(3)(f), F.S.
[10] *See* s. 287.042(2)(c), F.S.

III. Effect of Proposed Changes:

The bill amends the existing agency competitive procurement law in ch. 287, F.S., to require agencies to consider the prior relevant experience of a vendor when evaluating responses to a request for proposal or invitation to negotiate. Currently, agencies may consider prior relevant experience of a vendor but are not required by law to do so.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.057 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Latvala

20-01398-14 2014914__

A bill to be entitled

An act relating to state contracting; amending s. 287.057, F.S.; revising the criteria for evaluating a proposal to include consideration of prior relevant experience of the vendor; revising the criteria for evaluating a response to an agency's invitation to negotiate to include consideration of prior relevant experience of the vendor; providing an effective date.

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

Section 1. Subsection (1) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

(1) The competitive solicitation processes authorized in this section shall be used for procurement of commodities or contractual services in excess of the threshold amount provided for CATEGORY TWO in s. 287.017. Any competitive solicitation shall be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies and of the public opening, and must include all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining acceptability and relative merit of the bid, proposal, or reply.

(a) *Invitation to bid.*—The invitation to bid shall be used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications

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20-01398-14 2014914__

defining the actual commodity or group of commodities required.

1. All invitations to bid must include:

a. A detailed description of the commodities or contractual services sought; and

b. If the agency contemplates renewal of the contract, a statement to that effect.

2. Bids submitted in response to an invitation to bid in which the agency contemplates renewal of the contract must include the price for each year for which the contract may be renewed.

3. Evaluation of bids must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.

4. The contract shall be awarded to the responsible and responsive vendor who submits the lowest responsive bid.

(b) *Request for proposals.*—An agency shall use a request for proposals when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document.

1. Before issuing a request for proposals, the agency must determine and specify in writing the reasons that procurement by invitation to bid is not practicable.

2. All requests for proposals must include:

a. A statement describing the commodities or contractual services sought;

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

b. The relative importance of price and other evaluation criteria; and

c. If the agency contemplates renewal of the contract, a statement to that effect.

3. Criteria that will be used for evaluation of proposals must ~~shall~~ include, but are not limited to:

a. Price, which must be specified in the proposal;

b. If the agency contemplates renewal of the contract, the price for each year for which the contract may be renewed; ~~and~~

c. Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor; and~~.~~

d. Consideration of prior relevant experience of the vendor.

4. The contract shall be awarded by written notice to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals. The contract file shall contain documentation supporting the basis on which the award is made.

(c) *Invitation to negotiate.*—The invitation to negotiate is a solicitation used by an agency which is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.

1. Before issuing an invitation to negotiate, the head of an agency must determine and specify in writing the reasons that procurement by an invitation to bid or a request for proposal is not practicable.

2. The invitation to negotiate must describe the questions being explored, the facts being sought, and the specific goals or problems that are the subject of the solicitation.

3. The criteria that will be used for determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified. The evaluation criteria must include consideration of prior relevant experience of the vendor.

4. The agency shall evaluate replies against all evaluation criteria set forth in the invitation to negotiate in order to establish a competitive range of replies reasonably susceptible of award. The agency may select one or more vendors within the competitive range with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state, based on the selection criteria.

5. The contract file for a vendor selected through an invitation to negotiate must contain a short plain statement that explains the basis for the selection of the vendor and that sets forth the vendor's deliverables and price, pursuant to the contract, along with an explanation of how these deliverables and price provide the best value to the state.

Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number 919 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☒ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 948
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; Governmental Oversight and Accountability Committee; and Senator Ring
SUBJECT:	Foreign Investments
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Fav/CS**
2.	Matiyow	Knudson	BI	**Fav/CS**
3.	McSwain	Kynoch	AP	**Fav/CS**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 948 modifies the Protecting Florida's Investments Act (PFIA), which requires the State Board of Administration (SBA) to identify and divest assets in foreign companies doing business in Iran and Sudan, by providing that SBA investment in exchange-traded funds will not be subject to the divestiture requirements. The bill also makes terminology changes to reflect that South Sudan is now an independent nation.

The bill allows the SBA to invest up to 50 percent of any of its funds in foreign corporate securities and obligations, an increase from the current maximum of 35 percent.

The bill also provides that a domestic insurer with investments in a company included on the Iran and Sudan scrutinized company lists must report such investments quarterly to the Office of Insurance Regulation.

The fiscal impact of the bill is indeterminate.

II. Present Situation:

State Board of Administration Investing Duties

The State Board of Administration (SBA) is created in Article IV, s. 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Article XII, s. 9 of the Florida Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan and the FRS Investment Plan, which represent approximately $151 billion, or 88 percent, of the $173 billion in assets managed by the SBA, as of November 30, 2013. The Pension Plan is a defined benefit plan and the Investment Plan is a defined contribution plan that employees may choose in lieu of the Pension Plan. The SBA also manages over 30 other investment portfolios, with combined assets of $22 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.[1]

In investing assets, the SBA follows the Florida Statutes' fiduciary standards of care, subject to certain limitations.[2] Pursuant to s. 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type. Some of the key guidelines in the "legal list" specific to the investment of FRS Pension Plan assets include:

- No more than 80 percent of assets may be invested in domestic common stocks.
- No more than 75 percent of assets may be invested in internally managed common stocks.
- No more than 3 percent of equity assets may be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets may be invested in the equity securities of any one corporation.
- No more than 80 percent of assets may be placed in corporate fixed income securities.
- No more than 25 percent of assets may be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 35 percent of assets may be invested in foreign corporate or commercial securities or obligations[3].

[1] State Board of Administration "Monthly Performance Report to the Trustees" as of November 30, 2013, issued January 13, 2014.
[2] Section 215.44, F.S.
[3] This provision in s. 215.47(20), F.S., permitting the SBA to invest up to 35 percent of any fund in foreign securities or bonds is an SBA-specific exception to the general requirement in s. 215.47(5), F.S., that no more than 25 percent of any fund may be invested in foreign securities or bonds. The SBA exception is located in s. 215.47(20), F.S., because s. 112.661(5)(a), F.S., subjects local retirement systems and plans to the limitations in s. 215.47(5), F.S.

- No more than 10 percent[4] of assets may be invested in alternative investments,[5] alternative investment vehicles,[6] and other non-publicly-traded investments.

Exchange-Traded Funds

Exchange-traded funds (ETFs) are a type of exchange-traded investment product. Investors use ETFs as a way to pool their money in a fund that makes investments in stocks, bonds, or other assets and, in return, to receive an interest in that investment pool. Unlike mutual funds, however, ETF shares are traded on a national stock exchange and at market prices that may or may not be the same as the net asset value of the shares. ETFs were initially designed to track the performance of specific U.S. equity indexes; those types of index-based ETFs continue to be the predominant type of ETF offered and sold in the United States. Newer ETFs, however, also seek to track indexes of fixed-income instruments and foreign securities.[7]

The SBA does not currently invest in ETFs, and ch. 215, F.S., does not address the use of ETFs by the SBA.

Protecting Florida Investments Act

In 2007, the Legislature enacted[8] the Protecting Florida's Investments Act (PFIA). The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities[9] and are required to divest those securities if the companies[10] do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of entities or business associations.

According to staff of the SBA, the PFIA imposes the following reporting, engagement, and investment requirements on the SBA:

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[4] The cap on alternative investments was last changed in 2008, when it was raised from 5% to 10% by Ch. 2008-31, L.O.F.
[5] An "alternative investment" is defined in s. 215.4401(3)(a)1., F.S., as "an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."
[6] An "alternative investment vehicle" is defined in s. 215.4401(3)(a)2., F.S., as the "limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company."
[7] All of the information in this paragraph is from a Securities and Exchange Commission Investor Bulletin available at: https://www.sec.gov/investor/alerts/etfs.pdf, last visited on March 26, 2014.
[8] Chapter 2007-88, L.O.F.; Senate Bill 2142.
[9] Section 215.473(3)(c), F.S.
[10] Section 215.473(3)(b), F.S.

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a "Scrutinized Companies" list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA's website[11], along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients' assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations. Such correspondence continues semiannually.
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment. The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company's initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.
- Quarterly reporting to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to Sudan, and the United States Presidential Special Envoy to Iran.[12] The report must include the following:
  - A summary of correspondence with engaged companies;
  - A listing of all investments sold, redeemed, divested, or withdrawn;
  - A listing of all prohibited investments;
  - A description of any progress related to external managers offering PFIA compliant funds; and
  - A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.

[11] The quarterly reports are available at http://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/PFIA/2013QuarterlyReports/tabid/1483/Default.aspx
[12] Section 215.473(4)(b), F.S.

- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
  - Darfur genocide has been halted for at least 12 months;
  - Sanctions imposed against the Government of Sudan are revoked;
  - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;
  - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;
  - Sanctions imposed against the government of Iran are revoked; or
  - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.
- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment. If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment. Such condition is required to be updated semiannually.

Sudan and South Sudan

Previous to the enactment of the PFIA in 2007, Sudan had been embroiled in a north-south civil war, until a Comprehensive Peace Agreement was signed in 2005. Southern Sudan was granted a six-year period of autonomy to be followed by a referendum on independence. That referendum was held in January 2011, and resulted in an overwhelming vote in favor of succession from Sudan. The southern Sudan region attained independence on July 9, 2011, as South Sudan.[13]

The PFIA in s. 215.473, F.S., contains references to Sudan that are now outdated and inaccurate, including details about the government structures of Sudan and the southern Sudan region as they existed in 2007.

III. Effect of Proposed Changes:

SBA Investments in Foreign Securities

Section 1 amends s. 215.47, F.S., to allow the SBA to invest up to 50 percent of any of its funds in foreign corporate securities and obligations, up from the current maximum of 35 percent.

Section 2 amends s. 215.473, F.S., by amending the definition of "indirect holdings" to clarify that the securities included are held in a commingled fund or other collective instrument, whether managed by an SBA employee or not. The bill provides that SBA investment in exchange-traded funds will not be subject to the divestiture requirements.

[13] Information from the CIA World Factbook, located at https://www.cia.gov/library/publications/the-world-factbook/geos/od.html, last visited on March 26, 2014.

The bill also changes references in s. 215.473, F.S., to Sudan and South Sudan, to reflect current geopolitical reality, makes corresponding corrections to cross-references, and makes technical and grammatical changes.

Assets of Insurers

Section 3 creates s. 624.449, F.S., related to assets of insurers invested in companies doing business in Iran and Sudan. The bill provides that a domestic insurer must provide to the Office of Insurance Regulation, annually, a list of all investments that the insurer has in the companies included on the "Scrutinized Companies with Activities in Sudan List" and "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List." The list must include the name of the issuer of the stock, bond, security, and other evidence of indebtedness.

Severability Clause and Effective Date

The bill provides that the invalidation of any one provision of the act does not affect other provisions that could still be given legal effect.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, s. 6 of the Florida Constitution provides that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The single subject clause contains three requirements: that each law embrace only one subject, that the law may include any matter that is properly connected with the subject, and that the subject be briefly expressed in the title.[14] The single subject of an act is to be derived from the short title.[15] "A connection between a provision [in an act] and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the

[14] *Franklin v. State*, 887 So.2d 1063, 1072, (Fla. 2004)
[15] *Id.* at 1075.

subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject."[16]

The short title of this bill is "[a]n act relating to foreign investments," and the bill contains provisions relating to the proportion of funds the SBA may invest in foreign securities, restrictions on SBA's ability to invest in scrutinized foreign companies doing business in Iran and Sudan, and regulatory and divestiture requirements for insurers with investments in scrutinized foreign companies. If this bill were challenged under the single subject provision of the constitution, a court would apply a highly deferential standard of review.[17]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/CS/SB 948 requires insurers with investments in companies on the "Scrutinized Companies with Activities in Sudan List" and "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List" to report such investments, quarterly, to the Office of Insurance Regulation.

C. Government Sector Impact:

The fiscal impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.47 and 215.473.

This bill creates section 624.449 of the Florida Statutes.

[16] *Id.* at 1078.
[17] *Id.* at 1073.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 22, 2014:
The CS provides that reports of insurers to the Office of Insurance Regulation on all investments the insurer has in companies on the "Scrutinized Companies with activities in Sudan List" and the "Scrutinized Companies with activities in the Iran Petroleum Energy Sector List" must be filed annually, rather than quarterly.

CS/CS by Banking and Insurance on March 25, 2014:
The CS removes the requirement that domestic insurers must, within 36 months, divest any investments in a company that is included on the Iran and Sudan scrutinized company lists.

CS by Governmental Oversight and Accountability on March 6, 2014:
The CS removes a definitional change that allows an affiliate or wholly owned subsidiary doing business in Sudan or Iran to not impact the scrutinized company status of the parent company. Current law will therefore be retained, which requires the actions of affiliates and subsidiaries to impact the parent company's scrutinized company status.

The CS also removes language unnecessary to the implementation of the insurer divestment provisions.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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	.	
	.	

The Committee on Appropriations (Ring) recommended the following:

Senate Amendment

Delete line 348
and insert:
insurer shall provide to the office on an annual basis a list

By the Committees on Banking and Insurance; and Governmental Oversight and Accountability; and Senator Ring

597-03206-14 2014948c2

A bill to be entitled

An act relating to foreign investments; amending s. 215.47, F.S.; revising the percentage of investments that the State Board of Administration may invest in foreign securities; amending s. 215.473, F.S.; revising and providing definitions with respect to requirements that the board divest securities in which public moneys are invested in certain companies doing specified types of business in or with Sudan or Iran; revising exclusions from the divestment requirements; conforming cross-references; creating s. 624.449, F.S.; requiring a domestic insurer to provide a list of investments that it has in companies on the State Board of Administration's lists of scrutinized companies with activities in Sudan or in Iran's petroleum energy sector; providing for severability; providing an effective date.

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

Section 1. Subsection (20) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(20) Notwithstanding the provisions in subsection (5) limiting such investments to 25 percent of any fund, the board

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

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may invest up to 50 ~~no more than 35~~ percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity having its principal office located in any country other than the United States or its possessions or territories, not including United States dollar-denominated securities listed and traded on a United States exchange that are a part of the ordinary investment strategy of the board.

Section 2. Subsections (1) and (2), paragraph (e) of subsection (3), and subsection (5) of section 215.473, Florida Statutes, are amended to read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran.—

(1) DEFINITIONS.—As used in this act, the term:

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Sudan or Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means a ~~any~~ sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose

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

of making profit.

(d) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including~~, but not limited to,~~ preventing Darfur's victimized population from communicating with each other; encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur; actively working to deny, cover up, or alter the record on human rights abuses in Darfur; or other similar actions.

(e) "Direct holdings" in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(f) "Government of Iran" means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(g) "Government of South Sudan" means the Republic of South Sudan, that has its capital in Juba, South Sudan.

(h)~~(g)~~ "Government of Sudan" means the Republic of the Sudan that has its capital ~~government~~ in Khartoum, Sudan~~, that is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does not include the regional government of southern Sudan~~.

(i)~~(h)~~ "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not

presently deployed for such purpose.

(j)~~(i)~~ "Indirect holdings" in a company means all securities of that company that are held in a commingled ~~an account or~~ fund or other collective investment, such as a mutual fund, ~~managed by one or more persons not employed by the public fund,~~ in which the public fund owns shares or interests together with other investors not subject to ~~the provisions of~~ this section ~~act~~.

(k)~~(j)~~ "Iran" means the Islamic Republic of Iran.

(l)~~(k)~~ "Marginalized populations of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of South ~~southern~~ Sudan victimized by Sudan's north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(m)~~(l)~~ "Military equipment" means weapons, arms, military supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems, military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(n)~~(m)~~ "Mineral-extraction activities" include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium,

and zinc, as well as facilitating such activities, including providing supplies or services in support of such activities.

(o) ~~(n)~~ "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including providing supplies or services in support of such activities, except that the mere retail sale of gasoline and related consumer products is not considered an oil-related activity.

(p) ~~(o)~~ "Petroleum resources" means petroleum, petroleum byproducts, or natural gas.

(q) ~~(p)~~ "Power-production activities" means a ~~any~~ business operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including providing supplies or services in support of such activities.

(r) ~~(q)~~ "Public fund" means all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121.

(s) ~~(r)~~ "Scrutinized active business operations" means active business operations that result ~~have resulted~~ in a company becoming a scrutinized company.

(t) ~~(s)~~ "Scrutinized business operations" means business operations that result ~~have resulted~~ in a company becoming a scrutinized company.

(u) ~~(t)~~ "Scrutinized company" means a ~~any~~ company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has a ~~any~~ direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and:

a. More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the ~~regional~~ government of South ~~southern~~ Sudan ~~or a project or consortium created exclusively by that regional government~~; and the company has failed to take substantial action; or

b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan,

unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the ~~regional~~ government of South ~~southern~~ Sudan or any internationally recognized peacekeeping force or humanitarian organization.

4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:

a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities, ~~,~~ and the company has failed to take substantial action; or

b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

(v) ~~(u)~~ "Social-development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment; agricultural supplies or infrastructure; educational opportunities; journalism-related activities; information or information materials; spiritual-related activities; services of a purely clerical or reporting nature; food, clothing, or general consumer goods that are unrelated to oil-related activities; mineral-extraction activities; or power-production activities.

(w) ~~(v)~~ "Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from ~~any~~ such new business operations.

(x) ~~(w)~~ "Substantial action specific to Sudan" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from ~~any~~ such new business operations; undertaking humanitarian efforts in conjunction with an international organization, the government of Sudan, the ~~regional~~ government of South ~~southern~~ Sudan, or a nonprofit entity evaluated and certified by an independent third party to be substantially in a relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(2) IDENTIFICATION OF COMPANIES.—

(a) Within 90 days after June 8, 2007 ~~the effective date of this act~~, the public fund shall make its best efforts to identify all scrutinized companies in which the public fund has

direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:

1. Reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies having business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the public fund which ~~that~~ invest in companies having business operations in Sudan; or

3. Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

4. Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions for companies conducting business or investing in countries that are designated state sponsors of terror.

(b) By the first meeting of the public fund following the 90-day period described in paragraph (a), the public fund shall assemble all scrutinized companies that fit criteria specified in subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into a "Scrutinized Companies with Activities in Sudan List" and ~~shall assemble~~ all scrutinized companies that fit criteria specified in subparagraph (1)(u)4. ~~(1)(t)4.~~ into a "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List."

(c) The public fund shall update and make publicly available quarterly the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the

Iran Petroleum Energy Sector List based on evolving information from, among other sources, those listed in paragraph (a).

(d) Notwithstanding the provisions of this section ~~act~~, a social-development company that is not complicit in the Darfur genocide is not considered a scrutinized company under subparagraph (1)(u)1. ~~(1)(t)1.~~, subparagraph (1)(u)2. ~~(1)(t)2.~~, or subparagraph (1)(u)3 ~~(1)(t)3~~.

(3) REQUIRED ACTIONS.—The public fund shall adhere to the following procedure for assembling companies on the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

(e) *Excluded securities.*—

1. Notwithstanding the provisions of this act, paragraphs (b) and (c) do not apply to indirect holdings in actively managed investment funds. However, the public fund shall submit letters to the managers of such investment funds containing companies that have scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, a private equity fund is deemed to be an actively managed investment fund.

2. Notwithstanding the provisions of this section, paragraphs (b) and (c) do not apply to exchange-traded funds.

(5) EXPIRATION.—This act expires upon the occurrence of all

of the following:

(a) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer assemble the Scrutinized Companies with Activities in Sudan List, shall cease engagement and divestment of such companies, and may reinvest in such companies if ~~as long as~~ such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

1. The Congress or President of the United States, affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the Darfur genocide has been halted for at least 12 months;

2. The United States revokes all sanctions imposed against the government of Sudan;

3. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

4. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written

certification from the President to Congress, that mandatory divestment of the type provided for in this section ~~act~~ interferes with the conduct of United States foreign policy.

(b) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraph (1)(u)4. ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and shall cease engagement, investment prohibitions, and divestment. The public fund may reinvest in such companies if ~~as long as~~ such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List:

1. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;

2. The United States revokes all sanctions imposed against the government of Iran; or

3. The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section ~~act~~ interferes with the conduct of United States foreign policy.

Section 3. Section 624.449, Florida Statutes, is created to read:

624.449 Insurer investment in foreign companies.—A domestic insurer must provide to the office on a quarterly basis a list

of investments that the insurer has in companies included on the "Scrutinized Companies with Activities in Sudan List" and "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List," compiled by the State Board of Administration pursuant to s. 215.473(2). The insurer's list must include the name of the issuer and the stock, bond, security, and other evidence of indebtedness.

Section 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 5. This act shall take effect July 1, 2014.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 950 (675198)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Stargel
SUBJECT:	Education
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Fav/CS**
3.	Elwell	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 950 revises the requirements for instructional personnel who supervise or direct educator preparation students during field experience courses or internships. The bill also revises the K-12 educator certification requirements to authorize the use of additional assessment options, align competencies across preparation program types, and provide flexibility for training and inservice requirements.

The bill authorizes the State Board of Education to adopt rules regarding additional examinations that may be used by teacher certification applicants to demonstrate mastery of general knowledge and subject area knowledge and educator preparation programs that may be used to demonstrate professional preparation and education competence.

Under the bill, applicants with teaching experience in a Florida College System institution, state university, or private college or university must meet additional requirements to demonstrate mastery of professional preparation and education competence. The applicant must have taught on a full-time basis and must achieve a passing score on the professional education competency examination required by State Board of Education rule.

The bill requires that scientifically based reading instruction must be included in a district competency-based professional development certification program.

With respect to renewal of a professional certificate, the bill provides that an applicant may renew a subject area specialization by passing a State Board of Education approved subject area test or another standardized examination in lieu of college course credit or inservice points.

In addition, the bill requires the State Board of Education to adopt rules that would expand training for renewal of professional certificates for educators who must complete training in teaching students with disabilities.

The bill permits the assignment of newly hired instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous three years pursuant to s. 1008.34, F.S., if they meet specific requirements related to training, teaching experience, performance, and certification.

The bill also allows a consortium of charter schools to develop a professional development system and repeals a longitudinal study that compared the performance of Florida educators who met certification requirements through different mechanisms.

This bill does not have a fiscal impact on the state.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Educator Certification

An educator in a traditional public school, including a charter school, must hold a certificate issued by the Florida Department of Education (DOE).[1] The DOE issues professional certificates,[2] temporary certificates,[3] and athletic coaching certificates.[4] In addition, school districts are authorized to issue adjunct teaching certificates to part-time teachers who have expertise in the subject area to be taught.[5] An adjunct teaching certificate is valid through the term of the annual contract between the educator and the school district.[6]

To be eligible to seek certification, a person must meet the following basic eligibility requirements:[7]

- Be at least 18 years of age;
- Sign an affidavit attesting that the applicant will uphold the U.S. and State Constitutions and provide true, accurate, and complete information;

[1] Sections 1012.55(1) and 1002.33(12)(f), F.S. District school boards and charter school governing boards are authorized to hire noncertificated individuals to serve in an instructional capacity or as paraprofessionals. Rule 6A-1.0502, F.A.C, and ss. 1002.33(12)(f) and 1012.55(1)(c),

[2] Section 1012.56(7)(a), F.S. and Rule 6A-4.004(1), F.A.C. The professional certificate is valid for five years and is renewable. Section 1012.56(7)(a), F.S., and Rule 6A-4.004(3), F.A.C.

[3] Section 1012.56(7), F.S., and Rule 6A-4.004(1)(a), F.A.C. The temporary certificate is valid for three years and is nonrenewable.

[4] Rule 6A-4.004(4), F.A.C.

[5] Section 1012.57(1), F.S.

[6] Section 1012.57(4), F.S.

[7] Sections 1012.32, 1012.315 and 1012.56(2)(a)-(f), F.S.

- Hold a bachelor's or higher degree from an accredited institution of higher learning[8] or from a nonaccredited institution identified by the DOE as having a quality program resulting in a bachelor's or higher degree;[9]
- Submit to fingerprinting and background screening and not have a criminal history that requires the applicant's disqualification from certification or employment;
- Be of good moral character; and
- Be competent and capable of performing the duties, functions, and responsibilities of an educator.

Eligibility Requirements for a Temporary Certificate

To be eligible for a temporary certificate, an applicant must:
- Meet the basic eligibility requirements for certification;[10]
- Obtain full-time employment in a position that requires a Florida educator certificate by a school district or private school that has a DOE-approved professional education competence demonstration program;[11] and
- Either:
  - Demonstrate mastery of subject area knowledge (*e.g.*, passage of the appropriate subject area exam);[12] or
  - Complete the subject content requirements specified in rules adopted by the State Board of Education.[13]

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge within one calendar year of the date of employment.[14] If the educator is employed under contract, the calendar year deadline for demonstrating mastery of general knowledge may be extended through the end of the school year.[15]

Eligibility Requirements for a Professional Certificate

To be eligible for a professional certificate, an applicant must:
- Meet the basic eligibility requirements for certification;[16]
- Demonstrate mastery of general knowledge;[17]
- Demonstrate mastery of subject area knowledge;[18] and
- Demonstrate mastery of professional preparation and education competence.[19]

[8] Section 1012.56(2)(c), F.S., and Rule 6A-4.003(1), F.A.C.
[9] For initial certification, an applicant must attain at least a 2.5 overall grade point average on a 4.0 scale in the applicant's major field of study. Section 1012.56(2)(c), F.S.
[10] Section 1012.56(2)(a)-(f) and (7)(b), F.S.
[11] Rule 6A-4.004(1)(a)2., F.A.C.
[12] Section 1012.56(7)(b), F.S., and Rule 6A-4.0021(9), F.A.C. *See also Subject Area Knowledge*, Department of Education http://www.fldoe.org/edcert/mast_sub.asp (last visited March 7, 2014)
[13] Section 1012.56(7)(b), F.S.
[14] Section 1012.56(7), F.S.
[15] *Id*.
[16] Section 1012.56(2)(a)-(f) and (7)(b), F.S.
[17] Section 1012.56(2)(g) and (3), F.S.
[18] Section 1012.56(2)(h) and (5), F.S.
[19] Section 1012.56(2)(i) and (6), F.S.

Demonstration of Mastery of General Knowledge

Mastery of general knowledge may be demonstrated through any of the following methods:

- Achieving a passing score on the General Knowledge Test;[20]
- Achieving a passing score on the College-Level Academic Skills Test (CLAST) taken before July 1, 2002;[21]
- Having a valid professional standard teaching certificate issued by another state,[22] by the National Board for Professional Teaching Standards (NBPTS),[23] or a national educator credentialing board approved by the State Board of Education;[24]
- Completing two semesters of successful teaching in a Florida College System institution, state university, or private college or university that awards an associate or higher degree and is an accredited institution or an institution of higher education identified by the DOE as having a quality program.[25]

Demonstration of Mastery of Subject Area Knowledge

Mastery of subject area knowledge may be demonstrated through any of the following methods:[26]

- Achieving a passing score on the appropriate subject area exam required by State Board of Education rule;[27]
- Attaining oral and written proficiency scores above the intermediate level on exams administered by the American Council on the Teaching of Foreign Languages (ACTFL) and completing a bachelor's or higher degree;[28]
- For certification in any subject area for which there is no subject area exam, completing the specialization requirements specified in rules adopted by the State Board of Education and verification of subject area competence by the district school superintendent or, for a state-supported or private school, the school's chief administrative officer;[29]

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[20] Section 1012.56(3)(a), F.S. The General Knowledge Test is part of the Florida Teacher Certification Examinations and is administered as four subtests: Reading, English Language Skills, English Essay, and Mathematics. Rule 6A-4.0021(7), F.A.C.
[21] Section 1012.56(3)(b), F.S.
[22] Section 1012.56(3)(c), F.S.
[23] Section 1012.56(3)(d), F.S.
[24] *Id.*
[25] Section 1012.56(3)(e), F.S.
[26] The DOE has identified subject areas and the corresponding subject area exams. *See Florida Teacher Certification Examinations (FTCE)* https://app1.fldoe.org/ftce/Portal/FtceTests.aspx (last visited March 8, 2014), and *Florida Certification Coverages*, http://www.fldoe.org/edcert/subjlist.asp (last visited March 8, 2014).
[27] Section 1012.56(5)(a), F.S. Rule 6A-4.0243, F.A.C., specifies the specialization requirements for certification in the following world languages: Arabic, Chinese, Farsi, French, German, Greek, Haitian Creole, Hebrew, Hindi, Italian, Japanese, Portuguese, Russian, Spanish, and Turkish. There are subject area exams for French, German, Latin, and Spanish. *See* http://www.fldoe.org/edcert/sub_exams.asp (last visited March 8, 2014).
[28] Section 1012.56(5)(b), F.S. and Rule 6A-4.0243(1)(e), F.A.C.; *See* American Council on the Teaching of Foreign Languages (ACTFL), *Certified Proficiency Testing Program*, http://www.actfl.org/professional-development/certified-proficiency-testing-program (last visited March 8, 2014); Language Testing International (ACTFL Language Testing Office), *ACTFL Certified Proficiency Testing Program: Oral And Writing Proficiency Testing for State of Florida Prospective Teachers*, http://dev5.lti-inc.net/acad_fl2n.cfm (last visited March 8, 2014).
[29] Section 1012.56(5)(c), F.S.

- For a subject coverage requiring a master's or higher degree, achieving a passing score on the subject area examination specified in rules adopted by the State Board of Education and completing the subject area specialization requirements specified in rules adopted by the State Board of Education; or[30]
- Holding a valid professional standard teaching certificate issued for a subject area by another state, by NBPTS, or by an educator credentialing board approved by the State Board of Education.[31]

Demonstration of Mastery of Professional Preparation and Education Competence

Mastery of professional preparation and education competence may be demonstrated through any of the following methods:

- Achieving a passing score on the professional education competency exam required by rules adopted by the State Board of Education and:
  - Completing an approved teacher preparation program at a Florida or out-of-state postsecondary educational institution;[32]
  - Completing a competency-based professional development certification program offered by a school district or completing an Educator Preparation Institute program;[33] or
  - Completing professional preparation courses specified in State Board of Education rule and completing an approved professional education competence demonstration program;[34]
- Holding a valid professional standard teaching certificate issued by another state, NBPTS, or a national educator credentialing board approved by the State Board of Education;[35] or
- Documenting completion of two semesters of successful college teaching experience in a Florida College System institution, state university, or an accredited private college or university that awards an associate's or higher degree or at a nonaccredited institution of higher education identified by the DOE as having a quality program.[36]

Professional Certificate Renewal and Reinstatement

A state-issued professional certificate must be renewed every five years.[37] An educator must submit an application,[38] pay a fee,[39] and earn at least six college credits or 120 inservice points to

[30] Section 1012.56(5)(d), F.S.
[31] Section 1012.56(5)(e) and (f), F.S. and Rule 6A-4.002(1)(i)-(j), F.A.C. See also *NBPTS Certificate Subjects and Corresponding Subjects in Florida*, http://www.fldoe.org/edcert/nbpts-chart.asp (last visited March 8, 2014).
[32] Section 1012.56(6)(a) and (b)., F.S.
[33] Section 1012.56(6)(g) and (8)(a)6., F.S.
[34] Section 1012.56(6)(f), F.S.
[35] Section 1012.56(6)(c) and (d), F.S.
[36] Section 1012.56(6)(e), F.S.
[37] Section 1012.585(2)(a), F.S.
[38] Rule 6A-4.0051(3)(b), F.A.C. The DOE processes certification renewals for individuals who are not employed by district school boards. Section 1012.585(1)(b), F.S. District school boards are responsible for processing certificate renewals for school district employees. Section 1012.585(1)(a), F.S.
[39] Section 1012.585(1)(a), F.S.

renew professional certification.[40] At least three college credits or equivalent inservice points must be earned in each subject area for which renewal is sought.[41]

An expired professional certificate may be reinstated if the applicant:[42]

- Submits an application for reinstatement;
- Submits to fingerprinting and background screening; and
- In the five years immediately preceding the application for reinstatement, completes the college credit and inservice point requirements for renewal and passes the subject area exam for each subject area to be reinstated.

Postsecondary Educator Preparation Programs

Florida provides several pathways to meet professional teacher certification requirements, including traditional teacher preparation programs provided by universities and colleges for individuals seeking a degree.[43] The Educator Preparation Institutes (EPI) and school district competency-based professional development certification programs provide individuals who already have baccalaureate degrees with professional training on the competencies needed for professional certification.[44]

The law provides special requirements for peer mentors and postsecondary instructors and school district personnel who instruct and supervise students during their clinical experiences.[45] During field experience courses or internships, all school district personnel and instructional personnel who supervise or direct teacher preparation students in traditional teacher preparation programs and educator preparation institutes must:

- Have evidence of "clinical educator" training;
- Hold a valid state-issued professional certificate;
- Have at least three years of teaching experience in prekindergarten through grade 12; and
- Have earned an "effective" or "highly effective" rating on the prior year's performance evaluation or be a peer evaluator under the district's approved evaluation system.[46]

Educator Performance Evaluations

Components of the each school district's instructional personnel and school administrator performance evaluation system are divided into three parts: performance of students; instructional practice or leadership; (for instructional or administrative personnel, respectively); and professional responsibilities.[47] Florida's educator evaluation system differentiates among four

[40] Section 1012.585(3)(a), F.S.
[41] Section 1012.585(3)(a), F.S.
[42] Sections 1012.32 and 1012.585(5), F.S. and Rule 6A-4.0051(7), F.A.C.
[43] Section s. 1004.04, F.S.
[44] Sections 1004.85 and 1012.56(8)(a), F.S.
[45] Sections 1004.04(5), 1004.85(6)., and 1012.56(8)(a)3., F.S.
[46] Sections 1004.04(5)(b) and 1004.85(6), F.S.
[47] Section 1012.34(3)(a), F.S.

levels: highly effective; effective; needs improvement; or, for instructional personnel in the first three years of employment who need improvement, developing;[48] and unsatisfactory.[49]

Assignment of Classroom Teachers to Schools Graded "D" or "F"

Current law prohibits school districts from assigning a higher percentage than the school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to schools graded "D" or "F".[50] Each school district must annually certify to the Commissioner of Education that this requirement has been met.[51] If the Commissioner determines that a school district is not in compliance with this provision, the State Board of Education must be notified and must take action pursuant to s. 1008.32, F.S., to require compliance.[52]

School Grades

Current law provides that the criteria for designating school performance grades for elementary schools, middle schools, and high schools, are based on a combination of student achievement, student learning gains, the improvement of the lowest 25th percentile of students in the school in Reading or English Language Arts and Mathematics, as measured by standardized statewide assessments, unless these students are exhibiting satisfactory performance.[53] For middle schools and high schools, there are additional criteria for participation and performance in accelerated courses.[54] Additionally, high school criteria include graduation rates, postsecondary readiness, performance on statewide, standardized end-of-course assessments, and the growth or decline in specific high school data components.[55]

The law specifies the letter grades used to designate school performance: "A," schools making excellent progress; "B," schools making above average progress; "C," schools making satisfactory progress; "D," schools making less than satisfactory progress; and "F," schools failing to make adequate progress.[56]

III. Effect of Proposed Changes:

Educator Certification

The bill revises the requirements for instructional personnel who supervise or direct teacher preparation students during field experience courses or internships. The bill revises K-12 educator certification requirements to authorize the use of additional assessment options, align

[48] Section 1012.34(3)(a), F.S., requires newly hired teachers to be evaluated at least twice in the first year of teaching.
[49] Section 1012.34(2)(e), F.S.
[50] Section 1012.2315(2), F.S.
[51] *Id.*
[52] *Id.* Section 1008.32, F.S., provides for the State Board of Education's oversight authority for the performance of district school boards in enforcing all laws and rules.
[53] Section 1008.34(3)(b), F.S.,
[54] *Id.*
[55] *Id.*
[56] Section 1008.34(2), F.S.

competencies across preparation program types, and provide flexibility for training and inservice requirements.

The bill deletes reference to the obsolete CLAST test that was used as a way to demonstrate mastery of general knowledge. According to the DOE, more than a decade has passed since this provision was enacted to provide a transition period for educator certification applicants who earned a passing score on the CLAST prior to July 1, 2002.[57]

The bill establishes requirements for instructional personnel who supervise or direct teacher preparation students during field experience courses or internships in another state or on a U.S. military base outside the U.S. through a Florida online or distance program. Instructional personnel in another state must have received clinical educator training or its equivalent in that state, hold a valid professional certificate issued by that state, and have at least three years of teaching experience in prekindergarten through grade 12. Similarly, instructional personnel on a U.S. military base outside the U.S. must have received clinical educator training or its equivalent; hold a valid professional certificate issued by a state, U.S. territory, or the Department of Defense; and have at least three years teaching experience in prekindergarten through grade 12.

The bill permits an applicant for an educator certificate to demonstrate mastery of general knowledge by passing a national or international examination that assesses comparable content and relevant standards in verbal, analytical writing, and quantitative reasoning skills.[58] This includes the verbal, analytical writing, and quantitative reasoning portions of the Graduate Record Examination. Passing scores identified in State Board of Education rule must be at approximately the same level of rigor as is required to pass the general knowledge examination.

The bill authorizes the State Board of Education to adopt by rule additional examinations that may be used by applicants to demonstrate mastery of subject area knowledge.[59] The board may adopt not only the world language exams administered by ACTFL, but also standardized subject area examinations for which Florida has no examinations.

Applicants with teaching experience in a Florida College System institution, state university, or private college or university must meet additional requirements to demonstrate mastery of professional preparation and education competence. Currently, applicants must document two semesters of successful teaching. Under the bill, applicants must also have taught on a full-time basis and must achieve a passing score on the professional education competency examination required by State Board of Education rule.

The bill permits the State Board of Education to adopt rules to approve specific educator preparation programs that may be used by an applicant to demonstrate mastery of professional preparation and education competence.

[57] E-mail, Department of Education, March 7, 2014. On file with the Senate Education Committee.
[58] This provision is effective July1, 2015.
[59] *Id.*

The bill requires that scientifically based reading instruction must be included in a district competency-based professional development program. According to the DOE, this provision aligns the program with the competencies required in other educator preparation programs approved by the department.[60]

With respect to renewal of a professional certificate, the bill provides that an applicant may renew a subject area specialization by passing a subject area test approved by the State Board of Education or another standardized examination in lieu of college course credit or inservice points.

In addition, the bill requires the State Board of Education to adopt rules that would expand training for renewal of professional certificates for educators who must complete training in teaching students with disabilities.[61] This will allow a teacher who holds a professional certificate to use college credits or inservice points earned through training in teaching students with disabilities, in excess of six semester hours during one certificate-validity period, toward renewal of the professional certificate during subsequent validity periods. For a teacher with a temporary certificate, the rules must allow college credits or inservice points earned through training in teaching of such students to be used toward renewal of the teacher's first professional certificate.

The bill requires the State Board of Education to adopt rules that would require an applicant for reinstatement of an expired professional certificate to earn a minimum of one college credit, or the equivalent inservice points, in the area of instruction for teaching students with disabilities. The credit may be included as one of the six college credits or equivalent inservice points the applicant must earn during the five years immediately preceding reinstatement of the expired certificate.

Other

The bill repeals a longitudinal study that compared the performance of Florida educators who met the certification requirements through different mechanisms (e.g., graduating from a Florida teacher preparation program or holding a professional certificate from another state).

The bill also allows a consortium of charter schools that meet specific statutory requirements[62] to develop a professional development system that includes a master plan for inservice activities.

Assignment of Classroom Teachers to Schools Graded "D" or "F"

Beginning July 1, 2014, the bill permits a school district to assign newly hired instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of

[60] E-mail, Department of Education, March 7, 2014. On file with the Senate Education Committee.
[61] Pursuant to section 9 of chapter 2013-236, L.O.F., codified in s. 1012.585(3)(e), F.S., an applicant for renewal of a professional certificate must earn a minimum of one college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities. The law also provides that this requirement may not add to the total hours required by the DOE for continuing education or inservice training. This requirement is effective beginning July 1, 2014. Rule 6A-4.0051(6) and (7)(e), F.A.C., specifies how an educator may satisfy the one credit or 20 inservice points required for renewal of the certificate.
[62] Section 1012.98(6), F.S.

three consecutive grades of "D" or "F" in the previous three years pursuant to s. 1008.34, F.S., if they meet specific requirements related to training, teaching experience, performance, and certification. Such newly hired instructional personnel must:

- Have received an "effective" rating or "highly effective" rating in the immediate prior year's performance evaluation;
- Be enrolled in a professional education training program provided by Teach for America,[63] hold a certificate issued pursuant to s. 1012.56, F.S., and hold a probationary contract pursuant to s. 1012.335(2)(a), F.S.;[64] or
- Hold a probationary contract pursuant to s. 1012.335(2)(a), F.S., hold a certificate issued pursuant to s. 1012.56, F.S., have successful teaching experience, and, in the judgment of the school principal, students would benefit from the placement of that individual.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[63] In order to be eligible for Teach for America's 2015 corps, an applicant must have: a bachelor's degree by June 2015; a 2.50 undergraduate GPA; and proof of U.S. citizenship, national/permanent resident status, or deferred action for childhood arrivals. Corps members participate in the TFA training and development program. *See* https://www.teachforamerica.org/online/info/signUp.wbfl;jsessionid=37B6993DCF07D14AE14FE13B8576EB4D?_flowId=signUp-flow&_flowExecutionKey=e1s1, and http://www.teachforamerica.org/why-teach-for-america/training-and-support (last visited March 12, 2014). According to the DOE, a Teach for America teacher, like any other new teacher candidate, may currently obtain a temporary Florida educator certificate that is valid for three years, provided he or she has a major in the certification subject or passes the Florida subject area test. Once employed all teachers on a temporary certificate must pass the general knowledge certification test in the first year to maintain employment. E-mail, Department of Education, March 12, 2014. On file with the Senate Education Committee.

[64] Beginning July 1, 2011, each individual newly hired as instructional personnel by the district school board must be awarded a probationary contract. Upon successful completion of the probationary contract, the district school board may award an annual contract. Section 1012.335(2)(a), F.S. A probationary contract must be awarded regardless of previous employment in another school district or state. Section 1012.335(1)(c), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/CS/SB 950 does not have a fiscal impact on the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1004.04, 1012.2315, 1012.27, 1012.56, 1012.585, and 1012.98.

This bill repeals the following section of the Florida Statutes: 1012.56(17).

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Education on April 2, 2014:
The Committee Substitute:

- Adds alternative ways to meet clinical educator training requirements for personnel who supervise or direct teacher preparation students during field experience courses or internships in another state or on a U.S. military base outside the U.S. through a Florida online or distance program;
- Deletes the provision permitting an individual who successfully completes a Teach for America training program to demonstrate mastery of professional preparation and education competence;
- Permits the State Board of Education to adopt rules to approve teacher preparation programs that may be used to meet the mastery of professional preparation and education competence requirements;
- Permits an applicant for an educator certificate to demonstrate mastery of general knowledge by achieving a passing score on a national or international examination;
- Adds requirements for demonstrating mastery of professional preparation and education competence for applicants who teach in a Florida College System institution, state university, or private college or university;
- Allows a consortium of charter schools to develop a professional development system; and

- Repeals a longitudinal study that compared the performance of Florida educators who met certification requirements through different mechanisms.

CS by Education on March 11, 2014:
The committee substitute:

- Permits an applicant for an educator certificate who successfully completes a Teach for America professional education training program to demonstrate mastery of professional preparation and education competence by earning a passing score on the professional education competency exam; and
- Permits the assignment of newly hired instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous three years pursuant to s. 1008.34, F.S., if they meet specific requirements related to training, teaching experience, performance, and certification.

B. Amendments:

None.

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

589062

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2014	.	
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	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 72 and 73

insert:

Section 2. Subsection (8) of section 1009.26, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

1009.26 Fee waivers.—

(8) A state university, a ~~or~~ Florida College System institution, a career center operated by a school district under

589062

s. 1001.44, or a charter technical career center shall waive undergraduate tuition for each recipient of a Purple Heart or another combat decoration superior in precedence who:

(a) Is enrolled as a full-time, part-time, or summer-school student in an undergraduate program that terminates in a degree or certificate;

(b) Is currently, and was at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, a resident of this state; and

(c) Submits to the state university or the Florida College System institution the DD-214 form issued at the time of separation from service as documentation that the student has received a Purple Heart or another combat decoration superior in precedence. If the DD-214 is not available, other documentation may be acceptable if recognized by the United States Department of Defense or the United States Department of Veterans Affairs as documenting the award.

Such a waiver for a Purple Heart recipient or recipient of another combat decoration superior in precedence shall be applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled.

(12)(a) A state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive out-of-state fees for students, including but not limited to students who are undocumented for federal immigration purposes,

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who meet the following conditions:

1. Attended a secondary school in this state, which is not the Florida Virtual School Global, for 3 consecutive years immediately before graduating from a high school in this state;

2. Enrolled in a degree or certificate program at an institution of higher education within 24 months after high school graduation; and

3. Submitted an official Florida high school transcript as evidence of attendance and graduation.

(b) Tuition and fees charged to a student who qualifies for the out-of-state fee waiver under this subsection may not exceed the tuition and fees charged to a resident student. The waiver is applicable for 110 percent of the required credit hours of the degree or certificate program for which the student is enrolled. Each state university, Florida College System institution, career center operated by a school district under s. 1001.44, and charter technical career center shall report to the Board of Governors and the State Board of Education, as appropriate, the number and value of all fee waivers granted annually under this subsection. The Board of Governors for the state universities and the State Board of Education for Florida College System institutions, career centers operated by a school district under s. 1001.44, and charter technical career centers shall annually certify within their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as the 2013-2014 resident student enrollment systemwide.

(c) A student who is granted an out-of-state fee waiver under this subsection is not eligible for state financial aid

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under part III of chapter 1009.

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

An act relating to education; amending s. 1004.04, F.S.; providing requirements for certain instructional personnel who supervise or direct preservice field experience courses or internships; amending s. 1009.26, F.S.; requiring a state university, a Florida College System institution, a career center operated by a school district, or a charter technical career center to waive undergraduate tuition for a recipient of a Purple Heart or another combat decoration superior in precedence under certain conditions; requiring a state university, a Florida College System institution, a career center operated by a school district, and a charter technical career center to waive out-of-state fees for certain students who meet specified conditions; requiring a state university, a Florida College System institution, a career center operated by a school district, and a charter technical career center to report to the Board of Governors and the State Board of Education, as appropriate, the number and value of all fee waivers; requiring the Board of Governors for the state universities and the State Board of Education for the Florida College System institutions, career centers operated by a

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school district, and charter technical career centers to annually certify within their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as the resident student enrollment systemwide in a specified academic year; providing that a student who is granted the out-of-state fee waiver is not eligible for state financial aid;

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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to educator certification; amending s. 1004.04, F.S.; providing requirements for certain instructional personnel who supervise or direct preservice field experience courses or internships; amending s. 1012.2315, F.S.; authorizing a school district to assign to a school that has earned failing grades certain newly hired instructional personnel; amending s. 1012.27, F.S.; revising the powers of a district school superintendent to include filling instructional positions and assigning newly hired instructional personnel; amending s. 1012.56, F.S.; deleting an obsolete provision; revising acceptable means of demonstrating mastery of general knowledge, subject area knowledge, and professional preparation and education competence; authorizing the State Board of Education to adopt rules; revising components of a competency-based professional development certification and education competency program; repealing s. 1012.56(17), F.S., relating to a study to compare the performance of certain certificateholders; amending s. 1012.585, F.S.; revising certain requirements for the renewal or reinstatement of a professional certificate; amending s. 1012.98, F.S.; authorizing a consortium of certain charter schools to develop a professional development system; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 1004.04, Florida Statutes, is amended to read:

1004.04 Public accountability and state approval for teacher preparation programs.—

(5) PRESERVICE FIELD EXPERIENCE.—All postsecondary instructors, school district personnel and instructional personnel, and school sites preparing instructional personnel through preservice field experience courses and internships shall meet special requirements. District school boards may pay student teachers during their internships.

(b)1. All school district personnel and instructional personnel who supervise or direct teacher preparation students during field experience courses or internships taking place in this state in which candidates demonstrate an impact on student learning growth must have evidence of "clinical educator" training, a valid professional certificate issued pursuant to s. 1012.56, and at least 3 years of teaching experience in prekindergarten through grade 12 and must have earned an effective or highly effective rating on the prior year's performance evaluation under s. 1012.34 or be a peer evaluator under the district's evaluation system approved under s. 1012.34. The State Board of Education shall approve the training requirements.

2. All instructional personnel who supervise or direct teacher preparation students during field experience courses or internships in another state in which candidates demonstrate

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impact on student learning growth, through a Florida online or distance program, must have received "clinical educator" training or its equivalent in that state, hold a valid professional certificate issued by the state in which the field experience takes place, and have at least 3 years of teaching experience in prekindergarten through grade 12.

3. All instructional personnel who supervise or direct teacher preparation students during field experience courses or internships in which candidates demonstrate impact on student learning growth, on a United States military base in another country through a Florida online or distance program, must have received "clinical educator" training or its equivalent, hold a valid professional certificate issued by the United States Department of Defense or a state or territory of the United States, and have at least 3 years of teaching experience in prekindergarten through grade 12.

Section 2. Subsection (2) of section 1012.2315, Florida Statutes, is amended to read:

1012.2315 Assignment of teachers.—

(2) ASSIGNMENT TO SCHOOLS GRADED "D" or "F".—

(a) A school district ~~districts~~ may not assign a higher percentage than the school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to schools graded "D" or "F" pursuant to s. 1008.34.

(b) Beginning July 1, 2014, a school district may assign an individual newly hired as instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the

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previous 3 years pursuant to s. 1008.34 if the individual:

1. Has received an effective rating or highly effective rating in the immediate prior year's performance evaluation pursuant s. 1012.34;

2. Is enrolled in a professional education training program provided by Teach for America, holds a certificate issued pursuant to s. 1012.56, and holds a probationary contract pursuant to s. 1012.335(2)(a); or

3. Holds a probationary contract pursuant to s. 1012.335(2)(a), holds a certificate issued pursuant to s. 1012.56, and has successful teaching experience and if, in the judgment of the school principal, students would benefit from the placement of that individual.

Each school district shall annually certify to the Commissioner of Education that the requirements in this subsection have ~~this requirement has~~ been met. If the commissioner determines that a school district is not in compliance with this subsection, the State Board of Education shall be notified and shall take action pursuant to s. 1008.32 in the next regularly scheduled meeting to require compliance.

Section 3. Subsection (1) of section 1012.27, Florida Statutes, is amended to read:

1012.27 Public school personnel; powers and duties of district school superintendent.—The district school superintendent is responsible for directing the work of the personnel, subject to the requirements of this chapter, and in addition the district school superintendent shall perform the following:

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(1) POSITIONS, QUALIFICATIONS, AND NOMINATIONS.—

(a) Recommend to the district school board duties and responsibilities which need to be performed and positions which need to be filled to make possible the development of an adequate school program in the district.

(b) Recommend minimum qualifications of personnel for these various positions, and nominate in writing persons to fill such positions.

(c) ~~The district school superintendent's recommendations for filling instructional positions at the school level must~~ Consider nominations received from school principals of the respective schools for filling instructional positions at the school level.

(d) Comply with s. 1012.2315(2)(b) for the assignment of newly hired individuals to schools described in s. 1012.2315(2)(b).

Before transferring a teacher who holds a professional teaching certificate from one school to another under this subsection, the district school superintendent shall consult with the principal of the receiving school and allow the principal to review the teacher's records, including student performance demonstrated under s. 1012.34, and interview the teacher. If, in the judgment of the principal, students would not benefit from the placement, an alternative placement may be sought. A principal may refuse the placement in accordance with s. 1012.28(6).

Section 4. Subsections (3), (5), and (6) and paragraphs (a) and (b) of subsection (8) of section 1012.56, Florida Statutes,

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are amended to read:

1012.56 Educator certification requirements.—

(3) MASTERY OF GENERAL KNOWLEDGE.—Acceptable means of demonstrating mastery of general knowledge are:

(a) Achievement of passing scores on the general knowledge ~~basic skills~~ examination required by state board rule;

~~(b) Achievement of passing scores on the College Level Academic Skills Test earned prior to July 1, 2002;~~

(b) ~~(c)~~ Documentation of a valid professional standard teaching certificate issued by another state;

(c) ~~(d)~~ Documentation of a valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education; ~~or~~

(d) ~~(c)~~ Documentation of two semesters of successful, full-time teaching in a Florida College System institution, state university, or private college or university that awards an associate or higher degree and is an accredited institution or an institution of higher education identified by the Department of Education as having a quality program; or

(e) Effective July 1, 2015, achievement of passing scores, identified in state board rule, on national or international examinations that test comparable content and relevant standards in the verbal, analytical writing, and quantitative reasoning skills, including, but not limited to, the verbal, analytical writing, and quantitative reasoning portions of the Graduate Record Examination. Passing scores identified in state board rule must be at approximately the same level of rigor as is required to pass the general knowledge examinations.

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(5) MASTERY OF SUBJECT AREA KNOWLEDGE.—Acceptable means of demonstrating mastery of subject area knowledge are:

(a) For a subject requiring only a baccalaureate degree for which a Florida subject area examination has been developed, achievement of a passing score ~~scores~~ on the Florida-developed subject area examination specified in ~~examinations required by~~ state board rule~~, which may include, but need not be limited to, world languages in Arabic, Chinese, Farsi, French, German, Greek, Haitian Creole, Hebrew, Hindi, Italian, Japanese, Portuguese, Russian, and Spanish~~;

(b) For a subject for which a Florida subject area examination has not been developed, achievement of a passing score on a standardized examination specified in state board rule, including, but not limited to, passing scores on both the oral proficiency and written proficiency examinations ~~Completion of a bachelor's degree or higher and verification of the attainment of an oral proficiency interview score above the intermediate level and a written proficiency score above the intermediate level on a test~~ administered by the American Council on the Teaching of Foreign Languages ~~for which there is no Florida-developed examination~~;

(c) For a subject for which a Florida subject area examination has not been developed or a standardized examination has not been specified in state board rule, completion of the subject area specialization requirements specified in state board rule and verification of the attainment of the essential subject matter competencies by the district school superintendent of the employing school district or chief administrative officer of the employing state-supported or

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private school ~~for a subject area for which a subject area examination has not been developed and required by state board rule~~;

(d) For a subject requiring a master's or higher degree, completion of the subject area specialization requirements specified in state board rule ~~for a subject coverage requiring a master's or higher degree~~ and achievement of a passing score on the Florida-developed subject area examination or a standardized examination specified in state board rule;

(e) Documentation of a valid professional standard teaching certificate issued by another state; or

(f) Documentation of a valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education.

School districts are encouraged to provide mechanisms for ~~those~~ middle grades ~~school~~ teachers holding only a K-6 teaching certificate to obtain a subject area coverage for middle grades through postsecondary coursework or district add-on certification.

(6) MASTERY OF PROFESSIONAL PREPARATION AND EDUCATION COMPETENCE.—Acceptable means of demonstrating mastery of professional preparation and education competence are:

(a) Successful completion of an approved teacher preparation program at a postsecondary educational institution within this state and achievement of a passing score on the professional education competency examination required by state board rule;

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(b) Successful completion of a teacher preparation program at a postsecondary educational institution outside Florida and achievement of a passing score on the professional education competency examination required by state board rule;

(c) Documentation of a valid professional standard teaching certificate issued by another state;

(d) Documentation of a valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education;

(e) Documentation of two semesters of successful, full-time teaching in a Florida College System institution, state university, or private college or university that awards an associate or higher degree and is an accredited institution or an institution of higher education identified by the Department of Education as having a quality program and achievement of a passing score on the professional education competency examination required by state board rule;

(f) Successful completion of professional preparation courses as specified in state board rule, successful completion of a professional preparation and education competence ~~demonstration~~ program pursuant to paragraph (8)(b), and achievement of a passing score on the professional education competency examination required by state board rule;

(g) Successful completion of a professional development ~~preparation alternative~~ certification and education competency program, outlined in paragraph (8)(a); or

(h) Successful completion of a competency-based ~~an alternative~~ certification program pursuant to s. 1004.85 and

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achievement of a passing score on the professional education competency examination required by state board rule ~~of the State Board of Education~~.

The State Board of Education may adopt rules to approve specific teacher preparation programs that are not identified in this subsection which may be used to meet requirements for mastery of professional preparation and education competence.

(8) PROFESSIONAL DEVELOPMENT CERTIFICATION AND EDUCATION COMPETENCY PROGRAM.—

(a) The Department of Education shall develop and each school district may provide a cohesive competency-based professional development certification and education competency program by which members of a school district's instructional staff may satisfy the mastery of professional preparation and education competence requirements specified in ~~this~~ subsection (6) and state board rules ~~of the State Board of Education~~. Participants must hold a state-issued temporary certificate. A school district that implements the program shall provide a competency-based certification program developed by the Department of Education or developed by the district and approved by the Department of Education. The program shall include the following ~~components~~:

1. A minimum period of initial preparation before assuming duties as the teacher of record.

2. An option for collaboration between school districts and other supporting agencies or educational entities for implementation.

3. An experienced peer-mentor component ~~peer mentors~~. Each

individual selected by the district as a peer mentor must hold a valid professional certificate issued pursuant to this section, must have earned at least 3 years of teaching experience in prekindergarten through grade 12, and must have earned an effective or highly effective rating on the prior year's performance evaluation under s. 1012.34 or be a peer evaluator under the district's evaluation system approved under s. 1012.34.

4. An assessment of teaching performance aligned to the district's system for personnel evaluation under s. 1012.34 which provides for:

a. An initial evaluation of each educator's competencies to determine an appropriate individualized professional development plan.

b. A summative evaluation to assure successful completion of the program.

5. Professional education preparation content knowledge that includes, but is not limited to, the following:

a. The state ~~state-adopted student content~~ standards provided in s. 1003.41, including scientifically based reading instruction, content literacy, and mathematical practices, for each subject identified on the temporary certificate.

b. The educator-accomplished practices approved by the state board.

c. A variety of data indicators for monitoring student progress.

d. Methodologies for teaching students with disabilities.

e. Methodologies for teaching students of limited English proficiency ~~English language learners~~ appropriate for each

subject area identified on the temporary certificate.

f. Techniques and strategies for operationalizing the role of the teacher in assuring a safe learning environment for students.

6. Required achievement of passing scores on the subject area and professional education competency examination required by State Board of Education rule. Mastery of general knowledge must be demonstrated as described in subsection (3).

(b)1. Each school district must and a state supported public school or a private school may develop and maintain a system by which members of the instructional staff may demonstrate mastery of professional preparation and education competence as required by law. Each program must be based on classroom application of the Florida Educator Accomplished Practices and instructional performance and, for public schools, must be aligned with the district's evaluation system approved under s. 1012.34.

2. The Commissioner of Education shall determine the continued approval of programs implemented under this paragraph, based upon the department's review of performance data. The department shall review the performance data as a part of the periodic review of each school district's professional development system required under s. 1012.98.

Section 5. Subsection (17) of section 1012.56, Florida Statutes, is repealed.

Section 6. Subsections (3) and (5) of section 1012.585, Florida Statutes, are amended to read:

1012.585 Process for renewal of professional certificates.—

(3) For the renewal of a professional certificate, the

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following requirements must be met:

(a) The applicant must earn a minimum of 6 college credits or 120 inservice points or a combination thereof. For each area of specialization to be retained on a certificate, the applicant must earn at least 3 of the required credit hours or equivalent inservice points in the specialization area. Education in "clinical educator" training pursuant to s. 1004.04(5)(b) and credits or points that provide training in the area of scientifically researched, knowledge-based reading literacy and computational skills acquisition, exceptional student education, normal child development, and the disorders of development may be applied toward any specialization area. Credits or points that provide training in the areas of drug abuse, child abuse and neglect, strategies in teaching students having limited proficiency in English, or dropout prevention, or training in areas identified in the educational goals and performance standards adopted pursuant to ss. 1000.03(5) and 1008.345 may be applied toward any specialization area. Credits or points earned through approved summer institutes may be applied toward the fulfillment of these requirements. Inservice points may also be earned by participation in professional growth components approved by the State Board of Education and specified pursuant to s. 1012.98 in the district's approved master plan for inservice educational training, including, but not limited to, serving as a trainer in an approved teacher training activity, serving on an instructional materials committee or a state board or commission that deals with educational issues, or serving on an advisory council created pursuant to s. 1001.452.

(b) In lieu of college course credit or inservice points,

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the applicant may renew a subject area specialization ~~area~~ by passage of a state board approved Florida-developed subject area examination or, if a Florida subject area examination has not been developed, a standardized examination specified in state board rule ~~test~~.

(c) If an applicant wishes to retain more than two specialization areas on the certificate, the applicant shall be permitted two successive validity periods for renewal of all specialization areas, but must earn no fewer than 6 college course credit hours or the equivalent in any one validity period.

(d) The State Board of Education shall adopt rules for the expanded use of training for renewal of the professional certificate for educators who are required to complete training in teaching students of limited English proficiency or students with disabilities and training in the teaching of reading as follows:

1. A teacher who holds a professional certificate may use college credits or inservice points earned through training in teaching students of limited English proficiency or students with disabilities ~~completed in English-for-Speakers-of-Other-Languages training~~ and training in the teaching of reading in excess of 6 semester hours during one certificate-validity period toward renewal of the professional certificate during the subsequent validity periods.

2. A teacher who holds a temporary certificate may use college credits or inservice points earned through training in teaching students of limited English proficiency or students with disabilities ~~completed in English-for-Speakers-of-Other-~~

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~~Languages training~~ and training in the teaching of reading toward renewal of the teacher's first professional certificate. Such training must not have been included within the degree program, and the teacher's temporary and professional certificates must be issued for consecutive school years.

(e) Beginning July 1, 2014, an applicant for renewal of a professional certificate must earn a minimum of one college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities. The requirement in this paragraph may not add to the total hours required by the department for continuing education or inservice training.

(5) The State Board of Education shall adopt rules to allow the reinstatement of expired professional certificates. The department may reinstate an expired professional certificate if the certificateholder:

(a) Submits an application for reinstatement of the expired certificate.

(b) Documents completion of 6 college credits during the 5 years immediately preceding reinstatement of the expired certificate, completion of 120 inservice points, or a combination thereof, in an area specified in paragraph (3)(a) to include the credit required under paragraph (3)(e).

(c) During the 5 years immediately preceding reinstatement of the certificate, achieves a passing score on the Florida-developed subject area examination or, if a Florida subject area examination has not been developed, a standardized examination specified in state board rule ~~test~~ for each subject to be shown on the reinstated certificate.

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The requirements of this subsection may not be satisfied by subject area examinations ~~tests~~ or college credits completed for issuance of the certificate that has expired.

Section 7. Subsection (6) of section 1012.98, Florida Statutes, is amended to read:

1012.98 School Community Professional Development Act.—

(6) An organization of private schools or consortium of charter schools which has no fewer than 10 member schools in this state, which publishes and files with the Department of Education copies of its standards, and the member schools of which comply with the provisions of part II of chapter 1003, relating to compulsory school attendance, may also develop a professional development system that includes a master plan for inservice activities. The system and inservice plan must be submitted to the commissioner for approval pursuant to state board rules ~~of the State Board of Education~~.

Section 8. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 950
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Stargel
SUBJECT:	Education
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Fav/CS**
3.	Elwell	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 950 revises the requirements for instructional personnel who supervise or direct educator preparation students during field experience courses or internships. The bill also revises the K-12 educator certification requirements to authorize the use of additional assessment options, align competencies across preparation program types, and provide flexibility for training and inservice requirements.

The bill authorizes the State Board of Education to adopt rules regarding additional examinations that may be used by teacher certification applicants to demonstrate mastery of general knowledge and subject area knowledge and educator preparation programs that may be used to demonstrate professional preparation and education competence.

Under the bill, applicants with teaching experience in a Florida College System institution, state university, or private college or university must meet additional requirements to demonstrate mastery of professional preparation and education competence. The applicant must have taught on a full-time basis and must achieve a passing score on the professional education competency examination required by State Board of Education rule.

The bill requires that scientifically based reading instruction must be included in a district competency-based professional development certification program.

With respect to renewal of a professional certificate, the bill provides that an applicant may renew a subject area specialization by passing a State Board of Education approved subject area test or another standardized examination in lieu of college course credit or inservice points.

In addition, the bill requires the State Board of Education to adopt rules that would expand training for renewal of professional certificates for educators who must complete training in teaching students with disabilities.

The bill permits the assignment of newly hired instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous three years pursuant to s. 1008.34, F.S., if they meet specific requirements related to training, teaching experience, performance, and certification.

The bill also allows a consortium of charter schools to develop a professional development system and repeals a longitudinal study that compared the performance of Florida educators who met certification requirements through different mechanisms.

This bill does not have a fiscal impact on the state.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Educator Certification

An educator in a traditional public school, including a charter school, must hold a certificate issued by the Florida Department of Education (DOE).[1] The DOE issues professional certificates,[2] temporary certificates,[3] and athletic coaching certificates.[4] In addition, school districts are authorized to issue adjunct teaching certificates to part-time teachers who have expertise in the subject area to be taught.[5] An adjunct teaching certificate is valid through the term of the annual contract between the educator and the school district.[6]

To be eligible to seek certification, a person must meet the following basic eligibility requirements:[7]

- Be at least 18 years of age;
- Sign an affidavit attesting that the applicant will uphold the U.S. and State Constitutions and provide true, accurate, and complete information;

[1] Sections 1012.55(1) and 1002.33(12)(f), F.S. District school boards and charter school governing boards are authorized to hire noncertificated individuals to serve in an instructional capacity or as paraprofessionals. Rule 6A-1.0502, F.A.C, and ss. 1002.33(12)(f) and 1012.55(1)(c),

[2] Section 1012.56(7)(a), F.S. and Rule 6A-4.004(1), F.A.C. The professional certificate is valid for five years and is renewable. Section 1012.56(7)(a), F.S., and Rule 6A-4.004(3), F.A.C.

[3] Section 1012.56(7), F.S., and Rule 6A-4.004(1)(a), F.A.C. The temporary certificate is valid for three years and is nonrenewable.

[4] Rule 6A-4.004(4), F.A.C.

[5] Section 1012.57(1), F.S.

[6] Section 1012.57(4), F.S.

[7] Sections 1012.32, 1012.315 and 1012.56(2)(a)-(f), F.S.

- Hold a bachelor's or higher degree from an accredited institution of higher learning[8] or from a nonaccredited institution identified by the DOE as having a quality program resulting in a bachelor's or higher degree;[9]
- Submit to fingerprinting and background screening and not have a criminal history that requires the applicant's disqualification from certification or employment;
- Be of good moral character; and
- Be competent and capable of performing the duties, functions, and responsibilities of an educator.

Eligibility Requirements for a Temporary Certificate

To be eligible for a temporary certificate, an applicant must:
- Meet the basic eligibility requirements for certification;[10]
- Obtain full-time employment in a position that requires a Florida educator certificate by a school district or private school that has a DOE-approved professional education competence demonstration program;[11] and
- Either:
  - Demonstrate mastery of subject area knowledge (*e.g.*, passage of the appropriate subject area exam);[12] or
  - Complete the subject content requirements specified in rules adopted by the State Board of Education.[13]

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge within one calendar year of the date of employment.[14] If the educator is employed under contract, the calendar year deadline for demonstrating mastery of general knowledge may be extended through the end of the school year.[15]

Eligibility Requirements for a Professional Certificate

To be eligible for a professional certificate, an applicant must:
- Meet the basic eligibility requirements for certification;[16]
- Demonstrate mastery of general knowledge;[17]
- Demonstrate mastery of subject area knowledge;[18] and
- Demonstrate mastery of professional preparation and education competence.[19]

[8] Section 1012.56(2)(c), F.S., and Rule 6A-4.003(1), F.A.C.
[9] For initial certification, an applicant must attain at least a 2.5 overall grade point average on a 4.0 scale in the applicant's major field of study. Section 1012.56(2)(c), F.S.
[10] Section 1012.56(2)(a)-(f) and (7)(b), F.S.
[11] Rule 6A-4.004(1)(a)2., F.A.C.
[12] Section 1012.56(7)(b), F.S., and Rule 6A-4.0021(9), F.A.C. *See also Subject Area Knowledge*, Department of Education http://www.fldoe.org/edcert/mast_sub.asp (last visited March 7, 2014)
[13] Section 1012.56(7)(b), F.S.
[14] Section 1012.56(7), F.S.
[15] *Id*.
[16] Section 1012.56(2)(a)-(f) and (7)(b), F.S.
[17] Section 1012.56(2)(g) and (3), F.S.
[18] Section 1012.56(2)(h) and (5), F.S.
[19] Section 1012.56(2)(i) and (6), F.S.

Demonstration of Mastery of General Knowledge

Mastery of general knowledge may be demonstrated through any of the following methods:

- Achieving a passing score on the General Knowledge Test;[20]
- Achieving a passing score on the College-Level Academic Skills Test (CLAST) taken before July 1, 2002;[21]
- Having a valid professional standard teaching certificate issued by another state,[22] by the National Board for Professional Teaching Standards (NBPTS),[23] or a national educator credentialing board approved by the State Board of Education;[24]
- Completing two semesters of successful teaching in a Florida College System institution, state university, or private college or university that awards an associate or higher degree and is an accredited institution or an institution of higher education identified by the DOE as having a quality program.[25]

Demonstration of Mastery of Subject Area Knowledge

Mastery of subject area knowledge may be demonstrated through any of the following methods:[26]

- Achieving a passing score on the appropriate subject area exam required by State Board of Education rule;[27]
- Attaining oral and written proficiency scores above the intermediate level on exams administered by the American Council on the Teaching of Foreign Languages (ACTFL) and completing a bachelor's or higher degree;[28]
- For certification in any subject area for which there is no subject area exam, completing the specialization requirements specified in rules adopted by the State Board of Education and verification of subject area competence by the district school superintendent or, for a state-supported or private school, the school's chief administrative officer;[29]

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[20] Section 1012.56(3)(a), F.S. The General Knowledge Test is part of the Florida Teacher Certification Examinations and is administered as four subtests: Reading, English Language Skills, English Essay, and Mathematics. Rule 6A-4.0021(7), F.A.C.
[21] Section 1012.56(3)(b), F.S.
[22] Section 1012.56(3)(c), F.S.
[23] Section 1012.56(3)(d), F.S.
[24] *Id.*
[25] Section 1012.56(3)(e), F.S.
[26] The DOE has identified subject areas and the corresponding subject area exams. *See Florida Teacher Certification Examinations (FTCE)* https://app1.fldoe.org/ftce/Portal/FtceTests.aspx (last visited March 8, 2014), and *Florida Certification Coverages*, http://www.fldoe.org/edcert/subjlist.asp (last visited March 8, 2014).
[27] Section 1012.56(5)(a), F.S. Rule 6A-4.0243, F.A.C., specifies the specialization requirements for certification in the following world languages: Arabic, Chinese, Farsi, French, German, Greek, Haitian Creole, Hebrew, Hindi, Italian, Japanese, Portuguese, Russian, Spanish, and Turkish. There are subject area exams for French, German, Latin, and Spanish. *See* http://www.fldoe.org/edcert/sub_exams.asp (last visited March 8, 2014).
[28] Section 1012.56(5)(b), F.S. and Rule 6A-4.0243(1)(e), F.A.C.; *See* American Council on the Teaching of Foreign Languages (ACTFL), *Certified Proficiency Testing Program*, http://www.actfl.org/professional-development/certified-proficiency-testing-program (last visited March 8, 2014); Language Testing International (ACTFL Language Testing Office), *ACTFL Certified Proficiency Testing Program: Oral And Writing Proficiency Testing for State of Florida Prospective Teachers*, http://dev5.lti-inc.net/acad_fl2n.cfm (last visited March 8, 2014).
[29] Section 1012.56(5)(c), F.S.

- For a subject coverage requiring a master's or higher degree, achieving a passing score on the subject area examination specified in rules adopted by the State Board of Education and completing the subject area specialization requirements specified in rules adopted by the State Board of Education; or[30]
- Holding a valid professional standard teaching certificate issued for a subject area by another state, by NBPTS, or by an educator credentialing board approved by the State Board of Education.[31]

Demonstration of Mastery of Professional Preparation and Education Competence

Mastery of professional preparation and education competence may be demonstrated through any of the following methods:

- Achieving a passing score on the professional education competency exam required by rules adopted by the State Board of Education and:
  - Completing an approved teacher preparation program at a Florida or out-of-state postsecondary educational institution;[32]
  - Completing a competency-based professional development certification program offered by a school district or completing an Educator Preparation Institute program;[33] or
  - Completing professional preparation courses specified in State Board of Education rule and completing an approved professional education competence demonstration program;[34]
- Holding a valid professional standard teaching certificate issued by another state, NBPTS, or a national educator credentialing board approved by the State Board of Education;[35] or
- Documenting completion of two semesters of successful college teaching experience in a Florida College System institution, state university, or an accredited private college or university that awards an associate's or higher degree or at a nonaccredited institution of higher education identified by the DOE as having a quality program.[36]

Professional Certificate Renewal and Reinstatement

A state-issued professional certificate must be renewed every five years.[37] An educator must submit an application,[38] pay a fee,[39] and earn at least six college credits or 120 inservice points to

[30] Section 1012.56(5)(d), F.S.
[31] Section 1012.56(5)(e) and (f), F.S. and Rule 6A-4.002(1)(i)-(j), F.A.C. See also *NBPTS Certificate Subjects and Corresponding Subjects in Florida*, http://www.fldoe.org/edcert/nbpts-chart.asp (last visited March 8, 2014).
[32] Section 1012.56(6)(a) and (b)., F.S.
[33] Section 1012.56(6)(g) and (8)(a)6., F.S.
[34] Section 1012.56(6)(f), F.S.
[35] Section 1012.56(6)(c) and (d), F.S.
[36] Section 1012.56(6)(e), F.S.
[37] Section 1012.585(2)(a), F.S.
[38] Rule 6A-4.0051(3)(b), F.A.C. The DOE processes certification renewals for individuals who are not employed by district school boards. Section 1012.585(1)(b), F.S. District school boards are responsible for processing certificate renewals for school district employees. Section 1012.585(1)(a), F.S.
[39] Section 1012.585(1)(a), F.S.

renew professional certification.[40] At least three college credits or equivalent inservice points must be earned in each subject area for which renewal is sought.[41]

An expired professional certificate may be reinstated if the applicant:[42]
- Submits an application for reinstatement;
- Submits to fingerprinting and background screening; and
- In the five years immediately preceding the application for reinstatement, completes the college credit and inservice point requirements for renewal and passes the subject area exam for each subject area to be reinstated.

Postsecondary Educator Preparation Programs

Florida provides several pathways to meet professional teacher certification requirements, including traditional teacher preparation programs provided by universities and colleges for individuals seeking a degree.[43] The Educator Preparation Institutes (EPI) and school district competency-based professional development certification programs provide individuals who already have baccalaureate degrees with professional training on the competencies needed for professional certification.[44]

The law provides special requirements for peer mentors and postsecondary instructors and school district personnel who instruct and supervise students during their clinical experiences.[45] During field experience courses or internships, all school district personnel and instructional personnel who supervise or direct teacher preparation students in traditional teacher preparation programs and educator preparation institutes must:
- Have evidence of "clinical educator" training;
- Hold a valid state-issued professional certificate;
- Have at least three years of teaching experience in prekindergarten through grade 12; and
- Have earned an "effective" or "highly effective" rating on the prior year's performance evaluation or be a peer evaluator under the district's approved evaluation system.[46]

Educator Performance Evaluations

Components of the each school district's instructional personnel and school administrator performance evaluation system are divided into three parts: performance of students; instructional practice or leadership; (for instructional or administrative personnel, respectively); and professional responsibilities.[47] Florida's educator evaluation system differentiates among four

[40] Section 1012.585(3)(a), F.S.
[41] Section 1012.585(3)(a), F.S.
[42] Sections 1012.32 and 1012.585(5), F.S. and Rule 6A-4.0051(7), F.A.C.
[43] Section s. 1004.04, F.S.
[44] Sections 1004.85 and 1012.56(8)(a), F.S.
[45] Sections 1004.04(5), 1004.85(6)., and 1012.56(8)(a)3., F.S.
[46] Sections 1004.04(5)(b) and 1004.85(6), F.S.
[47] Section 1012.34(3)(a), F.S.

levels: highly effective; effective; needs improvement; or, for instructional personnel in the first three years of employment who need improvement, developing;[48] and unsatisfactory.[49]

Assignment of Classroom Teachers to Schools Graded "D" or "F"

Current law prohibits school districts from assigning a higher percentage than the school district average of temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to schools graded "D" or "F".[50] Each school district must annually certify to the Commissioner of Education that this requirement has been met.[51] If the Commissioner determines that a school district is not in compliance with this provision, the State Board of Education must be notified and must take action pursuant to s. 1008.32, F.S., to require compliance.[52]

School Grades

Current law provides that the criteria for designating school performance grades for elementary schools, middle schools, and high schools, are based on a combination of student achievement, student learning gains, the improvement of the lowest 25th percentile of students in the school in Reading or English Language Arts and Mathematics, as measured by standardized statewide assessments, unless these students are exhibiting satisfactory performance.[53] For middle schools and high schools, there are additional criteria for participation and performance in accelerated courses.[54] Additionally, high school criteria include graduation rates, postsecondary readiness, performance on statewide, standardized end-of-course assessments, and the growth or decline in specific high school data components.[55]

The law specifies the letter grades used to designate school performance: "A," schools making excellent progress; "B," schools making above average progress; "C," schools making satisfactory progress; "D," schools making less than satisfactory progress; and "F," schools failing to make adequate progress.[56]

III. Effect of Proposed Changes:

Educator Certification

The bill revises the requirements for instructional personnel who supervise or direct teacher preparation students during field experience courses or internships. The bill revises K-12 educator certification requirements to authorize the use of additional assessment options, align

[48] Section 1012.34(3)(a), F.S., requires newly hired teachers to be evaluated at least twice in the first year of teaching.
[49] Section 1012.34(2)(e), F.S.
[50] Section 1012.2315(2), F.S.
[51] *Id.*
[52] *Id.* Section 1008.32, F.S., provides for the State Board of Education's oversight authority for the performance of district school boards in enforcing all laws and rules.
[53] Section 1008.34(3)(b), F.S.,
[54] *Id.*
[55] *Id.*
[56] Section 1008.34(2), F.S.

competencies across preparation program types, and provide flexibility for training and inservice requirements.

The bill deletes reference to the obsolete CLAST test that was used as a way to demonstrate mastery of general knowledge. According to the DOE, more than a decade has passed since this provision was enacted to provide a transition period for educator certification applicants who earned a passing score on the CLAST prior to July 1, 2002.[57]

The bill establishes requirements for instructional personnel who supervise or direct teacher preparation students during field experience courses or internships in another state or on a U.S. military base outside the U.S. through a Florida online or distance program. Instructional personnel in another state must have received clinical educator training or its equivalent in that state, hold a valid professional certificate issued by that state, and have at least three years of teaching experience in prekindergarten through grade 12. Similarly, instructional personnel on a U.S. military base outside the U.S. must have received clinical educator training or its equivalent; hold a valid professional certificate issued by a state, U.S. territory, or the Department of Defense; and have at least three years teaching experience in prekindergarten through grade 12.

The bill permits an applicant for an educator certificate to demonstrate mastery of general knowledge by passing a national or international examination that assesses comparable content and relevant standards in verbal, analytical writing, and quantitative reasoning skills.[58] This includes the verbal, analytical writing, and quantitative reasoning portions of the Graduate Record Examination. Passing scores identified in State Board of Education rule must be at approximately the same level of rigor as is required to pass the general knowledge examination.

The bill authorizes the State Board of Education to adopt by rule additional examinations that may be used by applicants to demonstrate mastery of subject area knowledge.[59] The board may adopt not only the world language exams administered by ACTFL, but also standardized subject area examinations for which Florida has no examinations.

Applicants with teaching experience in a Florida College System institution, state university, or private college or university must meet additional requirements to demonstrate mastery of professional preparation and education competence. Currently, applicants must document two semesters of successful teaching. Under the bill, applicants must also have taught on a full-time basis and must achieve a passing score on the professional education competency examination required by State Board of Education rule.

The bill permits the State Board of Education to adopt rules to approve specific educator preparation programs that may be used by an applicant to demonstrate mastery of professional preparation and education competence.

[57] E-mail, Department of Education, March 7, 2014. On file with the Senate Education Committee.
[58] This provision is effective July1, 2015.
[59] *Id.*

The bill requires that scientifically based reading instruction must be included in a district competency-based professional development program. According to the DOE, this provision aligns the program with the competencies required in other educator preparation programs approved by the department.[60]

With respect to renewal of a professional certificate, the bill provides that an applicant may renew a subject area specialization by passing a subject area test approved by the State Board of Education or another standardized examination in lieu of college course credit or inservice points.

In addition, the bill requires the State Board of Education to adopt rules that would expand training for renewal of professional certificates for educators who must complete training in teaching students with disabilities.[61] This will allow a teacher who holds a professional certificate to use college credits or inservice points earned through training in teaching students with disabilities, in excess of six semester hours during one certificate-validity period, toward renewal of the professional certificate during subsequent validity periods. For a teacher with a temporary certificate, the rules must allow college credits or inservice points earned through training in teaching of such students to be used toward renewal of the teacher's first professional certificate.

The bill requires the State Board of Education to adopt rules that would require an applicant for reinstatement of an expired professional certificate to earn a minimum of one college credit, or the equivalent inservice points, in the area of instruction for teaching students with disabilities. The credit may be included as one of the six college credits or equivalent inservice points the applicant must earn during the five years immediately preceding reinstatement of the expired certificate.

Other

The bill repeals a longitudinal study that compared the performance of Florida educators who met the certification requirements through different mechanisms (e.g., graduating from a Florida teacher preparation program or holding a professional certificate from another state).

The bill also allows a consortium of charter schools that meet specific statutory requirements[62] to develop a professional development system that includes a master plan for inservice activities.

Assignment of Classroom Teachers to Schools Graded "D" or "F"

Beginning July 1, 2014, the bill permits a school district to assign newly hired instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of

[60] E-mail, Department of Education, March 7, 2014. On file with the Senate Education Committee.
[61] Pursuant to section 9 of chapter 2013-236, L.O.F., codified in s. 1012.585(3)(e), F.S., an applicant for renewal of a professional certificate must earn a minimum of one college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities. The law also provides that this requirement may not add to the total hours required by the DOE for continuing education or inservice training. This requirement is effective beginning July 1, 2014. Rule 6A-4.0051(6) and (7)(e), F.A.C., specifies how an educator may satisfy the one credit or 20 inservice points required for renewal of the certificate.
[62] Section 1012.98(6), F.S.

three consecutive grades of "D" or "F" in the previous three years pursuant to s. 1008.34, F.S., if they meet specific requirements related to training, teaching experience, performance, and certification. Such newly hired instructional personnel must:

- Have received an "effective" rating or "highly effective" rating in the immediate prior year's performance evaluation;
- Be enrolled in a professional education training program provided by Teach for America,[63] hold a certificate issued pursuant to s. 1012.56, F.S., and hold a probationary contract pursuant to s. 1012.335(2)(a), F.S.;[64] or
- Hold a probationary contract pursuant to s. 1012.335(2)(a), F.S., hold a certificate issued pursuant to s. 1012.56, F.S., have successful teaching experience, and, in the judgment of the school principal, students would benefit from the placement of that individual.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[63] In order to be eligible for Teach for America's 2015 corps, an applicant must have: a bachelor's degree by June 2015; a 2.50 undergraduate GPA; and proof of U.S. citizenship, national/permanent resident status, or deferred action for childhood arrivals. Corps members participate in the TFA training and development program. *See* https://www.teachforamerica.org/online/info/signUp.wbfl;jsessionid=37B6993DCF07D14AE14FE13B8576EB4D?_flowId=signUp-flow&_flowExecutionKey=e1s1, and http://www.teachforamerica.org/why-teach-for-america/training-and-support (last visited March 12, 2014). According to the DOE, a Teach for America teacher, like any other new teacher candidate, may currently obtain a temporary Florida educator certificate that is valid for three years, provided he or she has a major in the certification subject or passes the Florida subject area test. Once employed all teachers on a temporary certificate must pass the general knowledge certification test in the first year to maintain employment. E-mail, Department of Education, March 12, 2014. On file with the Senate Education Committee.

[64] Beginning July 1, 2011, each individual newly hired as instructional personnel by the district school board must be awarded a probationary contract. Upon successful completion of the probationary contract, the district school board may award an annual contract. Section 1012.335(2)(a), F.S. A probationary contract must be awarded regardless of previous employment in another school district or state. Section 1012.335(1)(c), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 950 does not have a fiscal impact on the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1004.04, 1012.2315, 1012.27, 1012.56, 1012.585, and 1012.98.

This bill repeals the following section of the Florida Statutes: 1012.56(17).

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The Committee Substitute:

- Adds alternative ways to meet clinical educator training requirements for personnel who supervise or direct teacher preparation students during field experience courses or internships in another state or on a U.S. military base outside the U.S. through a Florida online or distance program;
- Deletes the provision permitting an individual who successfully completes a Teach for America training program to demonstrate mastery of professional preparation and education competence;
- Permits the State Board of Education to adopt rules to approve teacher preparation programs that may be used to meet the mastery of professional preparation and education competence requirements;
- Permits an applicant for an educator certificate to demonstrate mastery of general knowledge by achieving a passing score on a national or international examination;
- Adds requirements for demonstrating mastery of professional preparation and education competence for applicants who teach in a Florida College System institution, state university, or private college or university;
- Allows a consortium of charter schools to develop a professional development system; and

- Repeals a longitudinal study that compared the performance of Florida educators who met certification requirements through different mechanisms.

CS by Education on March 11, 2014:
The committee substitute:

- Permits an applicant for an educator certificate who successfully completes a Teach for America professional education training program to demonstrate mastery of professional preparation and education competence by earning a passing score on the professional education competency exam; and
- Permits the assignment of newly hired instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous three years pursuant to s. 1008.34, F.S., if they meet specific requirements related to training, teaching experience, performance, and certification.

B. Amendments:

None.

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

By the Committee on Education; and Senator Stargel

581-02432-14 2014950c1

A bill to be entitled

An act relating to education; amending s. 1012.2315, F.S.; authorizing a school district to assign to a school that has earned failing grades certain newly hired instructional personnel; amending s. 1012.27, F.S.; revising the powers of a district school superintendent to include authorization to assign certain newly hired instructional personnel to a school that has earned failing grades based on the judgment of a school principal; amending s. 1012.56, F.S.; deleting obsolete provisions relating to acceptable means of demonstrating mastery of professional development; revising acceptable means of demonstrating mastery of subject area knowledge; conforming terminology; revising components of a competency-based professional development certification program; amending s. 1012.585, F.S.; revising certain requirements for the renewal or reinstatement of a professional certificate; providing an effective date.

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

Section 1. Subsection (2) of section 1012.2315, Florida Statutes, is amended to read:

1012.2315 Assignment of teachers.—

(2) ASSIGNMENT TO SCHOOLS GRADED "D" or "F".—

(a) A school district ~~districts~~ may not assign a higher percentage than the school district average of temporarily

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certified teachers, teachers in need of improvement, or out-of-field teachers to schools graded "D" or "F" pursuant to s. 1008.34.

(b) Beginning July 1, 2014, a school district may assign an individual newly hired as instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous 3 years pursuant to s. 1008.34 if the individual:

1. Has received an effective rating or highly effective rating in the immediate prior year's performance evaluation pursuant s. 1012.34;

2. Has successfully completed a professional education training program provided by Teach for America, holds a certificate issued pursuant to s. 1012.56, and holds a probationary contract pursuant to s. 1012.335(2)(a); or

3. Holds a probationary contract pursuant to s. 1012.335(2)(a), holds a certificate issued pursuant to s. 1012.56, has successful teaching experience, and, in the judgment of the school principal, students would benefit from the placement of that individual.

Each school district shall annually certify to the Commissioner of Education that the requirements in this subsection have ~~this requirement has~~ been met. If the commissioner determines that a school district is not in compliance with this subsection, the State Board of Education shall be notified and shall take action pursuant to s. 1008.32 in the next regularly scheduled meeting to require compliance.

Section 2. Subsection (1) of section 1012.27, Florida

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Statutes, is amended to read:

1012.27 Public school personnel; powers and duties of district school superintendent.—The district school superintendent is responsible for directing the work of the personnel, subject to the requirements of this chapter, and in addition the district school superintendent shall perform the following:

(1) POSITIONS, QUALIFICATIONS, AND NOMINATIONS.—

(a) Recommend to the district school board duties and responsibilities which need to be performed and positions which need to be filled to make possible the development of an adequate school program in the district.

(b) Recommend minimum qualifications of personnel for these various positions, and nominate in writing persons to fill such positions.

For the purpose of this subsection, the district school superintendent's recommendations for filling instructional positions at the school level must consider nominations received from school principals of the respective schools. The district school superintendent may assign an individual newly hired as instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous 3 years pursuant to s. 1008.34 if the individual holds a probationary contract pursuant to s. 1012.335(2)(a), holds a certificate issued pursuant to s. 1012.56, has successful teaching experience, and, in the judgment of the school principal, students would benefit from the placement of that individual. Before transferring a teacher

who holds a professional teaching certificate from one school to another, the district school superintendent shall consult with the principal of the receiving school and allow the principal to review the teacher's records, including student performance demonstrated under s. 1012.34, and interview the teacher. If, in the judgment of the principal, students would not benefit from the placement, an alternative placement may be sought. A principal may refuse the placement in accordance with s. 1012.28(6).

Section 3. Subsections (3), (5), and (6) and paragraph (a) of subsection (8) of section 1012.56, Florida Statutes, are amended to read:

1012.56 Educator certification requirements.—

(3) MASTERY OF GENERAL KNOWLEDGE.—Acceptable means of demonstrating mastery of general knowledge are:

(a) Achievement of passing scores on the basic skills examination required by state board rule;

~~(b) Achievement of passing scores on the College Level Academic Skills Test earned prior to July 1, 2002;~~

(b) ~~(c)~~ A valid professional standard teaching certificate issued by another state;

(c) ~~(d)~~ A valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education; or

(d) ~~(c)~~ Documentation of two semesters of successful teaching in a Florida College System institution, state university, or private college or university that awards an associate or higher degree and is an accredited institution or an institution of higher education identified by the Department

of Education as having a quality program.

(5) MASTERY OF SUBJECT AREA KNOWLEDGE.—Acceptable means of demonstrating mastery of subject area knowledge are:

(a) Achievement of passing scores on subject area examinations required by state board rule for subjects requiring no more than a bachelor's degree~~, which may include, but need not be limited to, world languages in Arabic, Chinese, Farsi, French, German, Greek, Haitian Creole, Hebrew, Hindi, Italian, Japanese, Portuguese, Russian, and Spanish~~;

(b) Completion of a bachelor's degree or higher and verification of the attainment of a passing score, as specified in state board rule, on a subject area content knowledge examination ~~an oral proficiency interview score above the intermediate level and a written proficiency score above the intermediate level on a test~~ administered by the American Council on the Teaching of Foreign Languages or a standardized assessment approved by state board rule for certification subjects for which there is no Florida-developed examination;

(c) Completion of the subject area specialization requirements specified in state board rule and verification of the attainment of the essential subject matter competencies by the district school superintendent of the employing school district or chief administrative officer of the employing state-supported or private school for a subject area for which a subject area examination has not been developed ~~and required~~ by state board rule;

(d) Completion of the subject area specialization requirements specified in state board rule for a subject coverage requiring a master's or higher degree and achievement

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of a passing score on the subject area examination or a standardized examination or assessment approved as specified in state board rule;

(e) A valid professional standard teaching certificate issued by another state; or

(f) A valid certificate issued by the National Board for Professional Teaching Standards or a national educator credentialing board approved by the State Board of Education.

A school district is ~~districts are~~ encouraged to provide mechanisms for those middle school teachers holding only a K-6 teaching certificate to obtain a subject area coverage for middle grades through postsecondary coursework or district add-on certification.

(6) MASTERY OF PROFESSIONAL PREPARATION AND EDUCATION COMPETENCE.—Acceptable means of demonstrating mastery of professional preparation and education competence are:

(a) Completion of an approved teacher preparation program at a postsecondary educational institution within this state and achievement of a passing score on the professional education competency examination required by state board rule;

(b) Completion of a teacher preparation program at a postsecondary educational institution outside Florida and achievement of a passing score on the professional education competency examination required by state board rule;

(c) A valid professional standard teaching certificate issued by another state;

(d) A valid certificate issued by the National Board for Professional Teaching Standards or a national educator

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credentialing board approved by the State Board of Education;

(e) Documentation of two semesters of successful teaching in a Florida College System institution, state university, or private college or university that awards an associate or higher degree and is an accredited institution or an institution of higher education identified by the Department of Education as having a quality program;

(f) Completion of professional preparation courses as specified in state board rule, successful completion of a professional education competence demonstration program pursuant to paragraph (8)(b), and achievement of a passing score on the professional education competency examination required by state board rule;

(g) Successful completion of a professional development ~~preparation alternative~~ certification and education competency program, outlined in paragraph (8)(a); ~~or~~

(h) Successful completion of a competency-based ~~an alternative~~ certification program pursuant to s. 1004.85 and achievement of a passing score on the professional education competency examination required by rule of the State Board of Education; or~~.~~

(i) Successful completion of a professional education training program provided by Teach for America and achievement of a passing score on the professional education competency examination required by rule of the State Board of Education.

(8) PROFESSIONAL DEVELOPMENT CERTIFICATION AND EDUCATION COMPETENCY PROGRAM.—

(a) The Department of Education shall develop and each school district may provide a cohesive, competency-based

professional development certification program by which members of a school district's instructional staff may satisfy the mastery of professional preparation and education competence requirements specified in this subsection and rules of the State Board of Education. Participants must hold a state-issued temporary certificate. A school district that implements the program shall provide a competency-based certification program developed by the Department of Education or developed by the district and approved by the Department of Education. The program must ~~shall~~ include the following components:

1. A minimum period of initial preparation before assuming duties as the teacher of record.

2. An option for collaboration between school districts and other supporting agencies or educational entities for implementation.

3. Experienced peer mentors. Each individual selected by the district as a peer mentor must hold a valid professional certificate issued pursuant to this section, must have earned at least 3 years of teaching experience in prekindergarten through grade 12, and must have earned an effective or highly effective rating on the prior year's performance evaluation under s. 1012.34 or be a peer evaluator under the district's evaluation system approved under s. 1012.34.

4. An assessment of teaching performance aligned to the district's system for personnel evaluation under s. 1012.34 which provides for:

a. An initial evaluation of each educator's competencies to determine an appropriate individualized professional development plan.

b. A summative evaluation to assure successful completion of the program.

5. Professional education preparation content knowledge that includes, but is not limited to, the following:

a. The state-adopted student content standards, including scientifically based reading instruction, content literacy, and mathematical practices, for each subject identified on the temporary certificate.

b. The educator-accomplished practices approved by the state board.

c. A variety of data indicators for monitoring student progress.

d. Methodologies for teaching students with disabilities.

e. Methodologies for teaching English language learners appropriate for each subject area identified on the temporary certificate.

f. Techniques and strategies for operationalizing the role of the teacher in assuring a safe learning environment for students.

6. Required achievement of passing scores on the subject area and professional education competency examination required by State Board of Education rule. Mastery of general knowledge must be demonstrated as described in subsection (3).

Section 4. Paragraphs (b) and (d) of subsection (3) and paragraph (b) of subsection (5) of section 1012.585, Florida Statutes, are amended to read:

1012.585 Process for renewal of professional certificates.—

(3) For the renewal of a professional certificate, the following requirements must be met:

(b) In lieu of college course credit or inservice points, the applicant may renew a specialization area by passage of a state-board-approved ~~state board approved~~ subject area test, including another standardized examination or assessment.

(d) The State Board of Education shall adopt rules for the expanded use of training for renewal of the professional certificate for educators who are required to complete training in teaching students of limited English proficiency, training in teaching students with disabilities, and training in the teaching of reading as follows:

1. A teacher who holds a professional certificate may use college credits or inservice points completed in training in English for Speakers of Other Languages, in teaching students with disabilities, ~~English-for-Speakers-of-Other-Languages training~~ and ~~training~~ in the teaching of reading in excess of 6 semester hours during one certificate-validity period toward renewal of the professional certificate during the subsequent validity periods.

2. A teacher who holds a temporary certificate may use college credits or inservice points completed in training in English for Speakers of Other Languages, in teaching students with disabilities, ~~English-for-Speakers-of-Other-Languages training~~ and ~~training~~ in the teaching of reading toward renewal of the teacher's first professional certificate. Such training must not have been included within the degree program, and the teacher's temporary and professional certificates must be issued for consecutive school years.

(5) The State Board of Education shall adopt rules to allow the reinstatement of expired professional certificates. The

department may reinstate an expired professional certificate if the certificateholder:

(b) Documents completion of 6 college credits during the 5 years immediately preceding reinstatement of the expired certificate, completion of 120 inservice points, or a combination thereof, in an area specified in paragraph (3)(a) to include the credit specified in paragraph (3)(e).

The requirements of this subsection may not be satisfied by subject area tests or college credits completed for issuance of the certificate that has expired.

Section 5. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 2, 2014

The Honorable Joe Negron
Senate Appropriations Committee, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I am respectfully requesting that SB 1512, related to *Students with Disabilities*, and SB 950, related to *Teacher Certification* be placed on the committee agenda at your earliest convenience.

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

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Ann Roberts/ AA

REPLY TO:
❒ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 15, 2014

The Honorable Joe Negron
Senate Appropriations Committee, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I am respectfully requesting that SB 698, related to *Sexual Misconduct with Students by Authority Figures*, SB 950, related to *Teacher Certification*, and SB 1512, related to *Students with Disabilities*, and SB 1632, related to *Special Districts*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Alicia Weiss/ AA

REPLY TO:
❒ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic Education

Bill Number CS/SB950 *(if applicable)*

Name Nanci Palacios

Amendment Barcode 589062 *(if applicable)*

Job Title ~~Campaign~~ Campaign Manager

Address 1014 Harold Ave *Street*

Phone 813-922-9848

Seffner *City* FL *State* 33584 *Zip*

E-mail npalacios@picoflorida.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Amendment Pico United Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Education

Bill Number 950 *(if applicable)*

Name Jim Horne

Amendment Barcode *(if applicable)*

Job Title

Address 200 W College Ave.
Street

Tallahassee FL 32
City *State* *Zip*

Phone

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic ED

Bill Number CS/SB 950 *(if applicable)*

Name Timothy Eakins

Amendment Barcode 589062 *(if applicable)*

Job Title Organizer

Address 1900 L St NW *Street*

Phone 860 752 4328

Washington DC DC 20036
City *State* *Zip*

E-mail tim@unitedwedream.org

Speaking: ☑ For (amendment) ☐ Against ☐ Information

Representing United We Dream Action Fund

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic Education

Bill Number CS/SB 950 *(if applicable)*

Name Francesca Menes

Amendment Barcode 589062 *(if applicable)*

Job Title Policy and Advocacy Coordinator

Address _____ *Street*

Phone (305) 571-7254

_____ *City* *State* *Zip*

E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing Amendment Florida Immigrant Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic ED

Bill Number CS/SB 950 *(if applicable)*

Name Elizabet Garcia

Amendment Barcode 589062 *(if applicable)*

Job Title

Address 4935 Sonview Dr. *Street*

Phone 407-670-9995

Apopka FL 32712 *City* *State* *Zip*

E-mail elizaga89@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

amendment

Representing Hope Community Center

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic ED

Bill Number CS SB 950 *(if applicable)*

Name Hugo Chable Lara

Amendment Barcode 589062 *(if applicable)*

Job Title

Address 2341 Old dixie Hwy
Street

Apopka FL 32712
City *State* *Zip*

Phone (407) 618-9710

E-mail HLara1995@gmail.com

Speaking: ☑ For (Amendment) ☐ Against ☐ Information

Representing Hope Community Center

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic ED

Bill Number CS/SB 950 *(if applicable)*

Name Daniel Patrocio

Amendment Barcode 589062 *(if applicable)*

Job Title ~~4435 St 1759~~ Windy Ave

Address 1759 Windy Ave
Street

Phone 407-490-5024

Apopka *City* Florida *State* 32712 *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information
amendment

Representing Hope Community Center

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic SB 950 Bill Number 950 *(if applicable)*

Name Sara Clements Amendment Barcode *(if applicable)*

Job Title Legislative Analyst

Address 215 S. Monroe St. Phone 850-391-0329
Street

TLH FL 32308 E-mail Sara@aflondapromise.org
City *State* *Zip*

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

Representing Foundation for FL's Future

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 956
INTRODUCER:	Appropriations Committee; Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Bean
SUBJECT:	Coastal Management
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Fav/CS**
2.	White	Yeatman	CA	**Fav/CS**
3.	Howard	DeLoach	AGG	**Favorable**
4.	Howard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 956 extends the expiration date by two years for any environmental resource permit issued by the Department of Environmental Protection (DEP) or a Water Management District (WMD) with an expiration date from January 1, 2014, through January 1, 2016. The bill limits the permit time extension to four years.

The bill authorizes the DEP to grant areawide and general permits for coastal construction activities. With respect to area-wide permits, the DEP must consult with the Florida Fish and Wildlife Conservation Commission (FWC) for each areawide permit proposed. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide and general permits.

The bill allows the DEP to receive gifts and donations for the administration, development, improvement, promotion, and maintenance of aquatic preserves, as well as for the future acquisition or development of aquatic preserves. In addition, the bill allows the DEP to promote the public use of aquatic preserves by authorizing privileges or concessions for visitor accommodations. The bill provides for transparency and public input regarding privileges and concessions.

The bill prohibits DEP from granting new concession agreements after May 1, 2014, in state parks that provide beach access and contain less than 7,000 linear feet of shoreline and the concession is available within 1,500 feet of the park's boundaries.

The DEP estimates a reduction in revenue from reduced permit fees of approximately $66,000 in the Permit Fee Trust Fund. Since the fund currently collects over $12 million annually, this reduction is insignificant. The state should realize an indeterminate positive fiscal impact from promoting the public use of aquatic preserves. The DEP will need additional resources for this purpose. See Section V. Fiscal Impact Statement.

II. Present Situation:

In 2009, the Legislature passed SB 360, providing a retroactive two-year extension and renewal from the date of expiration for:

- Any permit issued by the DEP or a WMD pursuant to Part IV of ch. 373, F.S.;
- Any development order issued by the Department of Community Affairs pursuant to s. 380.06, F.S.; and
- Any development order, building permit, or other land use approval issued by a local government that expired on or after September 1, 2008, but before January 1, 2012.[1]

The extension applied to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S., for development orders and land use approvals, including but not limited to certificates of concurrency and development agreements.

Those requesting an extension were required to notify the authorizing agency in writing. The notification was required to specify which permit was intended to be extended and the timeframe for acting on the authorization. Requests were due no later than December 31, 2009.[2]

The extension did not apply to a permit or authorization:

- Under a programmatic or regional general permit issued by the United States Army Corps of Engineers;
- For owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension; or
- That would delay or prevent compliance with a court order if extended.

The rules in place at the time the initial permit or authorization was issued applied to the extension. Modifications to the permits and authorizations were also governed by rules in place at the time the permit or authorization was issued; however, a modification could not extend the time limit beyond two years.[3]

[1] Chapter 2009-96, s. 14, Laws of Fla.
[2] *Id*.
[3] *Id*.

In 2010, the Legislature passed SB 1752, which reauthorized the two-year time extension granted in 2009 because the underlying law was being challenged in court.[4] Entities requesting an extension and renewal of the permit were required to notify the authorizing agency in writing.[5]

The law also extended and renewed the expiration date for permits that expired between September 1, 2008, and January 1, 2012. This extension was in addition to the extension granted in 2009 and applied to the same types of permits. The permittee was required to request the extension in writing from the DEP no later than December 31, 2010. The request had to include the authorization the permittee intended to use the extension for and the timeframe for acting on the authorization.[6]

In 2011, the Legislature extended and renewed the permits that were previously extended in 2009 and 2010 for an additional two years. The permittee was required to request the extension in writing from the DEP no later than December 31, 2011. The request had to include the authorization the permittee intended to use the extension for and the timeframe for acting on the authorization.[7]

In 2011, the Legislature passed HB 7207, to extend and renew a building permit or environmental resource permit that had an expiration date of January 1, 2012, through January 1, 2014. The extension included any development order or building permit issued by a local government, including certificates or levels of services. The extension was in addition to any existing permit extension. Development of regional impact order extensions under s. 380.06(19)(c)2., F.S., were not eligible for this extension and any permit that received a cumulative extension of four years due to previous extension was not eligible for this extension.[8]

Coastal Construction Control Line

Florida's coastline spans more than 1,260 miles; 825 miles of which are considered sandy beaches fronting the Atlantic Ocean, the Gulf of Mexico and the Straits of Florida.[9] Florida's beach and dune system are vital components of the delicate coastal ecosystem, providing habitat to hundreds of species of plants and animals. The beach and dune system is also critical in protecting uplands and coastal development during storm events.[10] Florida's beaches are a primary tourist destination, attracting 38 million visitors in 2012 and providing $55 billion in sales to the state's economy.[11]

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[4] Chapter 2009-96, Laws of Fla., was being challenged in court, see *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010); therefore, the Legislature reauthorized the permit extension granted in ch. 2009-96, Laws of Fla., in order to protect those who relied on the extension.
[5] 2010-147, s. 47, Laws of Fla.
[6] Chapter 2010-147, s. 46, Laws of Fla.
[7] Chapter 2011-139, s. 46, Laws of Fla.
[8] *Id*.
[9] DEP, *Statistical Abstract, Geographical Summary*, http://www.dep.state.fl.us/secretary/stats/geographical.htm (last visited Mar. 10, 2014).
[10] DEP, *Beaches and Coastal Systems,* http://dep.state.fl.us/beaches/ (last visited Mar. 10, 2014).
[11] Florida Shore and Beach Preservation Association, *Healthy Beaches Drive Florida's Economy*, *available at* http://www.fsbpa.com/EconomicFactSheet.pdf (last visited Mar. 10, 2014).

In 1965, the Legislature enacted the Florida Beaches and Shores Preservation Act (Act). The Act authorized the former Department of Natural Resources (DNR) to regulate construction and physical activity on or seaward of the state's beaches and required individuals, municipalities, and counties to obtain a permit for any coastal construction seaward of the mean high water line.[12]

In 1970, the Legislature established a setback line for coastal construction and excavation. The coastal construction setback line prohibited coastal construction and excavation within 50 feet of the mean high water line at any riparian coastal location fronting the Gulf of Mexico and Atlantic Ocean. The law provided waivers and variances for the setback requirement and provided an exemption for shore protection structures.[13]

Section 161.053, F.S., enacted in 1971, required setback lines on a county by county basis along the sandy beaches of the Atlantic Ocean and the Gulf of Mexico. The DNR was required to conduct a comprehensive engineering study and topographic survey to establish the setback lines necessary for the protection of upland properties and to control coastal erosion. The law required that a public hearing be held for each setback line established and that the established setback lines be recorded in the public records of the county and municipality affected.[14]

In 1978, s. 161.052, F.S., was amended to change the construction setback lines to Coastal Construction Control Lines (CCCL) and provided the DNR with authority to issue permits for construction activities that previously required a waiver or variance.

The CCCL requirements, established in s. 161.053, F.S., were significantly amended in 1996, to exempt proposed construction located seaward of the CCCL and landward of existing armoring from specific siting and design criteria. The law also allowed the DEP to grant areawide permits to local governments, governmental agencies, and utilities for specific activities, including, but not limited to, road repairs, utility repairs and replacements, beach cleaning, and emergency response. To qualify for an areawide permit, the statute requires that the activities "will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites."[15] The DEP is authorized to establish rules and criteria to administer this section; however, rules have not been adopted for areawide permits.

Section 161.053, F.S., also provides the DEP with the authority to issue general permits. General permits may be issued where a general permit line has been established and the activity "will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites."[16] Activities that may be authorized under a general permit include: dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures. A single-family habitable structure may qualify for a general permit as long as it does not advance the existing line of construction and

[12] Chapter 65-408, Laws of Fla.
[13] Chapter 70-231, Laws of Fla.
[14] Chapter 71-136, Laws of Fla.
[15] Chapter 96-371, Laws of Fla.
[16] Rule 62B-34.010(7), F.A.C., defines the general permit line as "the line that defines the seaward limit where General Permits can be issued for activities authorized by this rule chapter, is established pursuant to the provisions of s. 161.053(18), F.S., and is recorded in the official records of the county."

satisfies all siting and design requirements. Multi-family habitable structures do not qualify for a general permit. The DEP adopted Rule 62B-34, F.A.C., to establish the criteria and guidelines for the issuance of a general permit.

Florida State Parks

The DEP Division of Recreation and Parks (division) manages Florida's 161 state parks and 10 state trails that encompass approximately 800,000 acres and 100 miles of sandy white beaches. Florida's state parks provide valuable resources based recreational activities including fishing, diving, swimming, camping, and hiking. During Fiscal Year 2012-2013, more than 25 million people visited the state parks, providing over $55 million in state revenue.[17]

Section 258.007(3), F.S., provides the division authority to grant privileges, leases, concessions, and permits for the use of state parks for the accommodation of visitors. Currently the division has entered into 86 concession agreements that generate approximately $31.4 million in gross revenue, of which approximately $4 million is paid to the state.[18] Concession operations provide services such as merchandise sales, passenger ferry services, boat and land tours, food and beverage services, recreational equipment rentals, pier operations, campground operations, and recreational skills instruction.[19]

Aquatic Preserves

The Florida Aquatic Preserve Act was enacted in 1975 to set aside and protect state-owned submerged lands that have "exceptional biological, aesthetic, and scientific value."[20] There are 41 aquatic preserves protecting approximately 2.2 million acres in Florida.[21]

Aquatic preserves serve many valuable ecological and economic functions. The aquatic preserves provide nurseries for juvenile fish and other aquatic life, maintain water quality, and provide habitat for shorebirds. The aquatic preserves are also valuable tourist destinations, providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.[22]

The DEP is responsible for managing the state's aquatic preserves by maintaining a healthy balance of resource protection and promoting public access to the preserves.[23] The DEP adopted Rule Chapters 18-18 and 18-20, F.A.C., which specify the additional resource protections, management criteria, and regulations related to human activity that are permitted within an aquatic preserve.

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[17] Florida Park Service, Florida State Parks, *About Florida State Parks and Trails*, http://www.floridastateparks.org/resources/aboutus.cfm (last visited Apr. 23, 2014.
[18] Email from Amanda Marsh, DEP Office of Legislative Affairs (Apr. 23, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).
[19] DEP, *Bureau of Operational Services, Concession Operations*, http://www.dep.state.fl.us/Parks/bos/vsp/default.htm (last visited Apr. 23, 2014).
[20] Sections 258.35-394, and 258.40-46, F.S.
[21] DEP, *Florida's Aquatic Preserves*, http://www.dep.state.fl.us/coastal/programs/aquatic.htm (last visited Mar. 3, 2014).
[22] DEP, *Florida's Aquatic Preserves*, *Protecting Our Most Valued Resource: A Program Overview*, *available at* http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf (last visited Mar. 3, 2014).
[23] Sections 258.35-258.394 and 258.40-258.46, F.S.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of Florida law to extend and renew the permit extensions from previous years. The bill extends the expiration date by two years for any environmental resource permit issued by the DEP or a WMD with an expiration date from January 1, 2014, through January 1, 2016. The extension includes local government-issued development orders or building permits, including certificates of level of service. The bill does not prohibit the conversion from the construction phase to the operation phase upon completion of construction. The extension is in addition to any existing permit extensions; however, the total permit extension time for this bill and the 2009, 2010, and 2011 extensions cannot exceed four years.

The bill extends the dates for commencement and completion for any required mitigation associated with a phased construction project. The extension does not apply to:

- A permit or authorization under a programmatic or regional permit issued by the United States Army Corps of Engineers;
- A permit or authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization; or
- A permit or authorization that would be out of compliance with a court order if extended.

The bill requires that permit extensions are subject to the rules in effect at the time the permit was issued, unless the rules would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit. A modification cannot extend the time limit beyond two additional years.

The bill authorizes a county or municipality to require a property owner that has requested an extension to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws.

Section 2 amends s. 258.007, F.S., to prohibit the division from granting new concession agreements after May 1, 2014, in a state park that provides beach access and contains less than 7,000 linear feet of shoreline if the concession is available within 1,500 feet of the park's boundaries. The bill specifies that the provision does not apply to concession agreements for accommodations offered on or before May 1, 2014.

Section 3 amends s. 161.053, F.S., to require the DEP to adopt rules for areawide and general permits. The bill expands the types of activities allowed under each type of permit.

For areawide permits, the bill authorizes construction of minor structures and specifies dune restoration and on-grade walkovers qualify under this type of permit. The DEP must consult with the FWC for each proposed areawide permit.[24]

[24] Currently, the FWC is responsible for reviewing and commenting on administrative permits for coastal construction activities and reviewing beach lighting ordinances. This provision of the bill allows FWC to retain their involvement in the permitting process, which is of particular relevance with respect to swimming pools associated with single-family homes that produce an illuminating artificial light that may interfere with sea turtle nesting.

For general permits, the bill expands the types of activities to include dune restoration, construction of swimming pools associated with single-family habitable structures that do not advance the existing line of construction and comply with siting and design requirements, and minor reconstruction of existing coastal armoring structures.

Section 4 creates s. 258.435, F.S., promoting the use of aquatic preserves and their associated uplands. The bill allows the DEP to receive gifts and donations in order to promote the use of aquatic preserves. The funds received are to be deposited into the Land Acquisition Trust Fund for the administration, development, improvement, promotion, and maintenance of the preserves and their associated uplands. The gifts and donations may also be used for future acquisitions or development of aquatic preserves and their associated uplands.

The bill authorizes the DEP to grant a privilege or concession for the accommodation of visitors to an aquatic preserve as long as the privilege or concession does not interfere with the public's access to the preserve and is compatible with the preserve's management plan. It specifies that, in granting a concession, the DEP must base their decision on business plans, qualifications, approach, and specified expectations or criteria. A privilege or concession may not be assigned or transferred by the recipient without consent from the DEP. The public is afforded transparency and input measures, as the bill requires the DEP website to display proposed concession agreements, and allows for the public to comment on proposed concession agreements prior to execution of an agreement.

Section 5 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/CS/SB 956, developers or other entities holding a development permit or other authorization may realize a positive fiscal impact from permits that are extended or renewed for two years.

The bill may reduce the number of individual permits needed by the private sector for coastal construction projects, which may result in lower permitting costs for such projects.[25]

Private entities that enter into agreements with the DEP to provide vending services, accommodations, and recreational opportunities within an aquatic preserve will experience an indeterminate positive fiscal impact.[26]

C. Government Sector Impact:

The DEP and other governmental entities that issue permits subject to the extensions authorized in this bill may experience a negative fiscal impact due to the loss of permit renewal fees.

The bill will reduce revenues from permit fees within the Permit Fee Trust Fund. Activities that currently require administrative permits may now qualify for general permits or areawide permits. The DEP estimates approximately $66,000 in reduced revenues based on the number of permit applications and permit application fees from 2013.[27]

Conversely, local governments that apply for coastal construction permits will realize a cost savings as the number of required individual permits will decrease.

The DEP will need additional funding to promote the public use of Florida's aquatic preserves. The department has requested $250,000 in the agency's Fiscal Year 2014-2015 Legislative Budget Request to implement a targeted and creative ecotourism and marketing initiative. This issue has been included in both the Senate (SB 2500, as introduced) and House (HB 5001, as introduced) general appropriation bills.

The state will realize an indeterminate, positive fiscal impact from promoting the public use of aquatic preserves and their associated uplands. The DEP agency analysis includes examples of revenue generated from agreements with private entities. For example, at Little St. George Island, the DEP contracts with a concessionaire to provide an "all inclusive" primitive camping experience. The five year agreement allows the state to receive 13 percent of all gross receipts, excluding sales tax, providing approximately $148,000 over five years. At St. Joseph Bay Aquatic Preserve, the DEP contracts with a private entity to provide kayak and paddle boat excursions. The five year agreement

[25] DEP, *Senate Bill 956 Agency Analysis*, 7 (Mar. 2014).
[26] *Id.* at 5-6.
[27] *Id.*

allows for the state to receive 10 percent of gross revenue per year, providing approximately $50,000 over the next five years.[28]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DEP to grant areawide permits for construction of minor structures, including dune restoration and on-grade dune walkovers, which expands the allowable activities under an areawide permit. The statute states an areawide permit may be granted to local governments, governmental agencies, and utility companies as long as the activity does "not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites." The DEP has not defined "dune restoration" in statute or rule; therefore, it is unclear if this type of activity will cause measureable interference with the beach dune system and marine turtles. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide permit applications, which may resolve this issue.

The bill allows swimming pools to be permitted under a general permit as long as they do not advance the existing line of construction and "will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites." Rule 62B-33.002(60)(c) F.A.C., specifies a structure is considered a "major structure" if "as a result of design, location, or size [it] could cause an adverse impact to the beach and dune system." Rule 62B-33.002(60)(c)1, F.A.C., clarifies a swimming pool is considered a "nonhabitable major structure." The swimming pool provision in the bill could necessitate changes be made to the swimming pool criteria established in rule.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 161.053 and 258.007.

This bill creates section 258.435 of the Florida Statutes.

The bill creates an undesignated section of Florida Law.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 22, 2014:

- Extends the expiration date by two years for any environmental resource permit, local government-issued development order, or building permit issued by the DEP or a

[28] *Id*.

WMD with an expiration date from January 1, 2014, through January 1, 2016. The bill limits permit extensions to four years.

- Prohibits the division from granting new concession agreements after May 1, 2014, in a state park that provides beach access and contains less than 7,000 linear feet of shoreline if the concession is available within 1,500 feet of the park's boundaries. The bill specifies that the provision does not apply to concession agreements for accommodations offered on or before May 1, 2014.

CS/CS by Community Affairs on March 25, 2014:
Requires the DEP to consult with FWC on each proposed areawide permit. With respect to the granting of concessions and privileges in aquatic preserves, the DEP would consider specified criteria, post proposed concession agreements on the DEP website, and ensure that the public has the opportunity for input.

CS by Environmental Preservation and Conservation on March 13, 2014:

- Requires the DEP to adopt rules to establish criteria and guidelines for areawide and general permits;
- Allows the DEP to issue a general permit for dune reconstruction, construction of swimming pools associated with single family habitable structures, and minor reconstruction of existing coastal armoring structures; and
- Deletes the term "lease" from the types of agreements the DEP may grant for visitor accommodations to aquatic preserves.

B. Amendments:

None.

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

640218

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 22 and 23
insert:
Section 1.
(1) Any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2014, through January 1, 2016, is extended and renewed for a period of 2 years

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after its previously scheduled date of expiration. This extension includes any local government-issued development order or building permit including certificates of levels of service. This section does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension. Extensions granted pursuant to this section; s. 14 of chapter 2009-96, Laws of Florida, as reauthorized by s. 47 of chapter 2010-147, Laws of Florida; s. 46 of chapter 2010-147, Laws of Florida; s. 73 or s. 79 of chapter 2011-139, Laws of Florida; or s. 24 of chapter 2012-205, Laws of Florida, may not exceed 4 years in total. Further, specific development order extensions granted pursuant to s. 380.06(19)(c)2., Florida Statutes, may not be further extended by this section.

(2) The commencement and completion dates for any required mitigation associated with a phased construction project are extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

(3) The holder of a valid permit or other authorization that is eligible for the 2-year extension must notify the authorizing agency in writing by December 31, 2014, identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.

(4) The extension provided in subsection (1) does not apply to:

(a) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

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(b) A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.

(c) A permit or other authorization, if granted an extension that would delay or prevent compliance with a court order.

(5) Permits extended under this section shall continue to be governed by the rules in effect at the time the permit was issued unless it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit which lessens the environmental impact, except that any such modification does not extend the time limit beyond 2 additional years.

(6) This section does not impair the authority of a county or municipality to require the owner of a property who has notified the county or municipality of the owner's intent to receive the extension of time granted pursuant to this section to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

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

And the title is amended as follows:

Delete line 2

and insert:

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An act relating to environmental regulation; extending and renewing building permits and certain permits issued by the Department of Environmental Protection or a water management district, including any local government-issued development order or building permit issued pursuant thereto; limiting certain permit extensions to a specified period of time; extending commencement and completion dates for required mitigation associated with a phased construction project; requiring the holder of an extended permit or authorization to provide notice to the authorizing agency; providing exceptions to the extension and renewal of such permits; providing that extended permits are governed by certain rules; providing applicability; amending s.

481224

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 83 and 84
insert:

Section 2. Subsection (3) of section 258.007, Florida Statutes, is amended to read:

258.007 Powers of division.—

(3)(a) The division may grant privileges, leases, concessions, and permits for the use of land for the accommodation of visitors in the various parks, monuments, and

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memorials, provided no natural curiosities or objects of interest shall be granted, leased, or rented on such terms as shall deny or interfere with free access to them by the public; provided further, such grants, leases, and permits may be made and given without advertisement or securing competitive bids; and provided further, that no such grant, lease, or permit shall be assigned or transferred by any grantee without consent of the division.

(b) Notwithstanding paragraph (a), after May 1, 2014, the division may not grant new concession agreements for the accommodation of visitors in a state park that provides beach access and contains less than 7000 linear feet of shoreline if the type of concession is available within 1500 feet of the park's boundaries. This paragraph does not apply to concession agreements for accommodations offered at the park on or before May 1, 2014. This paragraph shall take effect upon this act becoming a law.

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

And the title is amended as follows:

Delete lines 6 through 19

and insert:

rules; amending s. 258.007, F.S., prohibiting certain new concession agreements in state parks with limited shorelines; exempting existing accommodations; creating s. 258.435, F.S., requiring the department to promote the public use of aquatic preserves and their associated uplands; authorizing the department to receive gifts and donations for certain purposes;

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authorizing the department to grant privileges or concessions for the accommodation of visitors in and use of aquatic preserves and their associated uplands provided certain conditions are met; prohibiting a grantee from assigning or transferring such privileges or concessions without the department's consent; requiring information on proposed concession agreements to be posted on the department's website upon submittal and 60 days before execution; providing effective dates.

By the Committees on Community Affairs; and Environmental Preservation and Conservation; and Senator Bean

578-03195-14 2014956c2

A bill to be entitled

An act relating to coastal management; amending s. 161.053, F.S.; authorizing the Department of Environmental Protection to grant areawide permits for certain structures; requiring the department to adopt rules; creating s. 258.435, F.S.; requiring the department to promote the public use of aquatic preserves and their associated uplands; authorizing the department to receive gifts and donations for certain purposes; authorizing the department to grant privileges or concessions for the accommodation of visitors in and use of aquatic preserves and their associated uplands provided certain conditions are met; prohibiting a grantee from assigning or transferring such privileges or concessions without the department's consent; requiring information on proposed concession agreements to be posted on the department's website upon submittal and 60 days before execution; providing an effective date.

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

Section 1. Subsections (17) and (18) of section 161.053, Florida Statutes, are amended to read:

161.053 Coastal construction and excavation; regulation on county basis.—

(17) The department may grant areawide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general

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

578-03195-14 2014956c2

jurisdiction or responsibility or for the construction of minor structures, if these activities or structures, due to the type, size, or temporary nature of the activity or structure, will not cause measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites. Such activities or structures must comply with this section and may include, but are not limited to: road repairs, not including new construction; utility repairs and replacements, or other minor activities necessary to provide utility services; beach cleaning; dune restoration; on-grade walkovers for enhancing accessibility or usage in compliance with the Americans with Disabilities Act; and emergency response. The department shall ~~may~~ adopt rules to establish criteria and guidelines for permit applicants. The department shall consult with the Florida Fish and Wildlife Conservation Commission on each proposed areawide permit and must require notice provisions appropriate to the type and nature of the activities for which the areawide permits are sought.

(18)(a) The department may grant general permits for projects, including dune restoration, dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures, if the projects, due to type, size, or temporary nature, will not cause a measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites. Multifamily habitable structures do not qualify for general permits. However, single-family habitable structures and swimming pools associated with such single-family habitable structures that do not advance the line of existing construction

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

and satisfy all siting and design requirements of this section and minor reconstruction for existing coastal armoring structures may be eligible for a general permit.

(b) The department shall ~~may~~ adopt rules to establish criteria and guidelines for permit applicants.

(c) ~~(a)~~ Persons wishing to use the general permits must, at least 30 days before beginning any work, notify the department in writing on forms adopted by the department. The notice must include a description of the proposed project and supporting documents depicting the proposed project, its location, and other pertinent information as required by rule, to demonstrate that the proposed project qualifies for the requested general permit. Persons who undertake projects without proof of notice to the department, but whose projects would otherwise qualify for general permits, shall be considered to have undertaken a project without a permit and are subject to enforcement pursuant to s. 161.121.

(d) ~~(b)~~ Persons wishing to use a general permit must provide notice as required by the applicable local building code where the project will be located. If a building code does not require ~~requires no~~ notice, a ~~any~~ person wishing to use a general permit must, at a minimum, post a sign describing the project on the property at least 5 days before commencing construction. The sign must be at least 88 square inches, with letters no smaller than one-quarter inch.

Section 2. Section 258.435, Florida Statutes, is created to read:

258.435 Use of aquatic preserves for the accommodation of visitors.—

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

(1) The Department of Environmental Protection shall promote the public use of aquatic preserves and their associated uplands. The department may receive gifts and donations to carry out the purposes of this part. Money received in trust by the department by gift, devise, appropriation, or otherwise, subject to the terms of such trust, shall be deposited into the Land Acquisition Trust Fund and appropriated to the department for the administration, development, improvement, promotion, and maintenance of aquatic preserves and their associated uplands and for any future acquisition or development of aquatic preserves and their associated uplands.

(2) The department may grant a privilege or concession for the accommodation of visitors in and the use of aquatic preserves and their associated state-owned uplands if the privilege or concession does not deny or interfere with the public's access to such lands and is compatible with the aquatic preserve's management plan as approved by the Acquisition and Restoration Council. A concession must be granted based on business plans, qualifications, approach, and specified expectations or criteria. A privilege or concession may not be assigned or transferred by the grantee without the consent of the department.

(3) In order to provide transparency to the public, information on proposed concession agreements will be posted on the department's website upon submission to the department and 60 days before execution. The public shall be afforded the opportunity to comment on proposed concession agreements before execution.

Section 3. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AARON BEAN
4th District

April 3, 2014

Senator Joe Negron
Chairman, Committee on Appropriations
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

This letter is to request that *CS/CS/SB 956 relating to an act of Coastal Management* be placed on the agenda of the next possible committee meeting if received.

Thank you for your consideration of this request.

Respectfully,

Aaron Bean
State Senator, 4th District

Cc: Cindy Kynoch, Staff Director
Ann Roberts, Committee Administrative Assistant

REPLY TO:
❒ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
❒ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AARON BEAN
4th District

April 11, 2014

Senator Joe Negron
Chairman, Committee on Appropriations
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

This letter is to request that the following bills be placed on the agenda of the next committee meeting:

- *CS/CS/SB 956 relating to an act of Coastal Management (Companion bill on 2nd. Reading)*
- *CS/SB 1212 relating to an act of behavioral analysts (Companion in last committee)*
- *SB 388 – Public Retirement (Companion bill on 2nd. Reading)*
- *SB 598 – Juvenile Justice Education Program (In Senate Messages}*
- *SB 992 – Infectious Disease Control (Companion in last committee)*
- *SB 1122 – Emergency Allergy Treatment (Companion bill on 2nd Reading)*
- *SB 1416 Sexual Predator & Sexual Offender Absconders (Companion in last committee)*

Thank you for your consideration of this request.

Respectfully,

Aaron Bean
State Senator, 4th District

Cc: Cindy Kynoch, Staff Director
Ann Roberts, Committee Administrative Assistant

REPLY TO:
❒ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
❒ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-22-14
Meeting Date

Topic Opposition

Bill Number CS/CS/SB 956 *(if applicable)*

Name Donald Forgione

Amendment Barcode 481224 *(if applicable)*

Job Title Director of the Florida Park Service

Address 3900 Commonwealth Blvd.
Street

Phone

Tallahassee FL
City *State* *Zip*

E-mail

Speaking: ☐ For ☒ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 972
INTRODUCER:	Appropriations Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senators Galvano and Bradley
SUBJECT:	Attorneys for Dependent Children with Special Needs
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Harkness	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 972 requires the court to appoint an attorney for any dependent children who have certain special needs.

A dependent child will qualify for an attorney if he or she:
- Already lives in, or is being considered for placement in a skilled nursing facility;
- Is prescribed a psychotropic medication but does not assent to take it;
- Has a developmental disability;
- Already lives in, or is being considered for placement in a residential treatment center; or
- Is a victim of human trafficking.

The bill requires the court to ask the statewide guardian ad litem office for a recommendation for an attorney willing to work without additional compensation, or pro bono, prior to the court appointing an attorney on a compensated basis. The attorney must be available for services within 15 days of the court's request. If, however, the statewide guardian ad litem does not make a recommendation within 15 days after the court's request, the court may appoint a compensated attorney. Any appointment by the court must be in writing.

The bill directs the attorney representing the child to provide the complete range of legal services from removal from the home or initial appointment through all appellate proceedings. With court

permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters.

The bill requires that, except for attorneys working pro bono, adequate compensation must be provided to attorneys appointed to represent dependent children with disabilities and access to funding for expert witnesses, depositions, and other costs of litigation. Payment of attorneys is subject to appropriation and to review by the Justice Administrative Commission (JAC) for reasonableness. Fees are capped at $1,000 per child per year. The bill requires the JAC to contract with all attorneys appointed by the court.

The bill requires the Department of Children and Families (DCF) to develop procedures for use in identifying a dependent child with qualifying special needs. The DCF is authorized to adopt rules for this purpose.

The bill preserves the power of the court to appoint an attorney for any dependent child under chapter 39, F.S.

The bill has a recurring fiscal impact of approximately $1.58 million a year based upon the Department of Children and Families' estimate of the number of dependent children who will qualify for an attorney pursuant to the bill's provisions.

II. Present Situation:

Dependent Children

A child that is determined by a court to be a dependent child, is a child who is dependent on the state for care and protection.[1] A child the court finds dependent is a child found:

- To have been abandoned, abused, or neglected by parents or legal custodians;
- To have been surrendered to the Department of Children & Family Services (DCF) or a licensed child-placing agency for adoption;
- To have been voluntarily placed with a licensed child-placing agency for adoption;
- To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, or the DCF, and after being placed a case plan expired and the parents or legal custodian failed to substantially comply with the plan;
- To have been voluntarily placed with a licensed child-placing agency for adoption and a parent or parents have signed a consent;
- To have no parent or legal custodians capable of providing supervision and care;
- To be at substantial risk of imminent abuse, abandonment or neglect by the parents or legal custodians; or
- To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing necessary and appropriate supervision and care.[2]

[1] *See In re M.F.*, 770 So. 2d 1189, 1193 (Fla. 2000) (stating that the "purpose of a dependency proceeding is not to punish the offending parent but to protect and care for a child who has been neglected, abandoned, or abused").
[2] Section 39.01(15), F.S.

The dependency process in Florida begins with a call to the Florida Abuse Hotline (hotline).[3] If accepted by the hotline, the call is referred to a child protective investigator, who conducts an on-site investigation of the allegations of abuse, neglect, or abandonment.[4] If warranted, a dependency petition is filed with the court by DCF.[5] A child may be taken into custody and placed in a shelter without a prior hearing if there is probable cause of imminent danger or injury to the child, the parent or legal custodian, responsible adult relative has materially violated a condition of placement, or the child has no parent, legal custodian, or responsible adult relative immediately known and able to provide supervision and care.[6] In that instance, a judicial hearing must be held within 24 hours after removal of the child from the home.[7] A Guardian ad Litem must be appointed at the time of the shelter hearing.[8] If needed, an Attorney ad Litem may be appointed at this time as well.[9]

If a petition for dependency is filed, whether or not the child is taken into custody, the circuit court assigned to hear dependency cases (dependency court) will schedule an adjudicatory hearing to determine whether the child is dependent, based on a preponderance of the evidence.[10] If a court finds a child dependent, a disposition hearing is held to determine appropriate services and placement settings for the child.[11] At this hearing, the court also reviews and approves a case plan outlining services and desired goals for the child.[12]

The dependency court holds periodic judicial reviews to determine the child's status, progress in following the case plan, and the status of the goals and objectives of the case plan. These reviews will generally occur every six months.[13] If after 12 months, case plan goals have not been met, the court holds a permanency hearing to determine the child's permanent placement goal.[14]

Lawyers for Children in the Dependency System

While all parents in dependency court are entitled to counsel, and indigent parents are entitled to appointed counsel,[15] no provision in Florida law or rule requires appointment of counsel for dependent children, with a few exceptions, including children placed in a skilled nursing facility[16] and children facing involuntary commitment for mental health treatment under the

[3] Section 39.201(2)(a), F.S.
[4] Section 39.301(1), F.S.
[5] Section 39.501(1) and (3)(c), F.S.
[6] Section 39.402(1), F.S.
[7] Section 39.402(8)(a), F.S.
[8] Section 39.822(1), F.S.
[9] The term "ad Litem" means literally "for the suit." In practice, it means a representative, either lay (guardian) or lawyer (attorney) appointed for the limited purposes of a particular lawsuit.
[10] Section 39.507(1)(a) and (b), F.S.
[11] Section 39.521(1), F.S.
[12] Section 39.521(1)(a), F.S.
[13] Section 39.521(1)(d), F.S.
[14] Section 39.621(1), F.S.
[15] Section 39.013(1), F.S.
[16] Section 744, conference report on SB 1500 (2013 Reg. Session)

Baker Act.[17] Unlike parents, children have been found to have no constitutional right to representation by counsel in dependency court.[18]

In general, the federal and state approach to safeguarding the legal needs of children in the dependency system relies upon the appointment of guardians ad litem or attorneys ad litem. The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to document in their case plans provisions for appointing guardian ad litem to represent the child's best interest in every case of child abuse or neglect which results in a judicial proceeding.[19] The funds of the Florida guardian ad litem program support both lay volunteers who assist children in dependency proceedings and attorneys ad litem. The guardian ad litem program has succeeded in recruiting attorneys who wish to satisfy their pro bono expectations by representing children with various legal needs in dependency court.[20] When there are insufficient pro bono lawyers available and there are sufficient resources to do so, the guardian ad litem program may contract with legal aid, other programs, or private attorneys for the provision of these services.[21]

Florida law requires the appointment of a guardian ad litem for every child who is the subject of a dependency proceeding.[22] While the guardian ad litem program has requested funds to allow it to meet this mandate, the guardian ad litem indicates they have not been fully funded. As of November 2013, there were 29,285 dependent children under court supervision, of whom 22,281 (76 percent) had been appointed a guardian ad litem.[23] The guardian ad litem program also funds the current attorney ad litem program. The guardian ad litem attorney is required by program standards to request the appointment of an attorney ad litem in any case where doing so would further the best interests of the child. In addition, the court on its own motion or upon motion of any party, including the child, can appoint an attorney ad litem at any point in the dependency process.[24] Common reasons for seeking appointment of an attorney ad litem in dependency court include cases in which a child needs legal guardianship or where special expertise is needed in areas such as immigration law, disability law, or administrative forums. No statewide tracking mechanism exists for the appointment of attorneys ad litem for dependent children, because attorneys are appointed at the court circuit level. The budget for the guardian ad litem program in Fiscal Year 2012-2013 was $34.1 million dollars.[25] Last year, the guardian ad litem program spent approximately $360,000 in contracts for attorney ad litem services.[26] Each attorney ad litem is typically paid $500-$1,000 annually per child per year.[27]

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[17] Section 394.467(4), F.S. requires the appointment of the Office of the Public Defender to represent any person for whom involuntary placement is sought pursuant to ch. 394, known as the Baker Act (s. 394.451, F.S.)
[18] *In the Interest of D.B.*, 385 So. 2d. 83, 90-91 (Fla. 1980), *In the Interest of C.T.*, 503 So .2d 972, 973 (Fla. 4th DCA 1987).
[19] 42 U.S.C. ss. 5101 *et seq.*
[20] The Florida Bar has an expectation that its members perform *pro bono* services. This term literally means "for good," and is applied to services performed without compensation by lawyers.
[21] Office of the Florida Guardian ad Litem, email, (March 13, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[22] Section 39.402(8)(c)1, s. 39.807(2), s. 39.822(1), F.S.
[23] Florida Guardian ad Litem, November 2013 Representation Report (on file with the Senate Appropriations Committee).
[24] Fla. R. Juv. P. 8.217(a).
[25] Office of the Florida Guardian ad Litem, *supra* note 20.
[26] Proviso language in the budget last year included funds appropriated for contracts with Attorneys ad Litem, to be selected and contracted with by the GAL.
[27] Office of Florida Guardian ad Litem, *supra* note 20.

In addition to the services of the attorneys ad litem through the guardian ad litem program, other options exist for legal services for children. The Florida Bar Foundation provides grants to legal service providers, several law schools have clinics which serve children, and several Children's Councils[28] fund lawyers for children. Notable among efforts to provide legal services is the Foster Children's Project in Palm Beach County. This project, administered by the Legal Aid Society of Palm Beach County and funded by the Children's Services Council of Palm Beach County and the guardian ad litem program, provides every child in the foster care system between birth and 12 years of age, and their siblings, with an attorney to represent them in all court matters and to advocate for them to achieve permanency within 12 months. The project has recently been authorized to expand its representation to children zero to five years of age in relative placements.

The DCF estimates the number of children who would qualify for the appointment of attorneys under the provisions of this bill is 1,594.[29]

Dependent Children in Nursing Homes

The state is currently party to a lawsuit related to the placement of medically complex children in more restrictive settings such as nursing homes. The United States Department of Justice joined the lawsuit which alleges the state violated the Americans with Disabilities Act (ADA).[30] The Agency for Health Care Administration (AHCA) has worked with the families of over 200 children in nursing homes under the Medicaid program to ensure they are aware of and are provided in home health services. In addition, the DCF and the Agency for Persons (APD) with Disabilities have worked with medically complex children and their families to ensure the least restrictive placement.

The DCF reports that currently 11 dependent children reside in nursing homes.[31] According to the guardian ad litem program, counsel currently represent all of these children.

Dependent Children and Psychotropic Drugs

Florida law requires the DCF to obtain consent from parents or a court order before administering psychotropic drugs to a child, barring an emergency.[32] The statute directs, unless parental rights have been terminated, parents should be involved in decision-making regarding administration of these drugs. By rule, when a child of sufficient age, understanding, and

[28] Florida Children's Councils, or Children's Services Councils, are locally established special taxing districts designed to provide services to children and families. Chapter 125, F.S., governs their creation and operation. The first Council was approved in 1946 in Pinellas County. There are currently Councils (with slight variances in names) in Broward, Duval, Hillsborough, Martin, Miami-Dade, Palm Beach, and St. Lucie counties. http://flchildrenscouncil.org/about-the-council/overview/ and http://flchildrenscouncil.org/about-cscs/member-cscs/ (last visited March 27, 2014).
[29] This number does not include those children with an unknown disability, children in in-home placements, children in extended foster care, or children being considered for placement in a residential treatment center.
[30] *A.R. et al. v. Dudek et al, United States V. Florida*, Consolidated Case No. 0:12-cv-60460-RSR, U.S. District Court for the Southern District of Florida.
[31] Department of Children and Families, Informal communication (March 13, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs.)
[32] Section 39.407(3)(a)1., F.S.

maturity refuses psychotropic medication, the dependency case manager or child protective investigator must request Children's Legal Services to request an attorney for the child.[33]

Dependent Children and Residential Treatment Facilities

No information is available about the number of children being considered for placement in a residential treatment facility. Placement of a dependent child in a residential treatment facility is governed by the provisions of s. 39.407(6), F.S. This section provides placement must be the least restrictive alternative for the child and requires an immediate appointment of a guardian ad litem for the child if a guardian ad litem is not already provided. In addition, the Florida Rules of Juvenile Procedure requires if a child does not agree with placement in a residential treatment facility, the court appoints an attorney for the child, if one has not already been appointed.[34]

Developmental Disabilities

A developmental disability is defined as a disorder or syndrome which manifests before the age of 18 and is due to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, if the disability constitutes a substantial handicap reasonably expected to be permanent.[35]

Human Trafficking

The act of human trafficking is defined as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting the person.[36]

III. Effect of Proposed Changes:

The bill requires the court to appoint an attorney for any dependent child who has a qualifying special need. Neither Florida law, nor the courts, currently guarantee legal counsel for dependent children having special needs.

This bill applies to dependent children having special needs who:

- Already live in, or are being considered for placement in a skilled nursing facility;
- Are prescribed a psychotropic medication but do not assent to take it;
- Have a developmental disability as defined in s. 393.063, F.S.;
- Already live in, or are being considered for placement in a residential treatment center; or
- Are victims of human trafficking.

The bill requires the court to ask the statewide guardian ad litem office for a recommendation for an attorney willing to work without additional compensation, or pro bono, prior to the court appointing an attorney on a compensated basis. The pro bono attorney must be available for services within 15 days after the court's request. If, however, the statewide guardian ad litem

[33] Rule 65C-35.005(3)(b), F.A.C.
[34] Fla. R. Juv. P. 8.350(6).
[35] Section 393.063(9), F.S.
[36] Section 787.06(2)(d), F.S.

does not make a recommendation within 15 days after the court's request, the court may appoint a compensated attorney. Any appointment by the court must be in writing. This provision prioritizes the use of pro bono attorneys or legal aid societies over other attorneys.

The bill directs the attorney representing the child to provide the complete range of legal services from removal from the home or initial appointment through all appellate proceedings. With court permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters.

The bill requires, except for attorneys working pro bono or without additional compensation, adequate compensation be provided to attorneys appointed to represent dependent children with disabilities along with funding for expert witnesses, depositions, and other costs of litigation. Payment of attorneys is subject to appropriation and to review by the Justice Administrative Commission (JAC) for reasonableness. Fees are capped at $1,000 per child per year. The bill requires the JAC to contract with all attorneys appointed by the court. Therefore, all payments and distributions of legal fees will go through the JAC.

The bill requires the Department of Children and Families (DCF) to develop procedures for use in identifying a dependent child with qualifying special needs. The DCF is authorized to adopt rules for this purpose.

The bill preserves the power of the court to appoint an attorney for any dependent child under ch. 39, F.S.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 972 provides that the cost to the state for attorneys appointed to represent a dependent child will be limited to the amount specifically appropriated for this purpose and attorney fees may not exceed $1,000 per child per year. However, the state's experience in paying for court-appointed counsel in criminal cases, dependency cases, and for capital collateral counsel has shown costs are difficult to control. While the Legislature may set rates to pay private attorneys and even require private attorneys to sign contracts agreeing to certain payment levels, the attorney can argue to the court their individual case warrants higher reimbursement. Courts have in some instances awarded higher fees. The Florida Supreme Court has held attorneys' fees and costs for court appointed counsel can exceed statutory limits in certain circumstances.[37]

The number of children in the dependency system that will qualify for appointed attorneys under the bill is unknown. However, based on the Department of Children and Families' estimates, approximately 1,594 children would be entitled to an attorney at a cost of $1.58 million for attorney fees. The fiscal impact of the bill may be reduced if pro bono attorneys are willing to represent some of these children; however, the number of cases that would be handled by pro bono attorneys is unknown. The DCF may incur costs in developing procedures to identify qualifying dependent children and in adopting rules.

The Office of State Courts Administrator (OSCA) indicates that fiscal impact cannot accurately be determined as insufficient data is available to quantify the increase in judicial workload. Still the OSCA expects an increase in workload from:

- The entry of orders of appointment or discharge;
- Longer hearings due to participation of attorneys;
- Additional motions and other filings from attorneys; and
- Hearings to determine a child's eligibility for counsel.[38]

VI. Technical Deficiencies:

None.

[37] *Maas v. Olive*, 992 So. 2d 196 (Fla. 2008) (holding that the statutory cap on attorney fees for court-appointed attorneys in postconviction relief proceedings was unconstitutional even though defendants have no constitutional right to such representation). *Makemson v. Martin County*, 491 So. 2d 1109, 1112 (Fla. 1986). Although this case only addressed the adequate representation of a criminal defendant based on the constitutional sixth amendment right to counsel; *Bd. of County Comm'rs of Hillsborough County v. Scruggs,* 545 So. 2d 910, 912 (Fla. 2d DCA 1989). This case applied the holding of expanding *Makemson* to attorney representation of parents in civil dependency and parental termination hearings: "Although the right to counsel in criminal cases emanates from the sixth amendment, and in civil dependency and termination of parental rights proceedings, from due process considerations, counsel is required in each case because fundamental constitutional interests are at stake. *Id*.

[38] Office of State Courts Administrator, *2014 Judicial Impact Statement, CS/SB 972* (March 28, 2014); on file with the Senate Judiciary Committee.

VII. Related Issues:

The bill is unclear as to whether organizations who agree to represent a child without additional compensation can receive funds for expert witnesses, and other litigation costs.

VIII. Statutes Affected:

This bill creates section 39.01305 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 24, 2014:
The committee substitute limits attorney fees to $1,000 per child per year.

CS/CS by Judiciary on April 1, 2014:
The committee substitute:
- Narrows the class of qualifying dependent children who are entitled to an attorney;
- Requires the court to prioritize the appointment of pro bono attorneys or other attorneys who will serve without additional compensation;
- Requires the court to appoint an attorney on a time-limited basis of 15 days;
- Provides that the Justice Administrative Commission will contract with all attorneys appointed by the court; and
- Requires the Department of Children and Families to develop procedures to use in identifying dependent children who qualify for legal services under the bill.

CS by Children, Families, and Elder Affairs on March 18, 2014:
Recognizes the contributions of organizations and individuals already providing legal representation to children in the dependency system and expresses the legislative intent that the efforts of these organizations and individuals not be supplanted by the provisions of this bill:
- Replaces legislative intent regarding the appointment of attorneys for children with a directive that such attorneys be appointed for identified groups of children;
- Revises the description of the groups of dependent children for whom attorneys must be appointed;
- Provides that attorney fees are subject to review by the Justice Administration Commission for reasonableness;
- Authorizes the Justice Administration Commission to contract with attorneys selected by the GAL program; and
- Limits attorney fees to $3,000 per child per year.

B. Amendments:

None.

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

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment

Delete line 102
and insert:
may not exceed $1,000 per child per year in addition to the sum of $110,000, which shall be provided to the Justice Administrative Commission for administrative costs.

388572

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Substitute for Amendment (670178)

Delete line 102

and insert:

may not exceed $1,000 per child per year.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senators Galvano and Bradley

590-03522-14 2014972c2

A bill to be entitled

An act relating to attorneys for dependent children with special needs; providing legislative findings and intent; creating s. 39.01305, F.S.; requiring appointment of an attorney to represent a dependent child who meets one or more specified criteria; requiring that, if one is available, an attorney who is willing to represent a child without additional compensation be appointed; requiring that the appointment be in writing; requiring that the appointment continue in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed; requiring that an attorney not acting in a pro bono capacity be adequately compensated for his or her services and have access to funding for certain costs; providing for financial oversight by the Justice Administrative Commission; providing a limit on attorney fees; requiring the Department of Children and Families to develop procedures to identify dependent children who qualify for an attorney; authorizing the department to adopt rules; providing applicability; providing an effective date.

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

Section 1. (1)(a) The Legislature finds that:

1. All children in proceedings under chapter 39, Florida Statutes, have important interests at stake, such as health, safety, and well-being and the need to obtain permanency.

2. A dependent child who has certain special needs has a particular need for an attorney to represent the dependent child in proceedings under chapter 39, Florida Statutes, as well as in fair hearings and appellate proceedings, so that the attorney may address the child's medical and related needs and the services and supports necessary for the child to live successfully in the community.

(b) The Legislature recognizes the existence of organizations that provide attorney representation to children in certain jurisdictions throughout the state. Further, the statewide guardian ad litem program provides best interest representation for dependent children in every jurisdiction in accordance with state and federal law. The Legislature, therefore, does not intend that funding provided for representation under this act supplant proven and existing organizations representing children. Instead, the Legislature intends that funding provided for representation under this act be an additional resource for the representation of more children in these jurisdictions, to the extent necessary to meet the requirements of chapter 39, Florida Statutes, with the cooperation of existing local organizations or through the expansion of those organizations. The Legislature encourages the expansion of pro bono representation for children. This act is not intended to limit the ability of a pro bono attorney to appear on behalf of a child.

Section 2. Section 39.01305, Florida Statutes, is created to read:

39.01305 Appointment of an attorney for a dependent child

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

with certain special needs.—

(1) An attorney shall be appointed for a dependent child who:

(a) Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;

(b) Is prescribed a psychotropic medication but declines to assent to the psychotropic medication;

(c) Has a diagnosis of developmental disability as defined in s. 393.063;

(d) Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or

(e) Is a victim of human trafficking as defined in s. 787.06(2)(d).

(2)(a) Before a court may appoint an attorney who may be compensated pursuant to this section, the court must request a recommendation from the statewide guardian ad litem office for an attorney who is willing to represent a child without additional compensation. If such an attorney is available within 15 days after the court's request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the statewide guardian ad litem office informs the court that it will not be able to recommend an attorney in that time period.

(b) After an attorney is appointed, the appointment continues in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed under this section to represent the child shall provide the complete range of legal services, from

the removal from home or from the initial appointment through all available appellate proceedings. With the permission of the court, the attorney for the dependent child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an attorney under this section must be in writing.

(3) Except if the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated and provided with access to funding for expert witnesses, depositions, and other costs of litigation. Payment to an attorney is subject to appropriations and subject to review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $3,000 per child per year.

(4) The department shall develop procedures to identify a dependent child who has a special need specified under subsection (1) and to request that a court appoint an attorney for the child. The department may adopt rules to administer this section.

(5) This section does not limit the authority of the court to appoint an attorney for a dependent child in a proceeding under this chapter.

(6) Implementation of this section is subject to appropriations expressly made for that purpose.

Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 2, 2014

Senator Joe Negron
201 Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/CS/SB 972, Attorneys for Dependent Children with Disabilities, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Cindy Kynoch
Alicia Weiss

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

Y 122 /2014
Meeting Date

Topic _____ Bill Number 972 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Attorney For Dependent Children

Bill Number ~~754~~ 972 *(if applicable)*

Name ALAN ABRAMOWITZ

Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 600 Callen St.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-241-3232

E-mail JUDGEA@MONICA

Speaking: ☒ For ☐ Against ☐ Information

Representing GAL

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Attorneys for Dependent Children with Special Needs

Bill Number 972 *(if applicable)*

Name Christina Spudeas

Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 1801 N. University Drive, Suite 3B
Street
Coral Springs, FL 33071
City *State* *Zip*

Phone 954-796-0860

E-mail christina.spudeas@floridaschildrenfi

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida's Children First

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1006
INTRODUCER:	Criminal Justice Committee and Senator Hays
SUBJECT:	Consumer Collection Practices
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Favorable**
2.	Sumner	Cannon	CJ	**Fav/CS**
3.	Davis	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1006 requires "control persons" of consumer collection agencies (CCAs) to submit to state and federal criminal background checks, and subjects these persons to disqualifying periods based on the severity and recency of a criminal conviction. The bill enhances the authority of the Office of Financial Regulation (OFR) to register, investigate, examine, and bring enforcement actions against consumer collection agencies. The bill requires CCA registrants to report criminal convictions, changes from the initial application, and changes to the controlling persons of a CCA agency.

This bill is estimated to have an insignificant fiscal impact on state expenditures. See Section V.

II. Present Situation:

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is "charged off" corporate records. Typically, the charged-off debt is then either assigned or sold as part of a portfolio to a third-party collection agency or collection law firm, which in turn may use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable

creditors to minimize losses due to non-repayment by borrowers, and help ensure the availability and affordability of consumer credit.

State and Federal Regulation

State and federal debt collection laws provide consumer protections against deceptive, unfair, or abusive collection practices that may occur before the debtor is sued, as well as during the litigation process.

The Fair Debt Collection Practices Act (FDCPA) is primarily enforced by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau. The FTC has received more consumer complaints about the debt collection industry than any other specific industry, and these complaints have constituted around 25 percent of the total number of complaints received by the FTC over the past three years.

At the state level, part VI of ch. 559, F.S., is the Florida Consumer Collection Practices Act (Act), and was enacted in 1972. The Act prohibits many of the same debt collection practices prohibited by the FDCPA, and gives regulatory oversight authority to the Florida Office of Financial Regulation (OFR). The Act defines "consumer collection agency" as "any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, and which is not otherwise expressly exempted from the Act." The OFR received 1,261 consumer complaints regarding consumer collection agencies in the past fiscal year.[1]

A debt collector is generally defined as any person who uses any instrumentality of interstate commerce in any business with the principal purpose of the collection of debts, or who regularly collects or attempts to collect debts owed or due or asserted to be owed or due another.[2] Both acts define "debt collector" narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations, and the consumer may recover actual and statutory damages and attorney's fees and costs. If the court finds that the suit fails to raise a justiciable issue of law or fact, the consumer is liable for court costs and reasonable attorney's fees incurred by the defendant.

In terms of the FDCPA's relation to state law, both acts were designed to work harmoniously, except to the extent state law conflicts with the FDCPA. The Act also provides that in the event of an inconsistency with the FDCPA, the provision which is more protective for the consumer or debtor shall prevail.

Registration of Consumer Collection Agencies in Florida

The OFR is responsible for the registration of consumer collection agencies that are not otherwise exempted by the Act. The Act exempts from registration, original creditors, Florida

[1] Email from the OFR (dated January 8, 2014), on file with the Subcommittee on General Government Appropriations staff.
[2] Section 559.55(6), F.S., and 15 U.S.C. § 1692a(6).

Bar members, financial institutions authorized to do business in Florida and their wholly owned subsidiaries and affiliates, and insurance companies authorized to do business in this state.

According to the OFR, there are currently 1,344 registered consumer collection agencies in Florida. During the 2012-2013 fiscal year, the OFR received 408 CCA applications. During the same fiscal year, the OFR approved 372 and denied 60 applications, and 25 applications were withdrawn.[3] Once registered, CCAs must renew their registration between October 1 and December 31 of every year.[4]

A consumer collection agency must meet minimal requirements to register with the OFR and is "entitled to be registered when registration information is complete on its face and the $200 registration fee has been paid."[5] Unlike other regulatory programs administered by the OFR, the Act gives the OFR very limited statutory authority to deny registration of consumer collection agencies. Currently, the OFR cannot deny registration to any applicant, even if its control persons have been convicted of felony financial crimes or the applicant has been subject to serious regulatory sanctions. Currently, the Act only permits the OFR to reject a registration if the applicant or any principal of the applicant previously held any professional license or state registration that was the subject of any suspension or revocation which has not been explained by the applicant to the satisfaction of the office either in the initial application or upon written request of the OFR. As written, the OFR presumably would have to grant registration after a satisfactory explanation of a disciplinary proceeding from an applicant, regardless of the egregiousness of the underlying facts.

Other regulatory programs administered by the OFR provide statutory and rule authority to deny licensure or registration based on applicants' civil, criminal, and regulatory history, which provides important public protections in light of the nature of industries regulated by the OFR and their access to consumers' financial information. With regard to criminal actions, other chapters authorize denial based on the severity and recency of a criminal plea or conviction of individuals or "control or relevant persons" listed on an application for licensure or registration. Specifically, these chapters impose disqualifying periods during which an applicant is ineligible for licensure until expiration of the disqualifying period and allow for aggravating and mitigating factors. These programs are statutorily authorized to require electronic fingerprints from applicants for state and national criminal background checks. These fingerprints are also retained by the Florida Department of Law Enforcement (FDLE) to enable rapid notification to the OFR if a licensee is arrested and/or becomes subject to a criminal prosecution.

[3] *Id.*
[4] During the 2012-2013 fiscal year, 1,283 consumer collection agencies renewed their registrations with the OFR. *2014 Legislative Bill Analysis for SB1006*, Office of Financial Regulation (February 24, 2014).
[5] Section 559.533(3), F.S. Information required on the application includes submission of business and trade names; the location of the business; statements identifying information as to owners, officers, directors and resident agents; and statements identifying and explaining any occasion on which a professional or occupational license held by the registrant or principal was the subject of any suspension or revocation proceeding.

The following table illustrates disqualifying periods for these other licenses under the OFR's jurisdiction. These disqualifying periods are explained in further detail through commission rule.[6]

Industry/License Type	Felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude	All other felonies	Misdemeanors involving fraud, dishonesty, or other acts of moral turpitude
Mortgage loan originators; control persons of mortgage brokers and lenders (ch. 494, F.S.)[7]	- Permanent bar[8] - 15 year bar for felonies involving acts of moral turpitude	7 year bar	5 year bar
Relevant persons of money services businesses (ch. 560, F.S.)[9]	15 year bar	7 year bar	5 year bar
Associated persons of securities issuers, dealers, and investment advisers (ch. 517, F.S.)[10]	15 year bar	N/A	5 year bar

Unregistered Activity

The Act provides that it is a first-degree misdemeanor to collect debts in this state without first registering with the OFR or to seek registration through fraud, misrepresentation, or concealment.[11] Additionally, unregistered out-of-state consumer debt collectors can be subject to administrative fines of up to $10,000 and enforcement actions by the Office of the Attorney General.[12]

However, the OFR is limited in its enforcement authority over unregistered in-state collection agencies. As written, it only authorizes the OFR to issue cease and desist orders over any person if it has any reason to believe the person has violated the Act, but authorizes the OFR to impose administrative fines only on registrants.[13]

[6] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
[7] *See* Chapter 69V-40, Fla. Admin. Code (Mortgage Brokerage).
[8] The permanent bar for the more severe felonies in the mortgage industry is required by federal law. In 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which requires states to implement minimum licensing standards for the mortgage industry. In 2009, the Florida Legislature enacted ch. 2009-241, L.O.F., to reflect these federal requirements. In subsequent legislative sessions, the Florida Legislature enacted similar licensing bars for the two other industries described (ch. 560 and ch. 517, F.S.).
[9] *See* Chapter 69V-560, Fla. Admin. Code (Money Transmitters).
[10] *See* Chapter 69W-600, Fla. Admin. Code (Registration of Dealers, Investment Advisers, Associated Persons).
[11] Section 559.785, F.S.
[12] Section 559.565, F.S.
[13] Sections 559.727 and 559.730, F.S.

Enforcement

In 2010, the Legislature enacted several amendments to the Act to enhance the OFR's oversight of the debt collection industry. Specifically, the 2010 amendments to the Act:

- Required registrants to maintain and produce certain books and records for at least three years after a transaction, and provided rulemaking authority to determine the content, retention, and destruction of the required records;[14]
- Designated the OFR, not the Department of Financial Services, as the agency responsible for handling and investigating consumer complaints regarding debt collection;
- Simplified the complaint statute, required consumer complaints to be subject to the penalty for perjury, and required registrants to respond to the OFR's inquiries regarding consumer complaints;
- Authorized the OFR to issue and enforce investigative subpoenas;
- Authorized the OFR to impose fines of up to $10,000 per violation, suspensions or revocations on registrants, and cease-and-desist orders against any person.[15]

The OFR is required to notify the appropriate state attorney or the Attorney General of any determination by the OFR that an unregistered CCA has violated the Act.[16]

However, the Act limits the OFR's authority to examine the books and records of only registrants to determine compliance with the Act, and the OFR's investigative authority is limited to instances when a consumer complaint has been filed against a CCA.[17]

III. Effect of Proposed Changes:

The bill expands the OFR's registration and enforcement authority under the Act. The bill creates two new definitions in s. 559.55, F.S. These include:

- "Commission" is defined as the Financial Services Commission. This relates to the bill's grant of rulemaking authority in a new s. 559.554, F.S., which will authorize the Commission to require the electronic submission of forms, documents, and fees required by the Act, and to adopt five-year, seven-year, and 15-year disqualifying periods from registration based on applicants' criminal histories.
- "Control person" is defined as an individual, partnership, corporation or trust or organization that possesses the power, directly or indirectly, to direct the management or policies of a company and includes certain specified persons as to each type of entity.

The bill repeals provisions in the registration statute, s. 559.553, F.S., that provide the current sole basis for denying registration, and creates new requirements in s. 559.555, F.S., for applicants, including a completed application form, a nonrefundable application fee of $200, and criminal background checks. Control persons of applicants must submit live-scan fingerprints for processing by the FDLE for state criminal background checks and by the Federal Bureau of Investigation (FBI) for national criminal background checks to enable the OFR to determine

[14] See Rules 69V-180.080 and 69V-180.090, Fla. Admin. Code.
[15] Ch. 2010-127, L.O.F. and s. 559.5556, F.S. *See also* Rule 69V-180.080, Fla. Admin. Code (Consumer Collection Agency Records), which set forth required books and records and was adopted pursuant to the 2010 legislation.
[16] Section 559.725(5), F.S.
[17] Sections 559.5556 and 559.725(4), F.S.

applicants' fitness for registration. The costs of fingerprint processing and retaining the fingerprints are borne by the persons subject to the background check. The OFR will pay an annual fee to FDLE for the retention of fingerprints. Based on information provided by the OFR, the average cost to process live-scan fingerprints from an approved service provider is $65 per control person, and the annual retention fee is $6.[18] CCAs who become registered before the bill's effective date of October 1, 2014, must have control persons submit live-scan fingerprints prior to the expiration of their registration on December 31, 2014 (i.e. before the next renewal cycle).

The bill subjects registrants to reporting requirements in a new s. 559.5551, F.S. This section requires registrants to notify the OFR when control persons are convicted or plead nolo contendere to certain offenses, when changes occur in the information contained in the initial application (such as a new business address), and of changes in the registrant's business organization (such as a new control person). The bill provides that the OFR may bring an administrative action to ensure compliance with the Act in order to deter registrants from adding an unqualified control person without regulatory approval. Registrants must submit a nonrefundable $200 renewal fee and fingerprint retention fee of $6 at renewal time.

The bill creates s. 559.5541, F.S., to authorize the OFR to make unannounced examinations and investigations to determine whether a person (as opposed to only registrants) has violated the Act or related rules, regardless of whether a consumer complaint has been filed against the CCA. The Act also permits the OFR to enter into joint or concurrent examinations with a state or federal regulatory agency, as long as the other regulator abides with the confidentiality provisions of ch. 119, F.S., and the Act.[19]

The bill provides additional grounds for administrative action in s. 559.730, F.S., such as unregistered activity, material misstatements on a registration application, regulatory actions and certain civil judgments, failure to maintain books and records, and acts of fraud and misrepresentation. These acts can subject an applicant or registrant to the denial, suspension, revocation of registration, and administrative fines. The bill provides that the OFR may impose an administrative fine of up to $1,000 per day for each day that a consumer collection agency acts without a valid registration.

The bill authorizes the OFR to summarily suspend registrations pursuant to s. 120.60(6), F.S., based on the arrest for specified crimes of the registrant or control person, and provides that such arrests are deemed sufficient to constitute an immediate danger to the public's health, safety, and welfare. The OFR has similar or identical summary suspension authority in chs. 494 and 517, F.S.

The bill also allows the OFR to deny requests to terminate a registration or to withdraw a registration application if the OFR believes there are grounds for denial, suspension, restriction, or revocation.

[18] E-mail from the OFR on file with Banking & Insurance staff.
[19] Senate Bill 1004 is the public records bill linked to this bill that will make certain information related to investigations and examinations of consumer collection agencies confidential and exempt from public records disclosure.

The bill provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1006 requires control persons of non-exempt collection agencies to submit electronic/live-scan fingerprints to live-scan vendors (who in turn submit fees to the FDLE for the background checks). Each control person will incur an average live-scan cost of $65.[20] The $65 average live-scan cost consists of the vendor's cost of providing the services as well as the $40.50 fee that is charged by the FDLE, which is apportioned as:

- $24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and
- $16.50 for a national background check, which is forwarded to the FBI.[21]

In addition, the bill requires the live-scan fingerprints of control persons to be retained. The cost to retain fingerprints at the state level is $6 per control person, which will be collected by the OFR annually upon renewal and paid to the FDLE.

C. Government Sector Impact:

The bill will have an insignificant fiscal impact on state expenditures by the OFR due to the fingerprint retention fees collected by the OFR at time of registration renewal that will be passed on to the FDLE. Total estimated revenue deposited with the FDLE for state background checks is anticipated to be $76,272 for the 2014-2015 fiscal year and

[20] According to the OFR, the average cost to process electronic fingerprints through a live-scan vendor is $65, which is inclusive of the $40.50 charge by FDLE and a cost added by the vendor to cover their services. E-mail from the OFR on file with Banking & Insurance staff.
[21] FDLE's bill analysis of SB 1006 on file with Banking & Insurance staff.

$34,980 (including fingerprint retention fees) for subsequent fiscal years. This revenue estimate is based on the following[22]:

- The OFR estimates 408 initial consumer collection agency applications each fiscal year, with an average of two control persons per applicant to be fingerprinted. This results in 816 new CCA control person registrants x $24 (state background check) for each fiscal year = $19,584. (However, due to the bill's October 1, 2014 effective date, the 2014-2015 fiscal year estimated fiscal impact is $14,688).[23]
- The bill authorizes full fingerprinting at renewal time for those registrants renewing by December 31, 2014 that were approved before October 1, 2014. Accordingly, Fiscal Year 2014-2015 includes: 2,566 control persons fingerprinted by their December 31, 2014, renewal x $24 (state background check) totaling $61,584.
- Beginning in Fiscal Year 2015-2016 and subsequent years, the estimated annual revenues for fingerprint retention fees would be $15,396, which would be passed from the OFR to the FDLE as a journal transfer from non-operating expenses.[24]

The OFR indicated that while the bill may result in a slight increase in investigations and examinations, existing staff and resources should be sufficient.[25] In addition, the bill grants rulemaking authority to the Financial Services Commission to require electronic submission of required forms, documents, and fees, and to establish disqualifying periods from registration based on applicants' criminal histories. Rules 69V-180.030 to 69V-180.100, Fla. Admin. Code, will need to be amended to implement these requirements. According to the OFR, these costs can be absorbed within existing resources.[26]

The FDLE has indicated that this bill does not necessitate additional FTE or other resources.[27]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.55, 559.553, 559.555, 559.565, and 559.730.

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[22] OFR's bill analysis of SB 1006 on file with Banking & Insurance staff.
[23] Prorated initial fiscal year due to the bill's October 1, 2014 effective date. ((408 applications/12 months) x 9 months x 2 control persons per applicant x $65).
[24] Based on the OFR's 2012 statistics, there were 1,283 CCA registration renewals. Using an average of two control persons per CCA, there would be 2,566 control persons subject to the $6 annual retention fee that OFR would collect during registration renewal.
[25] OFR's bill analysis of SB 1006 on file with Banking & Insurance staff.
[26] Telephone conversation with OFR staff on April 11, 2014.
[27] Telephone conversation with FDLE staff on April 10, 2014, and FDLE's bill analysis of SB 1006 on file with Banking & Insurance staff.

This bill creates the following sections of the Florida Statutes: 559.554, 559.5541, and 559.5551.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Criminal Justice on March 24, 2014:
Makes technical and conforming changes by replacing the word "federal" with the word "national" when describing the type of criminal background check that is conducted by the FBI.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Hays

591-03105-14 20141006c1

A bill to be entitled

An act relating to consumer collection practices; amending s. 559.55, F.S.; defining terms; amending s. 559.553, F.S.; removing provisions relating to the revocation or suspension of a professional license which allow the Office of Financial Regulation to reject an applicant for registration; conforming a cross-reference to changes made by the act; creating s. 559.554, F.S.; providing for the powers and duties of the Financial Services Commission and the Office of Financial Regulation; creating s. 559.5541, F.S.; authorizing the office to conduct examinations and investigations; amending s. 559.555, F.S.; revising requirements for registration as a consumer collection agency; specifying a registration fee; creating s. 559.5551, F.S.; requiring registrants to report, within a specified time period, a conviction of, or plea of nolo contendere to, a crime or an administrative enforcement action; requiring registrants to report, within a specified time period, a change in a control person or the form of the organization, or any other change in the information supplied in the initial application; amending s. 559.565, F.S.; conforming a cross-reference to changes made by the act; amending s. 559.730, F.S.; revising the administrative remedies and penalties available to the office; requiring the commission to adopt guidelines to impose administrative penalties; providing an effective date.

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

591-03105-14 20141006c1

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

Section 1. Section 559.55, Florida Statutes, is reordered and amended to read:

559.55 Definitions.—The following terms shall, unless the context otherwise indicates, have the following meanings for the purpose of this part:

(1) "Commission" means the Financial Services Commission.

(6)~~(1)~~ "Debt" or "consumer debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that ~~which~~ are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(8)~~(2)~~ "Debtor" or "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) "Control person" means an individual, partnership, corporation, trust, or organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The term includes, but is not limited to:

(a) A company's executive officers, including the president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, and other individuals having similar status or functions.

(b) For a corporation, a shareholder who, directly or indirectly, owns 10 percent or more or that has the power to

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vote 10 percent or more, of a class of voting securities unless the applicant is a publicly traded company.

(c) For a partnership, all general partners and limited or special partners who have contributed 10 percent or more or that have the right to receive, upon dissolution, 10 percent or more of the partnership's capital.

(d) For a trust, each trustee.

(e) For a limited liability company, all elected managers and those members who have contributed 10 percent or more or that have the right to receive, upon dissolution, 10 percent or more of the partnership's capital.

(5) ~~(3)~~ "Creditor" means a ~~any~~ person who offers or extends credit creating a debt or to whom a debt is owed. The term~~, but~~ does not include a ~~any~~ person to the extent that they receive an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(10) ~~(4)~~ "Office" means the Office of Financial Regulation of the ~~Financial Services~~ commission.

(2) ~~(5)~~ "Communication" means the conveying of information regarding a debt, directly or indirectly, to a ~~any~~ person through any medium.

(7) ~~(6)~~ "Debt collector" means a ~~any~~ person who uses an ~~any~~ instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collector" includes a ~~any~~ creditor who, in the process of collecting her or his own debts, uses a ~~any~~ name other than her

or his own which would indicate that a third person is collecting or attempting to collect such debts. The term does not include:

(a) An ~~Any~~ officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(b) A ~~Any~~ person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector for persons to whom it is so related or affiliated and if the principal business of such persons is not the collection of debts;

(c) An ~~Any~~ officer or employee of any federal, state, or local governmental body to the extent that collecting or attempting to collect any debt is in the performance of her or his official duties;

(d) A ~~Any~~ person while serving or attempting to serve legal process on another ~~any other~~ person in connection with the judicial enforcement of a ~~any~~ debt;

(e) A ~~Any~~ not-for-profit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; or

(f) A ~~Any~~ person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; concerns a debt which was originated by such person; concerns a debt which was not in default at the time it was obtained by such person; or

concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(3) ~~(7)~~ "Consumer collection agency" means a ~~any~~ debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted as specified in s. 559.553(3) ~~set forth in s. 559.553(4)~~.

(11) ~~(8)~~ "Out-of-state consumer debt collector" means a ~~any~~ person whose business activities in this state involve both collecting or attempting to collect consumer debt from debtors located in this state by means of interstate communication originating from outside this state and soliciting consumer debt accounts for collection from creditors who have a business presence in this state. For purposes of this subsection, a creditor has a business presence in this state if either the creditor or an affiliate or subsidiary of the creditor has an office in this state.

(9) "Federal Fair Debt Collection Practices Act" or "Federal Act" means the federal legislation regulating fair debt collection practices, as specified ~~set forth~~ in Pub. L. No. 95-109, as amended and published in 15 U.S.C. ss. 1692 et seq.

Section 2. Section 559.553, Florida Statutes, is amended to read:

559.553 Registration of consumer collection agencies required; exemptions.—

(1) A ~~After January 1, 1994, no~~ person may not ~~shall~~ engage in business in this state as a consumer collection agency or continue to do business in this state as a consumer collection

agency without first registering in accordance with this part, and thereafter maintaining a valid registration.

(2) Each consumer collection agency doing business in this state shall register with the office and renew such registration annually as set forth in s. 559.555.

~~(3) A prospective registrant shall be entitled to be registered when registration information is complete on its face and the applicable registration fee has been paid; however, the office may reject a registration submitted by a prospective registrant if the registrant or any principal of the registrant previously has held any professional license or state registration which was the subject of any suspension or revocation which has not been explained by the prospective registrant to the satisfaction of the office either in the registration information submitted initially or upon the subsequent written request of the office. In the event that an attempted registration is rejected by the office the prospective registrant shall be informed of the basis for rejection.~~

(3) ~~(4)~~ This section does ~~shall~~ not apply to:

(a) An ~~Any~~ original creditor.

(b) A ~~Any~~ member of The Florida Bar.

(c) A ~~Any~~ financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate thereof.

(d) A ~~Any~~ licensed real estate broker.

(e) An ~~Any~~ insurance company authorized to do business in this state.

(f) A ~~Any~~ consumer finance company and any wholly owned subsidiary and affiliate thereof.

(g) A ~~Any~~ person licensed pursuant to chapter 520.

(h) An ~~Any~~ out-of-state consumer debt collector who does not solicit consumer debt accounts for collection from credit grantors who have a business presence in this state.

(i) An ~~Any~~ FDIC-insured institution or subsidiary or affiliate thereof.

(4)~~(5)~~ An ~~Any~~ out-of-state consumer debt collector as defined in s. 559.55(11) ~~s. 559.55(8)~~ who is not exempt from registration by application of subsection (3) ~~(4)~~ and who fails to register in accordance with this part shall be subject to an enforcement action by the state as specified in s. 559.565.

Section 3. Section 559.554, Florida Statutes, is created to read:

559.554 Powers and duties of the commission and office.—

(1) The office is responsible for the administration and enforcement of this part.

(2) The commission may adopt rules to administer this part, including rules:

(a) Requiring electronic submission of forms, documents, and fees required by this part.

(b) Establishing time periods during which a consumer collection agency is barred from registration due to prior criminal convictions of, or guilty or nolo contendere pleas by, an applicant's control persons, regardless of adjudication.

1. The rules must provide:

a. A 15-year disqualifying period for felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude.

b. A 7-year disqualifying period for felonies not specified

in sub-subparagraph a.

c. A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or other acts of moral turpitude.

2. The rules must provide for an additional waiting period due to dates of imprisonment or community supervision, the commitment of multiple crimes, and other factors reasonably related to the applicant's criminal history.

3. The rules must provide for mitigating factors for crimes identified in sub-subparagraphs 1.a.-c.

4. An applicant is not eligible for registration until expiration of the disqualifying period set by rule.

5. Section 112.011 does not apply to eligibility for registration under this part.

(3) All fees, charges, and fines collected pursuant to this part shall be deposited into the Regulatory Trust Fund of the office.

Section 4. Section 559.5541, Florida Statutes, is created to read:

559.5541 Examinations and investigations.—

(1) Notwithstanding s. 559.725(4), the office may, without advance notice, conduct examinations and investigations, within or outside this state, to determine whether a person has violated this part or related rules. For purposes of this section, the office may examine the books, accounts, records, and other documents or matters of any person subject to this part. The office may compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Examinations may not be made more often than once during a 48-month period unless the office has

reason to believe a person has violated or will violate this part or related rules.

(2) In order to reduce the burden on persons subject to this part, the office may conduct a joint or concurrent examination with a state or federal regulatory agency and may furnish a copy of all examinations to an appropriate regulator if the regulator agrees to abide by the confidentiality provisions in chapter 119 and this part. The office may also accept an examination from any appropriate regulator.

Section 5. Section 559.555, Florida Statutes, is amended to read:

559.555 Registration of consumer collection agencies; procedure.—

(1) A ~~Any~~ person who acts ~~required to register~~ as a consumer collection agency must be registered in accordance with this section. ~~shall furnish to the office the registration fee and information as follows:~~

(2) In order to apply for a consumer collection agency registration, an applicant must:

(a) Submit a completed application form as prescribed by rule of the commission.

(b) Submit a nonrefundable application fee of $200. Application fees may not be prorated for partial years of registration.

(c) Submit fingerprints for each of the applicant's control persons in accordance with rules adopted by the commission.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

2. A state criminal history background check must be conducted through the Department of Law Enforcement, and a national criminal history background check must be conducted through the Federal Bureau of Investigation.

3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated biometric identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate in the system and inform the Department of Law Enforcement of any person whose fingerprints are no longer required to be retained.

4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.

5. The office is responsible for reviewing the results of the state and national criminal history background checks and determining whether the applicant meets registration requirements.

(3) The office shall issue a consumer collection agency registration to each person who is not otherwise ineligible and who meets the requirements of this section. However, it is a ground for denial of registration if the applicant or one of the applicant's control persons has committed any violation specified in this part, or is the subject of a pending felony criminal prosecution or a prosecution or an administrative enforcement action, in any jurisdiction, which involves fraud, dishonesty, breach of trust, money laundering, or any other act

of moral turpitude.

(4) A registration issued under this part is not transferable or assignable.

(5) A consumer collection agency shall report, on a form prescribed by rule of the commission, any change in the information contained in an initial application form, or an amendment thereto, within 30 days after the change is effective.

~~(1) The registrant shall pay to the office a registration fee in the amount of $200. All amounts collected shall be deposited by the office to the credit of the Regulatory Trust Fund of the office.~~

~~(2) Each registrant shall provide to the office the business name or trade name, the current mailing address, the current business location which constitutes its principal place of business, and the full name of each individual who is a principal of the registrant. "Principal of a registrant" means the registrant's owners if a partnership or sole proprietorship, corporate officers, corporate directors other than directors of a not-for-profit corporation organized pursuant to chapter 617 and Florida resident agent if a corporate registrant. The registration information shall include a statement clearly identifying and explaining any occasion on which any professional license or state registration held by the registrant, by any principal of the registrant, or by any business entity in which any principal of the registrant was the owner of 10 percent or more of such business, was the subject of any suspension or revocation.~~

(6) ~~(3)~~ Renewal of registration shall be made between October 1 and December 31 of each year. There shall be no

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proration of the fee for any registration. In order to renew a consumer collection agency registration, a registrant must submit a nonrefundable renewal fee equal to the registration fee and a nonrefundable fee to cover the costs of further fingerprint processing and retention as set forth by commission rule.

(7) A consumer collection agency registrant whose initial registration is approved and issued by the office pursuant to this section before October 1, 2014, who seeks renewal of the registration must submit fingerprints for each control person for live-scan processing pursuant to paragraph (2)(c). Such fingerprints must be submitted before renewing a registration that is scheduled to expire December 31, 2014.

Section 6. Section 559.5551, Florida Statutes, is created to read:

559.5551 Requirements of registrants.—A registrant under this part shall report to the office in a manner prescribed by rule of the commission:

(1) A conviction of, or plea of nolo contendere to, regardless of adjudication, a crime or administrative violation that involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude, in any jurisdiction, by the registrant or any control person within 30 days after the date of conviction, entry of a plea of nolo contendere, or final administrative action.

(2) A conviction of, or plea of nolo contendere to, regardless of adjudication, a felony committed by the registrant or any control person within 30 days after the date of conviction or the date the plea of nolo contendere is entered.

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

(3) A change to the information contained in an initial application form or an amendment to the application within 30 days after the change is effective.

(4) An addition or subtraction of a control person or a change in the form of business organization. A control person added by a registrant is subject to this part and must submit fingerprints in accordance with s. 559.555 and the rules of the commission. The office may bring an administrative action in accordance with s. 559.730 to enforce this part if the added control person fails to meet registration requirements or comply with any other provision of this part.

Section 7. Section 559.565, Florida Statutes, is amended to read:

559.565 Enforcement action against out-of-state consumer debt collector.— The remedies of this section are cumulative to other sanctions and enforcement provisions of this part for any violation by an out-of-state consumer debt collector, as defined in s. 559.55(11) ~~s. 559.55(8)~~.

(1) An out-of-state consumer debt collector who collects or attempts to collect consumer debts in this state without first registering in accordance with this part is subject to an administrative fine of up to $10,000 together with reasonable attorney fees and court costs in any successful action by the state to collect such fines.

(2) A ~~Any~~ person, whether or not exempt from registration under this part, who violates s. 559.72 is subject to sanctions the same as any other consumer debt collector, including imposition of an administrative fine. The registration of a duly registered out-of-state consumer debt collector is subject to

revocation or suspension in the same manner as the registration of any other registrant under this part.

(3) In order to effectuate this section and enforce the requirements of this part as it relates to out-of-state consumer debt collectors, the Attorney General is expressly authorized to initiate such action on behalf of the state as he or she deems appropriate in any state or federal court of competent jurisdiction.

Section 8. Section 559.730, Florida Statutes, is amended to read:

559.730 Grounds for disciplinary action; administrative remedies.—

(1) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (2) may be taken against a person registered or required to be registered under this part:

(a) Failure to disburse funds in accordance with agreements.

(b) Fraud, misrepresentation, deceit, negligence, or incompetence in a collection transaction.

(c) Commission of fraud, misrepresentation, concealment, or dishonest dealing by trick, scheme, or device; culpable negligence; breach of trust in a business transaction in any state, nation, or territory; or aiding, assisting, or conspiring with another person engaged in such misconduct and in furtherance thereof.

(d) Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a felony or crime involving fraud, dishonesty, breach of trust, money

laundering, or act of moral turpitude.

(e) Having a final judgment entered against the registrant in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.

(f) Being the subject of a decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by a court of competent jurisdiction or an administrative law judge, or by a state or federal agency, involving a violation of a federal or state law relating to debt collection or a rule or regulation adopted under such law.

(g) Having a license or registration, or the equivalent, to practice a profession or occupation denied, suspended, or revoked, or otherwise acted against, including the denial of a registration or license by a registration or licensing authority of this state or another state, territory, or country.

(h) Acting as a consumer collection agency without a current registration issued under this part.

(i) A material misstatement or omission of fact on an initial or amended registration application.

(j) Payment to the office for a registration or permit with a check or electronic transmission of funds, which is dishonored by the applicant's or registrant's financial institution.

(k) Failure to comply with, or a violation of, any provision of this part, or any rule or order made or issued pursuant to this part.

(l) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by this part and the rules of the commission.

(m) Refusal to permit an investigation or examination of

books and records, or refusal to comply with an office subpoena or subpoena duces tecum.

(n) Failure to timely pay a fee, charge, or fine imposed or assessed pursuant to this part and the rules of the commission.

(2) If the office finds a person in violation of any act specified in this section, it may enter an order imposing one or more of the following penalties:

(a) Issuance of a reprimand.

(b) Suspension of a registration, subject to reinstatement upon satisfying all reasonable conditions imposed by the office.

(c) Revocation of a registration.

(d) Denial of a registration.

(e) Imposition of a fine of up to $10,000 for each count or separate offense.

(f) An administrative fine of up to $1,000 per day for each day that a person engages as a consumer collection agency without a valid registration issued under this part.

~~(1) The office may impose an administrative fine against, or revoke or suspend the registration of, a registrant under this part who has committed a violation of s. 559.72. Final action to fine, suspend, or revoke the registration of a registrant is subject to review in accordance with chapter 120.~~

(3) ~~(2)~~ The office may impose suspension rather than revocation of a registration if circumstances warrant that one or the other should be imposed and the registrant demonstrates that the registrant has taken affirmative steps that can be expected to effectively eliminate the violations and that the registrant's registration has never been previously suspended.

(4) A consumer collection agency is subject to the

disciplinary actions specified in subsection (2) for a violation of subsection (1) by a control person of the consumer collection agency.

(5) Pursuant to s. 120.60(6), the office may summarily suspend the registration of a consumer collection agency if the office has reason to believe that a registrant poses an immediate, serious danger to the public's health, safety, or welfare. The arrest of the registrant, or the consumer collection agency's control person, for any felony or any crime involving fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude is deemed sufficient to constitute an immediate danger to the public's health, safety, or welfare. Any proceeding for the summary suspension of a registration must be conducted by the commissioner of the office, or designee, who shall issue the final summary order.

(6) The office may deny a request to terminate a registration or withdraw a registration application if the office believes that an act that would be a ground for registration denial, suspension, restriction, or revocation under this part has been committed.

(7) ~~(3) In addition to, or in lieu of suspension or revocation of a registration, the office may impose an administrative fine of up to $10,000 per violation against a registrant for violations of s. 559.72.~~ The ~~Financial Services~~ commission shall adopt rules establishing guidelines for imposing administrative penalties.

(8) ~~(4)~~ This part does not preclude any person from pursuing remedies available under the Federal Fair Debt Collection Practices Act for any violation of such act.

Section 9. This act shall take effect October 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator Joe Negron, Chair
Appropriations Committee
CC: Cindy Kynoch, Staff Director
Alicia Weiss, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: **Request to agenda SB 1006 – Consumer Collection Practices**

Date: March 24, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:
- ❒ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- ❒ 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- ❒ 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- ❒ 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number SB 1006 *(if applicable)*

Name Jo Morris Amendment Barcode _____ *(if applicable)*

Job Title Legislative Affairs Director

Address 200 E. Gaines St. Phone _____
Street

Tallahassee FL 32399 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Office of Financial Regulation

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Bill

Bill Number 1086 *(if applicable)*

Name Frank Meiners

Amendment Barcode *(if applicable)*

Job Title

Address PO Box 1633
Street
Tall FL 32302
City *State* *Zip*

Phone 591-0177

E-mail frank@chapmanpl.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FL. Collectors Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1012
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; and Senator Richter
SUBJECT:	Financial Institutions
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Clodfelter/Davis	Sadberry	ACJ	**Favorable**
3.	Johnson/Clodfelter/ Davis	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1012 amends provisions of the Financial Institutions Codes (codes). The Office of Financial Regulation (OFR) regulates state-chartered banks, trust companies, credit unions, and other financial institutions pursuant to the codes. The OFR ensures that Florida-chartered financial institutions comply with state and federal requirements for safety and soundness. This bill provides the following changes to the codes:

- Updates provisions of the Florida Control of Money Laundering in Financial Institutions Act to codify the requirements of the Federal USA PATRIOT Act and the Office of Foreign Asset Control.
- Clarifies permissible activities for out of state trust companies and business trusts.
- Expands the scope of persons subject to prohibited acts and practices to include affiliates and related interests.
- Authorizes the OFR to issue immediate cease and desist orders for persons using misleading banking-related names to perpetrate fraud on Florida consumers.
- Expands competitive equality for Florida-chartered financial institutions by clarifying that the par value requirement only applies to the settlement of checks between financial institutions, and provides that such institutions may charge fees to cash checks.
- Expands competitive equality to Florida-chartered credit unions by authorizing employee benefit plans and specified types of insurance coverage that is consistent with regulations governing federal credit unions.

- Provides a general rule of preemption to the state for financial or lending activities, and requires financial institutions to report any administrative or civil proceedings or civil investigations initiated by a county or municipality to the OFR;
- Provides that a financial institution is not civilly liable for the actions or operations of a borrower solely by virtue of extending a loan or a line of credit to such borrower; and,
- The bill repeals the $2,000 annual assessment imposed on each international representative office, international administrative office and international trust company.

The OFR indicates that it expects the provisions of the bill to have a negligible fiscal impact. The Office of the State Courts Administrator expects the bill to result in an increase in workload for the court system, but is unable to estimate the extent or cost of the increase.

II. Present Situation:

The "dual banking system" refers to the parallel state and federal banking systems that co-exist in the United States. The federal system is based on a federal bank charter, powers defined under federal law, the National Bank Act,[1] operation under federal regulations, and oversight by the primary federal regulator, the Office of the Comptroller of the Currency (OCC) within the U.S. Department of the Treasury. The state system is characterized by state chartering, bank powers established under state law, and operation under state standards, including oversight by state supervisors. The primary federal regulator for state banks that are members of the Federal Reserve is the Federal Reserve. The primary federal regulator for non-members is the Federal Deposit Insurance Corporation.

National banks are subject to state laws concerning their daily course of business, such as their acquisition and transfer of property, their right to collect their debts and their liability to be sued for debts, contracts, usury, and trust powers.[2] However, while states are generally free to legislate on matters not controlled by federal regulation, the application of state laws to national banks is subject to the preemption doctrine. By operation of the Supremacy Clause of the United States Constitution, federal regulation of a particular subject preempts state regulation related to the same subject. For instance, the United States Supreme Court held that a federal statute granting small town banks the authority to sell insurance preempted a Florida statute that prohibited such sales.[3] The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 codified the test for "conflict preemption" articulated in the Barnett Bank decision. The conflict preemption test asks whether the state law prevents or significantly interferes with the exercise of a national bank's powers.

Federal Oversight

The Federal Deposit Insurance Corporation (FDIC) insures deposits in banks and thrift institutions for at least $250,000 and identifies, monitors, and addresses risks to deposit

[1] The National Bank Act of 1964 (12 U.S.C. s. 24) gives enumerated powers and "all such incidental powers as shall be necessary to carry on the business of banking" to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided "No national bank shall be subject to any visitorial powers except as authorized by Federal law." Id. at s. 484(a).
[2] *National Bank* v. *Commonwealth*, 76 U.S. 353 (1869).
[3] *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et. al.,* 517 U.S. 25 (1999).

insurance funds. The FDIC Rules and Regulations require an annual, comprehensive on-site examination of every insured state nonmember bank at least once during each 12-month period, with exceptions.

Anti-Money Laundering and Terrorist Financing Provisions

The Financial Crimes Enforcement Network (FinCEN) within the U.S. Department of the Treasury is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crimes. It exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001[4] and other legislation, which is known as the "Bank Secrecy Act" (BSA). The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations. These regulations include requiring banks and other financial institutions to take a number of precautions against financial crime, including the establishment of anti-money laundering (AML) programs, maintaining certain records, and the filing of reports.

The Office of Foreign Assets Control (OFAC) within the U.S. Department of the Treasury administers and enforces economic and trade sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. Prohibited transactions can include trade or financial transactions and other dealings in which U.S. persons may not engage unless authorized by the OFAC or expressly exempted by statute.[5]

State Oversight

The Office of Financial Regulation (OFR) ensures Florida-chartered financial institutions comply with state and federal requirements for safety and soundness. The codes define the term, "financial institution," to include banks, trust business, credit unions, international banks, savings banks and other entities.[6]

Enforcement Authority

Section 655.041, F.S., allows the OFR to initiate administrative proceedings to impose a fine against persons that have violated the financial institutions codes, a cease and desist order of the OFR, or any written agreement with the OFR. Section 655.041, F.S., provides that a person must receive written notice of a violation and be offered a reasonable period to cure the violation before the accrual of any fines or the initiation of any administrative proceedings to impose a fine.

Lending Limits and Related Interests

According to the OCC regulations for national banks, lending limits ensure the safety and soundness of national banks by preventing excessive loans to one person or to related persons that are financially dependent. These limits promote diversification of loans and help ensure

[4] The official title of the USA PATRIOT Act is "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001." Pub. Law No. 107-56, H.R. 3162, 107th Cong. (October 26, 2001).
[5] See http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1 (last visited February 26, 2014).
[6] Section 655.005, F.S.

equitable access to banking services.[7] The lending limits apply to all loans and extensions of credit made by national banks and their domestic operating subsidiaries. If the state lending limits are lower than those provided by Regulation O for state banks that are members of the Federal Reserve System, Regulation O provides that the state lending limits control.

Florida-chartered banks are also subject to lending limits. Generally, a bank may extend unsecured credit to any person up to 15 percent of its capital accounts, and up to 25 percent of its capital accounts for secured credit. For the latter, the codes specify that the 25 percent limitation must include the borrower's "related interests."[8] If the bank's total extension of credit to any person (including his or her related interests) exceeds 15 percent of the bank's capital accounts, a majority of the bank's board of directors must approve the loan in advance. A bank is prohibited from extending credit of more than $25,000 to any of its executive officers and directors (and their related interests) unless the majority of the board of directors have approved the loan in advance.

Currently, s. 655.005(1)(t), F.S., defines "related interest" as:

> [W]ith respect to any person, the person's spouse, partner, sibling, parent, child, or other individual residing in the same household as the person. With respect to any person, the term means a company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:
> - Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;
> - Controls in any manner the election of a majority of the directors of the organization; or
> - Has the power to exercise a controlling influence over the management or policies of the organization.

The 2011 Legislature amended the definition of "related interest."[9] Prior to 2011, the term, "related interest," was defined within the context of credit unions' loan powers and lending limits for state banks, and was limited to only any partnership, corporation, or other business organization controlled by a person. Because of the 2011 legislation, "related interest" was moved to s. 655.005(1)(t), F.S., as a general definition and was amended to include specified family and household members of a person. The purpose of this change was to stop circumvention of lending limits by executives and stockholders, who used relatives to obtain loans and other financial benefits.

Regulation O contains a similar prohibition for loans to executive officers, directors, and principal shareholders of state and national banks that are members of the Federal Reserve System.[10] Regulation O provides that a principal shareholder is a person with 10 percent or more of a bank's voting securities, and accounts for shares owned by that person's "immediate

[7] 12 C.F.R. 32.1(b).
[8] Section 658.48(1)(a), F.S.
[9] Ch. 2011-194, Laws of Fla.
[10] 12 C.F.R. s. 215.

family." However, Regulation O only considers an individual's spouse, minor children, and the individual's children residing in the same household, while the Florida provision also includes partners, siblings, parents, or other individuals residing in the same household.

Settlement of Checks and Par Value

Section 655.85, F.S., requires banks to settle checks "at par," or at face value. This means that if a person presented a check made out to her or him for $500 to any bank in Florida, the bank is required to provide $500 in funds. In the past several years, this provision has generated significant litigation in both state and federal courts by consumers who were charged fees to have checks cashed at banks at which they were not account holders. These cases generally involved federal preemption and applicability of the fee limitations to bank-to-bank transactions or to the cashing of personal checks.

Vida Baptista ("Baptista"), sought to cash a check at a Florida branch of JPMorgan Chase, a national bank. While a Chase account holder wrote the check, Baptista was not a Chase account holder, and was charged a $6 fee by Chase to cash the check immediately. Baptista brought a class action lawsuit against Chase in federal court, asserting the fee violated s. 655.85, F.S. The federal court held that s. 655.85, F.S., applied to fees on personal checks presented by the payee in person. However, in applying the Barnett Bank/Dodd-Frank preemption test described above, the federal district and appellate courts ruled in favor of Chase, finding that s. 655.85, F.S., was preempted by the National Bank Act, which allows banks to exercise a range of incidental powers necessary to carry on the business of banking.[11]

Baptista also brought a separate class action lawsuit against PNC Bank, a North Carolina state-chartered bank, in a Florida state court, based on grounds similar to those raised in her lawsuit against Chase. Baptista did not hold an account at PNC Bank and was charged a $5 check-cashing fee to cash a check at a Florida branch. The Fifth District Court of Appeal found that a statute was not preempted. The court held that a North Carolina state-chartered bank was not permitted to charge check-cashing fees under the statute. Finding that the statute was not ambiguous, the Fifth DCA found that the statute did not apply only to bank-to-bank transactions.[12] In an earlier decision, the Fifth DCA had ruled in favor of Bank of America (a national bank) by holding that s. 655.85, F.S., was preempted by federal law.[13]

On January 2, 2013, a federal district court in Florida ruled in favor of Regions Bank (an Alabama state-chartered bank) in a class action lawsuit similar to both Baptista cases.[14] Following the 11th Circuit Court of Appeal's decision in *Baptista v. JPMorgan Chase Bank*, the federal district court found that s. 655.85, F.S., was preempted, and thus inapplicable to both national banks and out-of-state state-chartered banks. However, the federal court did not address the issue of whether the statute applied only to bank-to-bank transactions or to the cashing of personal checks. These decisions do not affect the statute's prohibition on Florida-chartered

[11] *Vida Baptista v. JPMorgan Chase Bank*, 640 F.3d 1194 (11th Cir. C.A. 2011). The U.S. Supreme Court denied Baptista's petition for certiorari review of the federal appellate decision. *Baptista v. JPMorgan Chase Bank, N.A.*, 132 S.Ct. 253 (2011).
[12] *Vida Baptista v. PNC, N.A.*, 91 So.3d 230 (Fla. 5th DCA 2012) (per curiam), *cert. denied*, 133 S.Ct. 895 (2013).
[13] *Britt v. Bank of America, N.A.*, 52 So.3d 809 (Fla. 5th DCA 2011).
[14] *Pereira v. Regions Bank*, 2013 WL 265314 (M.D.Fla. 2013).

banks to charge check-cashing fees, because banks must follow the laws and regulations of their chartering authority.

Competitive Equality

States have enacted competitive equality or parity statutes to address the competitive advantages granted to national banks through their "incidental banking powers" under the federal National Bank Act. In Florida, if a state law places a Florida institution at a competitive disadvantage with a national institution, the OFR may grant a Florida institution the authority to make any loan or investment or exercise any power that it could make or exercise if it was a federally chartered financial institution, and provide entitlement to the same privileges and protections granted to a federally chartered or regulated institution.[15] In addition, the office or commission must consider the importance of maintaining a competitive dual system of financial institutions, and whether issuing such an order or rule is in the public interest.[16]

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are authorized by federal or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law.[17] Section 125.01, F.S., enumerates the powers and duties of all county governments, which may be exercised to the extent not inconsistent with general or special law. Section 166.021, F.S., provides that municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject that has not been expressly preempted to the state. A county or municipality may not forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.[18]

In 2002, the Florida Legislature enacted the Florida Fair Lending Act (part IV, ch. 494, F.S.) to impose similar or more stringent restrictions on high-cost home loans than those found in the federal Home Ownership and Equity Protection Act (HOEPA) at the time of enactment. The Florida Fair Lending Act is administratively enforced by the OFR. In addition, several states and cities had enacted laws restricting or prohibiting the use of certain credit provisions commonly associated with predatory lending. Lenders have expressed concerns with compliance with a multitude of varying state and local requirements across different jurisdictions, and have argued for a national standard such as HOEPA. In response to these concerns, s. 494.00797, F.S., was enacted prohibiting counties and municipalities from enacting and enforcing local laws regulating financial or lending activities upon certain persons or entities, subject to the regulatory

[15] *See* Section 655.061, F.S.
[16] The OFR's orders of general application are publicly available on its agency website. https://real.flofr.com/ConsumerServices/SearchLegalDocuments/LDSearch.aspx (last accessed February 28, 2014).
[17] *See* Section 125.81(1), F.S.
[18] *City of Hollywood v. Mulligan*, 934 So.2d 1238 (Fla. 2006).

jurisdiction of the OFR, enumerated federal banking regulators, or authorized by Congress to engage in secondary market mortgage transactions.

Lender Liability and Third-party Litigation against Financial Institutions

Lender liability law generally requires lenders to treat their borrowers fairly, and subjects lending institutions to civil liability for losses and injuries sustained because of the lender's actions. In addition, the express terms of contracts governed by the Uniform Commercial Code are subject to the obligation of good faith.[19] In some cases, courts may infer a fiduciary relationship between the lender and the borrower if the facts indicate a relationship of trust.[20] Lenders can be subject to a number of legal claims by borrowers, most commonly under contract and tort theories of breach of contract, bad faith, fraud or misrepresentation, negligence, and tortious interference. Other lender liability claims may include labor violations, environmental violations, wrongful foreclosures, or a variety of civil remedies under federal regulatory statutes such as the Truth in Lending Act.

However, case law provides that lenders are generally not legally responsible for the operations and actions of its borrowers that cause harm to third parties.[21] Some exceptions include a joint venture between the borrower and lender or where a lender actively controls the borrower's business (especially as to the election of directors and the influence of day-to-day business affairs and decisions).[22]

In a number of recent medical negligence lawsuits filed against nursing homes in Florida courts, the plaintiffs have named large financial institutions as co-defendants, or have sought to collect a final money judgment against these banks when the plaintiffs were unable to collect from the nursing homes. The plaintiffs alleged that the lenders "colluded to pull money out of nursing home operations."[23] These lenders generally provided commercial loans to the nursing homes to finance a variety of operations, such as facility acquisitions. Plaintiffs have variously alleged in the different cases that the lender was related to the nursing home as a private equity investor, controlling owner, or through involvement with the nursing facilities through the financial institution's clinical performance division.[24] In two cases resulting in multi-million dollar jury verdicts on behalf of the estates of nursing home patients, the bank asserted that it did not have control over patient care and should not be held liable for the medical negligence claim.[25]

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[19] Section 671.203, F.S.
[20] *Barnett Bank v. Hooper*, 498 So.2d 923 (Fla. 1986).
[21] *Armetta v. Clevetrust Realty Inv.*, 359 So.2d 540, 543 (Fla. 4th DCA 1978) ("A lender owes no duty to others to supervise the construction and development of projects which it has financed."); *Napolitano v. Sec. First Fed. S&L Assoc.*, 533 So.2d 948 (Fla. 5th DCA 1988) ("Florida law is clear that a lender owes no duty to others to supervise construction which it has financed.").
[22] *Citibank, N.A. v Data Lease Fin. Corp.*, 828 F.2d 686 (11th Cir. 1987), cert. denied, 484. U.S. 1062 (1988).
[23] Stephen Nohlgren, "Tampa law firm wins another big verdict in nursing home lawsuit without a defense," *Tampa Bay Times* (February 8, 2012), at http://www.tampabay.com/news/courts/civil/tampa-law-firm-wins-another-big-verdict-in-nursing-home-lawsuit-without-a/1214647 (last accessed April 1, 2014).
[24] Nursing home litigation documents on file with the Banking and Insurance Committee staff.
[25] Stephen Nohlgren, "Who should pay the $200 million for nursing home death? It's complicated," *Tampa Bay Times* (February 4, 2012), at http://www.tampabay.com/news/courts/civil/who-should-pay-the-200-million-for-nursing-home-death-its-complicated/1214062 (last accessed April 1, 2014).

III. Effect of Proposed Changes:

Settlement of Checks and Par Value (Sections 12 and 13)

The bill provides that financial institutions must settle checks between institutions at par. The bill clarifies that banks are not prohibited from charging fees to cash checks presented by payees in person, thereby providing consistency with the federal decisions discussed in the Present Situation above. The bill provides a statement of legislative intent indicating that the changes clarify the relevant portions of the codes relating to the fees imposed by financial institutions.

Enforcement Authority

Related Interests (Section 1)

The bill amends the definition of "related interest" under s. 655.005, F.S. The bill removes a person's partner, sibling, or other individual residing in the same household as the person from the definition. The revised definition provides that the term "related interest" applies to an individual, company, partnership, corporation, or other business organization that engages in a common business enterprise with that person.

State Preemption and the Regulation of Financial Institutions (Sections 2 and 16)

This bill creates s. 655.017, F.S., which prohibits counties and municipalities from enacting and enforcing ordinances, resolutions or rules regulating financial or lending activities of persons who are subject to the jurisdiction of the OFR pursuant to the codes; persons who are subject to the jurisdiction of any one of specified federal agencies that regulate financial and lending activities; persons who originate, purchase, sell, assign, secure, or service property interests or obligations created by financial transactions or loans made by such persons; entities chartered by the U.S. Congress to engage in secondary market mortgage transactions; or persons acting on behalf of the Florida Housing Finance Corporation.

Subsection (1) is substantially similar to s. 414.0797, F.S. The bill excludes the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loan association) as a federal banking regulator, since it was merged into other federal banking agencies in July 2011, by operation of the Dodd-Frank Act. The bill also includes the Board of Governors of the Federal Reserve System as a federal banking regulator.

Subsection (2) provides that counties and municipalities are not prevented from engaging in civil investigations or initiating civil or administrative proceedings to enforce any non-preempted state or local laws, rules, and ordinances. However, the bill provides that the OFR has sole and exclusive jurisdiction to initiate appropriate proceedings, if the OFR determines a local investigation or proceeding is based on a local law that is preempted, or "directly and specifically regulates the manner, content, or terms and conditions of any financial transaction or account related thereto, as may be authorized for financial institutions to engage in, or prevents, significantly interferes with, or alters the exercise of powers granted to a financial institution under the financial institutions codes or by any applicable federal law or regulation." This

preemption standard is similar to the Barnett Bank federal standard, as codified in the Dodd-Frank Act, for preempting state consumer financial laws.[26]

Additionally, subsection (3) provides that new s. 655.017, F.S., does not limit or restrict the powers of the Department of Legal Affairs or law enforcement agencies in Florida to commence criminal proceedings or of the Department of Legal Affairs to bring a civil action. This preserves the police powers of these entities and reinforces the fact that the OFR does not have jurisdiction over criminal proceedings.

The bill also amends s. 655.948, F.S., the notice of significant events statute, to require financial institutions to notify the OFR within 30 days of any civil investigation or any civil or administrative proceeding initiated by counties or municipalities against the financial institution or its subsidiary or service corporation. The bill provides a safe harbor for reporting entities that make a good faith effort to fulfill this disclosure requirement.

Prohibited Acts (Section 3)

The bill amends s. 655.0322, F.S., to expand the scope of prohibited acts and practices to include affiliates and related interests. The codes define "affiliate" as "a holding company of a financial institution established pursuant to state or federal law, a subsidiary or service corporation of such holding company, or a subsidiary or a service corporation of a financial institution."[27]

Administrative Authority and Fines (Section 7)

The bill amends s. 655.041, F.S., to revise the OFR's authority by providing that a violation of any rules adopted under the codes is also grounds for the OFR to impose administrative fines. The bill provides that a violation of any OFR order is a basis for administrative fines. Under current law, the OFR may initiate a proceeding if a person has violated the codes, a cease and desist order, or a written agreement with the OFR. The bill expands the scope of the section to apply to affiliates and persons regulated by the OFR pursuant to s. 655.0391, F.S. The bill provides that if there is a violation of an OFR order or written agreement, fines begin accruing immediately upon the service of a complaint. Such fines will continue until the violation is corrected.

Injunctions (Section 4)

The bill provides that a violation of a "formal enforcement action" would allow the circuit court to have jurisdiction to hear the complaint. The bill defines a "formal enforcement action." The bill provides that the circuit court has jurisdiction to issue an injunction in order to protect the interests of the depositors, members, creditors, or stockholders or the public's interest in the safety and soundness of the financial institution system. Currently, the codes authorize the OFR to pursue injunctive relief in circuit court whenever a "threatened and impending" violation of the codes "will cause substantial injury to a state financial institution or its depositors, members, creditors, or stockholders."

[26] 12 U.S.C. § 25b(b); Barnett Bank, 517 U.S. 25.

[27] Violation of subsection (2), (3), or (4) is a third degree felony, punishable by imprisonment for a term of up to five years and a fine of up to $5,000. Violation of subsection (4) or (5) is a second degree felony, punishable by imprisonment for a term of up to 15 years and a fine of up to $10,000.

Approval of Directors and Executive Officers (Sections 6 and 19)

The bill creates a new subsection in s. 655.0385, F.S., to prohibit a director or executive officer of a state financial institution or affiliate from concurrently serving as a director or officer in a nonaffiliated financial institution or affiliate in the same geographical area or the same major business market area, unless this prohibition is waived by the OFR. The OFR may waive this prohibition if the person can demonstrate that the proposed concurrent service does not present a conflict of interest and neither institution is disadvantaged in the common market area. The bill amends s. 657.028, F.S., to provide that an individual may not serve as a director, officer, or committee member of a credit union if he or she had defaulted on a debt or obligation to a financial institution that resulted in a material loss to the financial institution and allows for exceptions with the prior approval of the OFR. The same criteria already applies to individuals serving at other financial institutions.

Unauthorized Banking (Section 15)

The bill amends s. 655.922, F.S., to expand the list of terms, names, words, symbols, etc., which are limited for use by a financial institution authorized to do business in Florida. The bill prohibits a financial institution, affiliate, subsidiary, or service corporation from conducting business in Florida using a name, trademark, Internet address or logo that may mislead consumers or cause confusion as to the identification of the proper legal business or the nature of the institution's business. The bill enhances the OFR's enforcement authority by authorizing the OFR to seek a circuit court order for the annulment or dissolution of a corporation found violating any provision of this section, and to issue and serve an emergency cease and desist order. The bill provides that the OFR is not required to determine the consequences that a violation of this section may cause. Currently, the codes prohibit any person, other than an authorized state or federal financial institution, from engaging in the business of soliciting or receiving funds for deposit, issuing certificates of deposit, or paying checks. A violation of this provision is a third-degree felony.

Examinations, Records, and Reports

Examinations (Sections 8, 9, and 26)

The bill amends s. 655.045, F.S., to clarify that the OFR is required to conduct an examination of each state financial institution at least once every 18 months. Beginning July 1, 2014, the bill provides that during each 36-month period, the OFR is required to conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information. Under current law, the OFR may accept an examination made by an appropriate federal regulatory agency or may conduct a joint or concurrent examination with the federal agency.

The bill amends s. 655.057, F.S., to provide that any information provided to the OFR by any person pursuant to an investigation or other supervisory activity of the OFR is not considered a waiver of any privilege or other legal proceeding in which the office is not a party. It also clarifies who has the right to copy membership and shareholder records.

Trade Secrets (Section 10)

Currently, the codes do not provide a public records exemption for trade secret documents held by the OFR. Senate Bill 1278, if enacted, creates a public records exemption for certain examination documents containing proprietary business information that is a trade secret. The bill creates s. 655.0591, F.S., to specify requirements for submission of a document or other information to the OFR in order for a person to claim that the information is a trade secret. The failure to file a notice of trade secret with the OFR constitutes a waiver of any claim by such person that the information is a trade secret. The requirements include labeling each page or portion as a trade secret and separating the trade secret documents from the non-trade secret material. The bill requires the submitting party to include an affidavit certifying certain information as to the trade secret status of the documents. If the OFR receives a public records request for information that is marked and certified as confidential, the OFR must immediately notify the person that certified the information as a trade secret. The bill requires the OFR to inform such person that, in order to avoid disclosure of the trade secret; the person must file an action in circuit court within 30 days seeking declaratory judgment that the document contains trade secrets and an order barring disclosure. The owner of the information is required to provide written notice to the OFR that the action was filed and the OFR may not release the documents pending the outcome of legal action. The failure to file an action within 30 days constitutes a waiver of any claim of confidentiality. The bill allows the OFR to disclose a trade secret to an employee or officer of another governmental agency whose use of the trade secret is within the scope of their employment.

Florida Control of Money Laundering and Terrorist Financing (Sections 5, 11, 22, 23, 25, 28, 30, 31, 33, and 34)

The bill updates current recordkeeping and reporting provisions to conform to the USA PATRIOT Act and the Office of Foreign Asset Control (OFAC) requirements. The bill amends s. 655.50, F.S., to require each financial institution to designate and retain a BSA/AML compliance officer and provides that the board of directors is responsible for establishing the institution's BSA/AML and OFAC policies and compliance. The bill also amends s. 655.50, F.S., to define the term "suspicious activity," and requires a financial institution to maintain specified records and report financial transactions that the institution reasonably believes is suspicious activity. It also provides that a suspicious activity report is entitled to the same confidentiality provided under 31 C.F.R. s. 1020.320.

Out of State Trust, Business Trust, and Trust Business (Sections 14 and 21)

The bill amends s. 655.921, F.S., to provide that the codes do not prohibit a financial institution or business trust which has its principal place of business outside of Florida from filing suit in Florida to collect any debt or foreclose on any security interest in collateral securing a debt. The intent of this language is to clarify permissible activities for out-of-state trust companies and business trusts. It also provides that an out-of-state business trust which own pools of mortgages and is pursuing foreclosure actions is not considered to be engaging in trust business in Florida.

The bill revises the definition of "trust business" in s. 658.12, F.S., to include a business that receives compensation that is not deemed de minimis by the OFR. The OFR indicates that it routinely receives inquiries on behalf of individuals engaging in estate planning activities that

involves the use of trusts, which provide for the appointment of trustees that are not family members and are not otherwise subject to a structure of regulatory oversight. These trusts often provide for de minimis compensation and expense reimbursement. Further, the individuals are not engaging in business as professional fiduciaries.

Liability of Financial Institutions (Section 17).

The bill creates a new section in the codes, s. 655.955, F.S., to provide that a financial institution is not civilly liable to a third party for the actions or operations of a borrower, solely by virtue of extending a loan or a line of credit to such borrower.

The bill provides this limited immunity to "financial institutions," which the codes define as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation or Edge Act corporation organized pursuant to the Federal Reserve Act.

To the extent third-party litigation is pending against financial institutions in this state at the time of the bill's effective date, legislation is presumed only to operate prospectively, especially when retroactive application would impair existing rights.[28]

Credit Unions and Competitive Equality (Sections 18 and 20)

The bill revises the application process and approval criteria for new branch applications and relocations by state-chartered credit unions and codifies a 2008 Order of General Application (OGA) issued by the OFR which allows a state credit union to maintain branches without requiring prior OFR examination and approval if certain conditions are met. Currently, s. 657.008, F.S., allows Florida credit unions to establish or relocate branch offices only if the credit union is operating in a safe and sound manner, its board has determined that such branches are reasonably necessary to furnish service to its members, and the credit union has provided 30 days' prior written notification to the OFR. Thus, Florida credit unions that do not meet this criterion cannot establish or relocate branch offices, even if the establishment or relocation of a branch would be in the best interests of the credit union and its members. This has placed Florida credit unions at a competitive disadvantage with their federally chartered counterparts, who are permitted under the Federal Credit Union Act and the National Credit Union Administration's (NCUA) regulations to establish or relocate branches if its directors determine that such action would be in the best interest of the federal credit union's members.

The bill amends s. 657.041, F.S., to authorize state credit unions to establish employee, officer, and director benefit plans, insurance, and investments consistent with NCUA rules for federal credit unions. This would codify the 2011 OGA currently in place to address competitive equality issues regarding a state credit union's ability to offer products that are permissible for a federal credit union.

[28] Art. I, Sec. 10 ("No . . . Law impairing the obligation of contracts shall be passed"). *See also State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994).

Loans of $50,000 or Less (Sections 24, 25, 29, and 32)

Current law caps the interest rate on loans of $50,000 or less which are issued by state-chartered banks at 18 percent per year. The law allows two additional charges with exceptions. National banks are not subject to such lending restrictions, which raises a competitive equality issue for Florida-chartered banks. The bill repeals section 658.49, F.S., and makes technical and conforming changes.

Annual Assessments for International Offices (Section 27)

The bill repeals the $2,000 annual assessment that is imposed on each international representative office, international administrative office, and international trust company office by s. 663.12, F.S.

Effective Date (Section 35)

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/SB 1012 repeals the $2,000 annual assessment imposed on each international representative office, international administrative office and international trust company.

B. Private Sector Impact:

The bill codifies current federal credit union regulations relating to branches, and employee benefit plans, which would place state credit unions at parity with federal credit unions.

The bill clarifies that institutions may charge customers a fee to cash checks. This will provide consistency with the federal laws permitting national banks and out-of-state

state-chartered banks operating in Florida to charge check-cashing fees, and will place Florida-chartered banks at parity with national and other state-chartered banks.

C. Government Sector Impact:

According to the OFR, the fiscal impact of repealing the $2,000 annual assessment fee for each international representative office, international administrative office or international trust company office is $18,000 on annual basis. The OFR considers this fiscal impact to be negligible.

The Office of the State Courts Administrator indicates that it expects some increase in workload as a result of the expanded authority to issue injunctions, new provisions regarding public records and trade secrets, and new authorization for the OFR and out-of-state financial institutions and business trust to engage in litigation. However, the extent and cost of the increase in workload cannot be determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.0322, 655.034, 655.037, 655.0385, 655.041, 655.045, 655.057, 655.50, 655.85, 655.921, 655.922, 655.948, 657.008, 657.028, 657.041, 658.12, 658.21, 658.235, 663.02, 663.09, 663.12, 663.306, 665.013, 665.033, 665.034, 667.003, 667.006, and 667.008.

This bill creates sections 655.17, 655.0591, and 655.955 of the Florida Statutes.

This bill repeals section 658.49 of the Florida Statutes.

The bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The committee substitute:

- Provides that a financial institution is not civilly liable to a third party for the actions or operations of a borrower solely by virtue of extending a loan or a line of credit of such borrower.

- Creates s. 655.017, F.S., which preempts to the state regulation of financial or lending activities which is substantially similar to s. 494.00797, F.S., and which also:
  - Preserves the ability of counties and municipalities to conduct civil investigations or initiate administrative civil proceedings to determine compliance or to enforce other laws, regulations, or ordinances that are not preempted,
  - Provides that the Office of Financial Regulation (OFR) has the sole and exclusive jurisdiction to initiate appropriate proceedings, if the OFR determines that a local investigation or proceeding is either based on a preempted local law or prevents, significantly interferes with, or alters the exercise of a financial institution's powers that have been granted under the Financial Institutions Codes or by applicable federal law or regulation, and
  - Preserves the ability of the Attorney General's office to initiate civil or criminal proceedings, as well as the ability of law enforcement agencies of the state to initiate criminal proceedings.
- Requires all financial institutions to notify the OFR within 30 days of any civil investigation or any civil or administrative proceeding initiated by counties or municipalities, and provides a safe harbor for financial institutions which make a good faith effort to fulfill this disclosure requirement.

CS by Banking and Insurance on March 5, 2014:
CS/SB 1012 provides technical, clarifying changes.

B. Amendments:

None.

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

858846

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 135 and 136
insert:

Section 2. Section 655.017, Florida Statutes, is created to read:

655.017 Local regulation preempted.—

(1) A county or municipality may not enact or enforce a resolution, ordinance, or rule that regulates financial or lending activities, including a resolution, ordinance, or rule

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that disqualifies persons from doing business with a county or municipality based on lending interest rates, or that imposes reporting requirements or other obligations regarding the financial services or lending practices of persons or entities, and subsidiaries or affiliates thereof which:

(a) Are subject to the jurisdiction of the office pursuant to the financial institutions codes;

(b) Are subject to the jurisdiction of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(c) Originate, purchase, sell, assign, secure, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in paragraph (a) or paragraph (b) which assist or facilitate such transactions;

(d) Are chartered by the United States Congress to engage in secondary market mortgage transactions; or

(e) Are acting on behalf of the Florida Housing Finance Corporation.

(2) This section does not prevent a county or municipality from engaging in a civil investigation, initiating an administrative proceeding, or commencing a civil proceeding to determine compliance with or to enforce a state law, a rule or order of a state agency, or an ordinance or rule of a county or municipality which is not preempted pursuant to this section.

(3) Notwithstanding subsection (2), a financial institution

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shall notify the office of any civil investigation or administrative or civil proceeding initiated by a county or municipality in accordance with s. 655.948. The office shall have sole and exclusive jurisdiction to initiate appropriate administrative or civil proceedings to enforce such laws, rules, or orders if the office determines that such investigation or proceeding:

(a) Is based on a local resolution, ordinance, or rule that is preempted pursuant to subsection (1); or

(b) Directly and specifically regulates the manner, content, or terms and conditions of a financial transaction or account related thereto, that a financial institution is authorized to engage in, or prevents, significantly interferes with, or alters the exercise of powers granted to a financial institution under the financial institutions codes or any applicable federal law or regulation.

(4) This section does not limit or restrict the powers of the Department of Legal Affairs or the law enforcement agencies of this state to commence a civil or criminal action, as applicable.

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

And the title is amended as follows:

Delete line 4

and insert:

interest"; creating s. 655.017, F.S.; preempting to the state the regulation of certain financial or lending activities of entities subject to the jurisdiction of the office or other regulatory

858846

agencies; providing that counties and municipalities may engage in investigations and proceedings against financial institutions that are not preempted; requiring a financial institution to notify the office if such local action is commenced; providing for the office's sole and exclusive jurisdiction in certain cases; providing applicability; amending s. 655.0322, F.S.; revising

166230

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 1055 and 1056
insert:

Section 15. Subsection (4) of section 655.948, Florida Statutes, is amended to read:

655.948 Significant events; notice required.—

(4) ~~(a)~~ The office shall ~~must~~ exempt a financial institution from any of the provisions of this section if the office determines that such financial institution is operating in a

166230

safe and sound manner pursuant to commission rules relating to safe and sound operations. The commission shall adopt rules defining the term "safe and sound" and explicitly stating the criteria that ~~which shall~~ constitute operating in a safe and sound manner. Notwithstanding this subsection:

(a) ~~(b) Notwithstanding paragraph (a),~~ All newly chartered financial institutions are ~~shall be~~ subject to the requirements of subsections (1) and (2) for 3 years.

(b) All financial institutions must notify the office within 30 days of any civil investigation or any civil or administrative proceeding initiated by a county or municipality against the financial institution or its subsidiary or service corporation. No liability may be incurred by a financial institution, subsidiary, service corporation, or financial institution-affiliated party as a result of making a good faith effort to fulfill this disclosure requirement.

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

And the title is amended as follows:

Delete line 57

and insert:

and desist orders; amending s. 655.948, F.S.; requiring a financial institution to notify the office of any investigations or proceedings initiated by a county or municipality against the institution within a specified timeframe; amending s. 657.008, F.S.;

182806

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 1055 and 1056
insert:

Section 15. Section 655.955, Florida Statutes, is created to read:

655.955 Liability of financial institution to third parties.—A financial institution is not civilly liable to a third party for the actions or operations of a person solely by virtue of extending a loan or a line of credit to such person.

182806

11
12 ========== T I T L E A M E N D M E N T ==========
13 And the title is amended as follows:
14 Delete line 57
15 and insert:
16 and desist orders; creating s. 655.955, F.S.;
17 providing that a financial institution is not civilly
18 liable solely by virtue of extending credit to a
19 person; amending s. 657.008, F.S.;

By the Committee on Banking and Insurance; and Senator Richter

597-02194-14 20141012c1

A bill to be entitled

An act relating to financial institutions; amending s. 655.005, F.S.; revising the definition of "related interest"; amending s. 655.0322, F.S.; revising provisions relating to prohibited acts and practices by a financial institution; applying certain provisions to affiliates; amending s. 655.034, F.S.; authorizing the circuit court to issue an injunction in order to protect the interests of the depositors, members, creditors, or stockholders of a financial institution and the public's interest in the safety and soundness of the financial institution system; defining "formal enforcement action"; amending s. 655.037, F.S.; conforming a cross-reference; amending s. 655.0385, F.S.; prohibiting a director or executive officer from concurrently serving as a director or officer in a financial institution or affiliate in the same geographical area or the same major business market area unless waived by the Office of Financial Regulation; amending s. 655.041, F.S.; revising provisions relating to administrative fines; clarifying that the office may initiate administrative proceedings for violations of rules; providing that fines for violations begin accruing immediately upon the service of a complaint; applying certain provisions to affiliates; revising the applications for imposing a fine; amending s. 655.045, F.S.; requiring the office to conduct an examination of a financial institution within a specified period;

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597-02194-14 20141012c1

amending s. 655.057, F.S.; conforming a cross-reference; providing that specified records are not considered a waiver of privileges or legal rights in certain proceedings; clarifying who has a right to copy member or shareholder records; creating s. 655.0591, F.S.; providing notice requirements and procedures that allow a financial institution to protect trade secrets included in documents submitted to the office; amending s. 655.50, F.S.; amending provisions relating to the control of money laundering to also include terrorist financing; adding and revising definitions; requiring a financial institution to have a BSA/AML compliance officer; updating cross-references; amending s. 655.85, F.S.; clarifying that an institution may impose a fee for the settlement of a check under certain circumstances; providing legislative intent; amending s. 655.921, F.S.; revising provisions relating to business transactions by an out-of-state financial institution; providing that such institution may file suit to collect a security interest in collateral; amending s. 655.922, F.S.; revising provisions relating to the name of a financial institution; prohibiting certain financial institutions from using a name that may mislead consumers; authorizing the office to seek court orders to annul or dissolve a business entity for certain violations and to issue emergency cease and desist orders; amending s. 657.008, F.S.; requiring certain credit unions seeking to establish a

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branch office to submit an application to the office for examination and approval; providing the criteria for the examination; amending s. 657.028, F.S.; revising provisions relating to prohibited activities of directors, officers, committee members, employees, and agents of credit unions; requiring the name and address of the credit manager to be submitted to the office; amending s. 657.041, F.S.; authorizing a credit union to pay health and accident insurance premiums and to fund employee benefit plans under certain circumstances; amending s. 658.12, F.S.; revising the definition of "trust business"; amending ss. 658.21 and 658.235, F.S.; conforming cross-references; repealing s. 658.49, F.S., relating to requirements for bank loans up to $50,000; amending ss. 663.02 and 663.09, F.S.; conforming provisions to changes made by the act; amending s. 663.12, F.S.; deleting an annual assessment imposed on certain international offices; amending s. 663.306, F.S.; conforming provisions to changes made by the act; amending ss. 665.013, 665.033, 665.034, 667.003, 667.006, and 667.008, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (t) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(t) "Related interest" means, with respect to a ~~any~~ person:~~,~~

1. The person's spouse, ~~partner, sibling, parent,~~ child, or other dependent ~~individual~~ residing in the same household as the person;~~. With respect to any person, the term means~~

2. A company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:

a.~~1.~~ Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;

b.~~2.~~ Controls in any manner the election of a majority of the directors of the organization; or

c.~~3.~~ Has the power to exercise a controlling influence over the management or policies of the organization; or~~.~~

3. An individual, company, partnership, corporation, or other business organization that engages in a common business enterprise with that person. A common business enterprise exists if:

a. The expected source for repayment of a loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of sub-subparagraph b. are met;

b. Loans or extensions of credit are made:

(I) To borrowers who are directly or indirectly related

through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(II) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence exists if 50 percent or more of one borrower's gross receipts or gross expenditures on an annual basis are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues and expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

c. Separate persons borrow from a financial institution to acquire a business enterprise such that those borrowers will own more than 50 percent of the voting securities or voting interests of the enterprise, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

d. The office determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

Section 2. Section 655.0322, Florida Statutes, is amended to read:

655.0322 Prohibited acts and practices; criminal penalties.—

(1) As used in this section, the term "financial institution" means a financial institution as defined in s. 655.005 ~~s. 655.50 which includes a state trust company, state or national bank, state or federal association, state or federal savings bank, state or federal credit union, Edge Act or agreement corporation, international bank agency, international~~

~~branch, representative office or administrative office~~ or other business entity as defined by the commission by rule, whether organized under the laws of this state, the laws of another state, or the laws of the United States, which ~~institution~~ is located in this state.

(2) A ~~It is unlawful for any~~ financial institution-affiliated party may not ~~to~~ ask for, or willfully and knowingly receive or consent to receive for himself or herself or any related interest, a ~~any~~ commission, emolument, gratuity, money, property, or thing of value for:

(a) Procuring, or endeavoring to procure, for any person a loan or extension of credit from such financial institution, affiliate, subsidiary, or service corporation; or

(b) Procuring, or endeavoring to procure, the purchase or discount of any note, draft, check, bill of exchange, or other obligation by such financial institution, affiliate, subsidiary, or service corporation.

Any person who violates this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A ~~It is unlawful for any~~ financial institution-affiliated party may not ~~to~~:

(a) Knowingly receive or possess ~~himself or herself of~~ any of such financial institution's ~~its~~ property other ~~otherwise~~ than in payment of a just demand, or ~~and~~, with intent to deceive or defraud, to omit to make or cause to be made a full and true entry thereof in the financial institution's ~~its~~ books and accounts, or concur in omitting to make any material entry

thereof;

(b) Embezzle, abstract, or misapply any money, property, or thing of value of such ~~the~~ financial institution, affiliate, subsidiary, or service corporation with intent to deceive or defraud the ~~such~~ financial institution, affiliate, subsidiary, or service corporation;

(c) Knowingly make, draw, issue, put forth, or assign any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, mortgage, judgment, or decree without authority from the board of directors of such financial institution;

(d) Make a ~~any~~ false entry in any book, report, or statement of such financial institution, affiliate, subsidiary, or service corporation with intent to deceive or defraud the ~~such~~ financial institution, affiliate, subsidiary, or service corporation, or another person, firm, or corporation, or with intent to deceive the office, any other appropriate federal or state regulatory agency, or an ~~any~~ authorized representative appointed to examine the affairs of the ~~such~~ financial institution, affiliate, subsidiary, or service corporation; or

(e) Deliver or disclose to the office or ~~any of~~ its employees an application, ~~any~~ examination report, report of condition, report of income and dividends, internal audit, account, statement, or other document known by him or her to be fraudulent or false as to any material matter.

Any person who violates this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

(4) A ~~It is unlawful for any~~ financial institution-affiliated party may not ~~to~~ knowingly place among the assets of such financial institution, affiliate, subsidiary, or service corporation any note, obligation, or security that ~~which~~ the financial institution, affiliate, subsidiary, or service corporation does not own or that, ~~which~~ to the party's ~~individual's~~ knowledge, is fraudulent or otherwise worthless or for the financial institution-affiliated party ~~any such individual~~ to represent to the office that any note, obligation, or security carried as an asset of such financial institution, affiliate, subsidiary, or service corporation is the property of the financial institution, affiliate, subsidiary, or service corporation and is genuine if it is known to such party ~~individual~~ that such representation is false or that the ~~such~~ note, obligation, or security is fraudulent or otherwise worthless. Any person who violates this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any person who willfully makes a ~~any~~ false statement or report, or willfully overvalues any land, property, or security, for the purposes of influencing in any way the action of a ~~any~~ financial institution, affiliate, subsidiary, or service corporation or any other entity authorized by law to extend credit, upon an ~~any~~ application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of ~~any of~~ the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s.

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775.083, or s. 775.084.

(6) Any person who knowingly executes, or attempts to execute, a scheme or artifice to defraud a financial institution, affiliate, subsidiary, or service corporation or any other entity authorized by law to extend credit, or to obtain ~~any of~~ the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, affiliate, subsidiary, service corporation, or ~~any~~ other entity authorized by law to extend credit, by means of false or fraudulent pretenses, representations, or promises, commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 655.034, Florida Statutes, is amended to read:

655.034 Injunctions.—

(1) If the office determines that ~~Whenever~~ a violation of the financial institutions codes or a violation of a formal enforcement action has occurred or is threatened or impending ~~and such violation will cause substantial injury to a state financial institution or to the depositors, members, creditors, or stockholders thereof~~, the circuit court has jurisdiction to hear a ~~any~~ complaint filed by the office and, upon proper showing, to issue an injunction restraining such violation or granting other ~~such~~ appropriate relief. Upon proper showing, the circuit court may also issue an injunction restraining any conduct or other act in order to protect the interests of depositors, members, creditors, or stockholders of a financial institution or the interests of the public in the safety and

soundness of the financial institution system in this state and the proper conduct of fiduciary functions.

(2) As used in this section, the term "formal enforcement action" means:

(a) With respect to a financial institution, a supervisory action subject to enforcement pursuant to s. 655.033, s. 655.037, or s. 655.041 which directs the financial institution to take corrective action to address violations of law or safety and soundness deficiencies.

(b) With respect to a person or entity that is not a financial institution, an order issued by the office pursuant the financial institutions codes which is directed to such person or entity.

Section 4. Subsection (1) of section 655.037, Florida Statutes, is amended to read:

655.037 Removal of a financial institution-affiliated party by the office.—

(1) The office may issue and serve upon any financial institution-affiliated party and upon the ~~state~~ financial institution, subsidiary, or service corporation involved, a complaint stating charges if ~~whenever~~ the office has reason to believe that the financial institution-affiliated party is engaging or has engaged in conduct that is:

(a) An unsafe or unsound practice;

(b) A prohibited act or practice;

(c) A willful violation of any law relating to financial institutions;

(d) A violation of any other law involving fraud or moral turpitude which constitutes a felony;

(e) A violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law;

(f) A willful violation of any rule of the commission;

(g) A willful violation of any order of the office;

(h) A willful breach of any written agreement with the office; or

(i) An act of commission or omission or a practice which is a breach of trust or a breach of fiduciary duty.

Section 5. Present subsections (4) and (5) of section 655.0385, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

655.0385 Disapproval of directors and executive officers.—

(4) A director or executive officer of a state financial institution or affiliate may not concurrently serve as a director, or be employed as an officer, of a nonaffiliated financial institution or affiliate whose principal place of business is located in the same metropolitan statistical area in this state. A person affected by this prohibition may provide written notice to the office of the proposed appointment or employment. Such notice may provide information that such concurrent service does not present a conflict of interest and that neither institution is competitively disadvantaged in the common market area. The office may waive this prohibition if the information provided demonstrates that the individual's proposed concurrent service does not present a conflict of interest and neither institution is competitively disadvantaged in the common

market area. A person who violates this subsection is subject to suspension, removal, or prohibition under s. 655.037.

Section 6. Section 655.041, Florida Statutes, is amended to read:

655.041 Administrative fines; enforcement.—

(1) The office may, by complaint, initiate a proceeding pursuant to chapter 120 to impose an administrative fine against any person found to have violated a ~~any~~ provision of the financial institutions codes or the rules adopted thereunder, an ~~or a cease and desist~~ order of the office, or a ~~any~~ written agreement with the office. Such ~~No such~~ proceeding may not ~~shall~~ be initiated ~~and no fine shall accrue pursuant to this section~~ until after such person has been notified in writing of the nature of the violation and ~~has been~~ afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so. If the office provided such notice, a fine for a violation of an office order or written agreement begins to accrue immediately upon service of the complaint and continues to accrue until the violation is corrected.

(2) ~~Any~~ Such fine may not exceed $2,500 per ~~a~~ day for each violation except as provided in this section.

(a) If the office determines that ~~any~~ such person has recklessly violated a ~~any~~ provision of the financial institutions codes, an ~~or a cease and desist~~ order of the office, or a ~~any~~ written agreement with the office, which violation results in more than a minimal loss to a financial institution, affiliate, subsidiary, or service corporation, or in a pecuniary benefit to such person, the office may impose a

fine of up to ~~not exceeding~~ $10,000 per ~~a~~ day for each day the violation continues.

(b) If the office determines that ~~any~~ such person has knowingly violated a ~~any~~ provision of the financial institutions codes, an ~~or a cease and desist~~ order of the office, or a ~~any~~ written agreement with the office, which violation results in more than a minimal loss to a financial institution, affiliate, subsidiary, or service corporation, or in a pecuniary benefit to such ~~a~~ person, the office may impose a fine of up to ~~not exceeding~~ the lesser of $500,000 per day or 1 percent of the total assets in the case of a financial institution, or $50,000 per day in any other case for each day the violation continues.

(c) The office may by complaint impose an administrative fine of up to~~, not exceeding~~ $10,000 per ~~a~~ day on a~~, upon any~~ financial institution-affiliated party, on ~~and upon~~ a state financial institution, subsidiary, service corporation, or affiliate, or on a person subject to supervision by the office pursuant to s. 655.0391 which ~~who~~ refuses to permit an examiner to examine a state financial institution, subsidiary, or service corporation;~~, who refuses~~ to permit an examiner to review the books and records of an affiliate or a contracting service entity subject to supervision by the office pursuant to s. 655.0391;~~,~~ or ~~who refuses~~ to give an examiner any information required in the course of an ~~any~~ examination or review of the books and records.

(3) An ~~Any~~ administrative fine levied by the office may be enforced by the office ~~by appropriate proceedings~~ in the circuit court of the county in which such person resides or in which the principal office of a state financial institution, affiliate,

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subsidiary, service corporation, or contracting service entity is located or does business in the state. In any administrative or judicial proceeding arising under this section, a party may elect to correct the violation asserted by the office and, upon doing so, any fine ceases to accrue; however, an election to correct the violation does not render an ~~any~~ administrative or judicial proceeding moot.

Section 7. Section 655.045, Florida Statutes, is amended to read:

655.045 Examinations, reports, and internal audits; penalty.—

(1) The office shall conduct an examination of the condition of each state financial institution at least every 18 months ~~during each 18-month period~~. The office may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations. The office may use continuous, phase, or other flexible scheduling examination methods for very large or complex state financial institutions and financial institutions owned or controlled by a multi-financial institution holding company. The office shall consider examination guidelines from federal regulatory agencies in order to facilitate, coordinate, and standardize examination processes.

(a) ~~With respect to, and examination of, the condition of a state institution,~~ The office may accept an examination of a state financial institution made by an appropriate federal regulatory agency~~,~~ or may conduct ~~make~~ a joint or concurrent examination of the institution with the federal agency. However,

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at least once during each 36-month period beginning July 1, 2014, the office shall conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The office may furnish a copy of all examinations or reviews made of financial institutions or their affiliates to the state or federal agencies participating in the examination, investigation, or review, or as otherwise authorized under ~~by~~ s. 655.057.

(b) If, as a part of an examination or investigation of a state financial institution, subsidiary, or service corporation, the office has reason to believe that the conduct or business operations of an affiliate may have a negative impact on the state financial institution, subsidiary, or service corporation, the office may conduct such examination or investigation of the affiliate as the office deems necessary.

(c) The office may recover the costs of examination and supervision of a state financial institution, subsidiary, or service corporation that is determined by the office to be engaged in an unsafe or unsound practice. The office may also recover the costs of a ~~any~~ review conducted pursuant to paragraph (b) of an ~~any~~ affiliate of a state financial institution determined by the office to have contributed to an unsafe or unsound practice at a state financial institution, subsidiary, or service corporation.

(d) As used in ~~For the purposes of~~ this section, the term "costs" means the salary and travel expenses directly attributable to the field staff examining the state financial

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institution, subsidiary, or service corporation, and the travel expenses of any supervisory staff required as a result of examination findings. The mailing of any costs incurred under this subsection must be postmarked within 30 days after the date of receipt of a notice stating that such costs are due. The office may levy a late payment of up to $100 per day or part thereof that a payment is overdue, unless excused for good cause. However, for intentional late payment of costs, the office may levy an administrative fine of up to $1,000 per day for each day the payment is overdue.

(e) The office may require an audit of a state financial institution, subsidiary, or service corporation by an independent certified public accountant, or other person approved by the office~~,~~ if the office, after conducting an examination of the state financial institution, subsidiary, or service corporation, or after accepting an examination of the ~~such~~ state financial institution by an appropriate state or federal regulatory agency, determines that an audit is necessary in order to ascertain the condition of the financial institution, subsidiary, or service corporation. The cost of such audit shall be paid by the state financial institution, subsidiary, or state service corporation audited.

(2)~~(a)~~ Each state financial institution, subsidiary, or service corporation shall submit a report, at least four times each calendar year, as of such dates as the commission or office determines. The ~~Such~~ report must include such information as the commission by rule requires for that type of institution.

(a)~~(b)~~ The office shall levy an administrative fine of up to $100 per day for each day the report is past due, unless it

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is excused for good cause. ~~However,~~

(b) For an intentional late filing of the report ~~required under paragraph (a)~~, the office shall levy an administrative fine of up to $1,000 per day for each day the report is past due.

(3)~~(a)~~ The board of directors of each state financial institution or, in the case of a credit union, the supervisory committee or audit committee shall perform or cause to be performed, within each calendar year, an internal audit of each state financial institution, subsidiary, or service corporation and ~~to~~ file a copy of the report and findings of such audit with the office on a timely basis. The ~~Such~~ internal audit must include such information as the commission by rule requires for that type of institution.

(a)~~(b)~~ With the approval of the office, the board of directors or, in the case of a credit union, the supervisory committee may elect, in lieu of such periodic audits, to adopt and implement an adequate continuous audit system and procedure that includes ~~which must include~~ full, adequate, and continuous written reports to, and review by, the board of directors or, in the case of a credit union, the supervisory committee, together with written statements of the actions taken thereon and reasons for omissions to take actions, all of which shall be noted in the minutes and filed among the records of the board of directors or, in the case of a credit union, the supervisory committee. If at any time such continuous audit system and procedure, including the reports and statements, becomes inadequate, in the judgment of the office, the state financial institution shall promptly make such changes as may be required

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by the office to cause the same to accomplish the purpose of this section.

(b)~~(c)~~ A ~~Any~~ de novo state financial institution open less than 4 months is exempt from the audit requirements of this section.

(4) A copy of the report of each examination must be furnished to the entity examined and~~. Such report shall be~~ presented to the board of directors at its next regular or special meeting.

Section 8. Paragraph (a) of subsection (3) and subsections (4) through (6) of section 655.057, Florida Statutes, are amended to read:

655.057 Records; limited restrictions upon public access.—

(3) The provisions of this section do not prevent or restrict:

(a) Publishing reports that are required to be submitted to the office pursuant to s. 655.045(2)~~(a)~~ or required by applicable federal statutes or regulations to be published.

Any confidential information or records obtained from the office pursuant to this subsection shall be maintained as confidential and exempt from the provisions of s. 119.07(1).

(4)(a) Orders of courts or of administrative law judges for the production of confidential records or information must ~~shall~~ provide for inspection in camera by the court or the administrative law judge. ~~and,~~ After the court or administrative law judge determines ~~has made a determination~~ that the documents requested are relevant or would likely lead to the discovery of admissible evidence and that the information sought is not

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otherwise reasonably available from other sources, the ~~said~~ documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality thereof. Any order directing the release of information is ~~shall be~~ immediately reviewable, and a petition by the office for review of such order ~~shall~~ automatically stays ~~stay~~ further proceedings in the trial court or the administrative hearing until the disposition of such petition by the reviewing court. If any other party files such a petition for review, it will operate as a stay of such proceedings only upon order of the reviewing court.

(b) Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body or committee that ~~which~~ received the records or information. However, ~~except~~ in a case involving investigation of charges against a public official subject to impeachment or removal, ~~and then~~ disclosure of such information shall be only to the extent necessary as determined by the legislative body or committee ~~to be necessary~~.

(c) Documents, statements, books, records, and any other information provided to the office by any person pursuant to an investigation, examination, or other supervisory activity by the office are not considered a waiver of any privilege or other legal right in an administrative or legal proceeding in which the office is not a party.

(5) Every credit union and mutual association shall maintain~~, in the principal office where its business is transacted,~~ full and correct records of the names and residences of all the members of the credit union or mutual association in

the principal office where its business is transacted. Such records are ~~shall be~~ subject to ~~the~~ inspection by ~~of~~ all ~~the~~ members of the credit union or mutual association, and the officers authorized to assess taxes under state authority, during normal business hours ~~of each business day~~. No member or any other person has the right to copy the membership records for any purpose other than in the course of business of the credit union or mutual association, as authorized by the office or the board of directors of the credit union or mutual association. A current list of members shall be made available to the office's examiners for their inspection and, upon the request of the office, shall be submitted to the office. Except as otherwise provided in this subsection, the list of the members of the credit union or mutual association is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(6) Every bank, trust company, and stock association shall maintain, in the principal office where its business is transacted, full and complete records of the names and residences of all the shareholders of the bank, trust company, or stock association and the number of shares held by each. Such records are ~~shall be~~ subject to the inspection of all the shareholders of the bank, trust company, or stock association, and the officers authorized to assess taxes under state authority, during normal business hours ~~of each banking day~~. No shareholder or any other person has the right to copy the shareholder records for any purpose other than in the course of business of the bank, the trust company, or the stock association, as authorized by the office or the board of directors of the bank, the trust company, or the stock

association. A current list of shareholders shall be made available to the office's examiners for their inspection and, upon the request of the office, shall be submitted to the office. Except as otherwise provided in this subsection, any portion of this list which reveals the identities of the shareholders is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

Section 9. Section 655.0591, Florida Statutes, is created to read:

655.0591 Trade secret documents.—

(1) If any person who is required to submit documents or other information to the office pursuant to the financial institutions codes, or by rule or order of the office or commission, claims that such submission contains a trade secret, such person may file with the office a notice of trade secret when the information is submitted to the office as provided in this section. Failure to file such notice constitutes a waiver of any claim by such person that the document or information is a trade secret. The notice must provide the contact information of the person claiming ownership of the trade secret. The person claiming the trade secret is responsible for updating the contact information with the office.

(a) Each page of such document or specific portion of a document claimed to be a trade secret must be clearly marked with the words "trade secret."

(b) All material identified as a trade secret shall be segregated from all other material, such as by being sealed in an envelope clearly marked with the words "trade secret."

(c) In submitting a notice of trade secret to the office or

the Department of Financial Services, the submitting party shall include an affidavit certifying under oath to the truth of the following statements concerning all documents or information that are claimed to be trade secrets:

1. [...I consider/my company considers...] this information a trade secret that has value and provides an advantage or an opportunity to obtain an advantage over those who do not know or use it.

2. [...I have/my company has...] taken measures to prevent the disclosure of the information to anyone other than those who have been selected to have access for limited purposes, and [...I intend/my company intends...] to continue to take such measures.

3. The information is not, and has not been, reasonably obtainable without [...my/our...] consent by other persons by use of legitimate means.

4. The information is not publicly available elsewhere.

(2) If the office receives a public records request for a document or information that is marked and certified as a trade secret, the office shall promptly notify the person that certified the document as a trade secret. The notice shall be sent to the address provided with the most recent contact information provided to the office and must inform such person that, in order to avoid disclosure of the trade secret, the person must file an action in circuit court within 30 days after the date of the notice seeking a declaratory judgment that the document in question contains trade secrets and an order barring public disclosure of the document. The owner shall provide written notice to the office that the action was filed and the

office may not release the documents pending the outcome of legal action. Failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and the office shall release the document as requested.

(3) The office may disclose a trade secret, together with the claim that it is a trade secret, to an officer or employee of another governmental agency whose use of the trade secret is within the scope of his or her employment.

Section 10. Section 655.50, Florida Statutes, is reordered and amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act~~; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties~~.—

(1) This section may be cited as the "Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act."

(2) ~~It is~~ The purpose of this section is to require the submission to the office of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if ~~when~~ such reports and records deter using ~~the use of~~ financial institutions to conceal, move, or provide ~~the~~ proceeds obtained from or intended for ~~of~~ criminal or terrorist activities and if such reports and records ~~activity and~~ have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

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

(a) "BSA/AML compliance officer" means the financial

institution's officer responsible for the development and implementation of the financial institution's policies and procedures for complying with the requirements of this section relating to anti-money laundering (AML), and the requirements of the Bank Secrecy Act of 1970 (BSA), Pub. L. No. 91-508, as amended, the USA Patriot Act of 2001, Pub. L. No. 107-56, as amended, and federal and state rules and regulations adopted thereunder, and 31 C.F.R. parts 500-598, relating to the regulations of the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury.

(b) ~~(a)~~ "Currency" means currency and coin of the United States or of any other country.

(c) ~~(b)~~ "Financial institution" means a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state.

(d) ~~(c)~~ "Financial transaction" means a transaction involving the movement of funds by wire, electronic funds transfer, or any other means, or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the use of a financial institution that ~~which~~ is engaged in, or the activities of which affect, commerce in any way or degree.

(e) ~~(d)~~ "Monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, stored value cards, prepaid cards, investment securities or ~~in bearer form or otherwise in such form that title thereto passes upon delivery, and~~ negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery, or similar

devices.

(i) ~~(c)~~ "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(f) "Report" means a report of each deposit, withdrawal, exchange of currency, or other payments or transfer, by, through, or to that financial institution, which ~~that~~ involves a transaction required or authorized to be reported by this section, and includes the electronic submission of such information in the manner provided ~~for~~ by rule of the commission.

(g) "Specified unlawful activity" means ~~any~~ "racketeering activity" as defined in s. 895.02.

(h) "Suspicious activity" means any transaction reportable as required and described under 31 C.F.R. s. 1020.320.

(4) A financial institution shall designate and retain a BSA/AML compliance officer. The board of directors of a financial institution must ensure that the designated compliance officer is properly qualified and has sufficient authority and resources to administer an effective BSA/AML compliance program. The board is ultimately responsible for establishing the institution's BSA/AML policies and overall BSA/AML compliance. A change in the BSA/AML compliance officer must be reported to the office.

(5) ~~(4)(a)~~ A ~~Every~~ financial institution shall keep a record of each financial transaction occurring in this state known to it which involves ~~to involve~~ currency or other monetary instrument, as the commission prescribes by rule, has ~~of~~ a value greater than ~~in excess of~~ $10,000, and involves ~~to involve~~ the proceeds of specified unlawful activity, or is ~~to be~~ designed to evade the reporting requirements of this section, chapter 896, or ~~any~~ similar state or federal law, or which the financial institution reasonably believes is suspicious activity. Each financial institution ~~and~~ shall maintain appropriate procedures to ensure compliance with this section, chapter 896, and ~~any~~ other similar state or federal law. Any report of suspicious activity made pursuant to this subsection is entitled to the same confidentiality provided under 31 C.F.R. s. 1020.320, whether the report or information pertaining to or identifying the report is in the possession or control of the office or the reporting institution.

(a) ~~(b)~~ Multiple financial transactions shall be treated as a single transaction if the financial institution has knowledge that they are made by or on behalf of any person and result in ~~either~~ cash in or cash out totaling more than $10,000 during any business day~~,~~ as defined in s. 655.89(1).

(b) ~~(c)~~ A ~~Any~~ financial institution may keep a record of any financial transaction occurring in this state, regardless of the value, if it suspects that the transaction involves ~~to involve~~ the proceeds of specified unlawful activity.

(c) ~~(d)~~ A financial institution, or officer, employee, or agent thereof, which ~~that~~ files a report in good faith pursuant to this subsection ~~section~~ is not liable to any person for loss

or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

(d) ~~(5)(a)~~ Each financial institution shall file a report ~~with the office~~ of the records ~~record~~ required under this subsection with the office ~~paragraphs (4)(a) and (b) and any record maintained pursuant to paragraph (4)(c)~~. Each report shall ~~record filed pursuant to subsection (4) must~~ be filed at such time and must contain such information as the commission requires by rule.

(e) ~~(b)~~ The timely filing of the reports ~~report~~ required by 31 U.S.C. s. 5313 and 31 C.F.R. part 1020 with the appropriate federal agency is deemed compliance with the reporting requirements of this subsection unless the reports are not regularly and comprehensively transmitted by the federal agency to the office.

(6) Each financial institution shall maintain a record of each qualified business customer that is ~~designation of a person~~ granted an exemption under ~~the authority of~~ 31 U.S.C. s. 5313, including any name, address, and taxpayer identification number of the exempt customer ~~person~~, as well as the name and address of the financial institution and the signature of the financial institution official designating the exempt customer ~~person~~. Such record of exemptions shall be made available to the office for inspection and copying and ~~shall be~~ submitted to the office within 15 days after request.

(7) All reports and records filed with the office pursuant to this section are confidential and exempt from s. 119.07(1). However, the office shall provide any report filed pursuant to

this section, or information contained therein, to federal, state, and local law enforcement and prosecutorial agencies, and any federal or state agency responsible for the regulation or supervision of financial institutions.

(8) ~~(a)~~ Each financial institution shall maintain:

(a) ~~For a minimum of 5 calendar years~~ Full and complete records of all financial transactions, including all records required by 31 C.F.R. parts 500-598 and 1010 for a minimum of 5 calendar years ~~parts 103.33 and 103.34~~.

(b) ~~The financial institution shall retain~~ A copy of all reports filed with the office under subsection (5) ~~(4)~~ for a minimum of 5 calendar years after submission of the report.

(c) ~~The financial institution shall retain~~ A copy of all records of exemption for each qualified business customer ~~designation of exempt person~~ made pursuant to subsection (6) for a minimum of 5 calendar years after termination of exempt status of such customer.

(9) The office, in addition to any other power conferred upon it to enforce and administer this chapter and the financial institutions codes, ~~the office~~ may:

(a) Bring an action in any court of competent jurisdiction to enforce or administer this section. In such action, the office may seek an award of any civil penalty authorized by law and any other appropriate relief at law or equity.

(b) Pursuant to s. 655.033, issue and serve upon a person an order requiring such person to cease and desist and take corrective action if ~~whenever~~ the office finds that such person is violating, has violated, or is about to violate any provision of this section, chapter 896, or ~~any~~ similar state or federal

law; any rule or order adopted under this section, chapter 896, or ~~any~~ similar state or federal law; or any written agreement related to this section, chapter 896, or ~~any~~ similar state or federal law and entered into with the office.

(c) Pursuant to s. 655.037, issue and serve upon any person an order of removal if ~~whenever~~ the office finds that such person is violating, has violated, or is about to violate any provision of this section, chapter 896, or ~~any~~ similar state or federal law; any rule or order adopted under this section, chapter 896, or ~~any~~ similar state or federal law; or any written agreement related to this section, chapter 896, or ~~any~~ similar state or federal law and entered into with the office.

(d) Impose and collect an administrative fine against any person found to have violated any provision of this section, chapter 896, or ~~any~~ similar state or federal law; any rule or order adopted under this section, chapter 896, or ~~any~~ similar state or federal law; or any written agreement related to this section, chapter 896, or ~~any~~ similar state or federal law and entered into with the office, in an amount up to ~~not exceeding~~ $10,000 per ~~a~~ day for each willful violation or $500 per ~~a~~ day for each negligent violation.

(10)(a) Except as provided in paragraph (b), a person who willfully violates ~~any provision of~~ this section commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who willfully violates or knowingly causes another to violate ~~any provision of~~ this section, when the violation involves:

1. Financial transactions totaling or exceeding $300 but

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less than $20,000 in any 12-month period, commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; ~~or~~

2. Financial transactions totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083; or

3. Financial transactions totaling or exceeding $100,000 in any 12-month period, commits ~~is guilty of~~ a felony of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) In addition to the penalties otherwise authorized by ss. 775.082 and 775.083, a person who has been convicted of or who has pleaded guilty or nolo contendere to having violated paragraph (b) may be sentenced to pay a fine of up to ~~not exceeding~~ $250,000 or twice the value of the financial transaction, whichever is greater, except that on a second or subsequent conviction for or plea of guilty or nolo contendere to a violation of paragraph (b), the fine may be up to $500,000 or quintuple the value of the financial transaction, whichever is greater.

(d) A financial institution as defined in s. 655.005 which ~~that~~ willfully violates this section is also liable for a civil penalty of not more than the greater of the value of the financial transaction involved or $25,000. However, the civil penalty may not exceed $100,000.

(e) A person other than a financial institution as defined in s. 655.005 who violates this section is also liable for a civil penalty of not more than the greater of the value of the financial transaction involved or $25,000.

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(11) In any prosecution brought pursuant to this section, the common law corpus delicti rule does not apply. The defendant's confession or admission is admissible during trial without the state having to prove the corpus delicti if the court finds in a hearing conducted outside the presence of the jury that the defendant's confession or admission is trustworthy. Before the court admits the defendant's confession or admission, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence that tends to establish the trustworthiness of the statement by the defendant. Hearsay evidence is admissible during the presentation of evidence at the hearing. In making its determination, the court may consider all relevant corroborating evidence, including the defendant's statements.

Section 11. Section 655.85, Florida Statutes, is amended to read:

655.85 Settlement of checks.—If a ~~Whenever any~~ check is forwarded or presented to a financial ~~an~~ institution for payment, except when presented by the payee in person, the paying institution or remitting institution shall settle the amount of the check at par ~~may pay or remit the same~~, at its option, ~~either~~ in money or in exchange drawn on its reserve agent or agents in the City of New York or in any reserve city within the Sixth Federal Reserve District~~; however, an institution may not settle any check drawn on it otherwise than at par~~. The term "at par" applies only to the settlement of checks between collecting and paying or remitting institutions and does not apply to, or prohibit an institution from, deducting from the face amount of the check drawn on it a fee

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for paying the check if the check is presented to the institution by the payee in person. ~~The provisions of~~ This section does ~~do~~ not apply ~~with respect~~ to the settlement of a check sent to such institution as a special collection item.

Section 12. The Legislature intends that the amendment to s. 655.85, Florida Statutes, made by this act, clarify the relevant portions of the financial institutions codes as defined in s. 655.005, Florida Statutes, relating to fees imposed by a financial institution for the payment of checks presented in person without requiring further amendment.

Section 13. Section 655.921, Florida Statutes, is amended to read:

655.921 Transaction of business by out-of-state financial institutions; exempt transactions ~~in the financial institutions codes~~.—

(1) ~~Nothing in~~ The financial institutions codes do not ~~shall be construed to~~ prohibit a financial institution or business trust that has ~~having~~ its principal place of business outside this state and that does not operate ~~operating~~ branches in this state from:

(a) Contracting in this state with any person to acquire from such person a part, or the entire, interest in a loan that such person ~~proposes to make, has heretofore made, or hereafter~~ makes, together with a like interest in any security instrument covering real or personal property in the state ~~proposed to be given or hereafter or heretofore~~ given to such person to secure or evidence such loan.

(b) Entering into mortgage servicing contracts with persons authorized to transact business in this state and enforcing in

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this state the obligations ~~heretofore or hereafter~~ acquired by it in the transaction of business outside this state or in the transaction of any business authorized by this section.

(c) Acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying property in this state which is ~~has heretofore or may hereafter be~~ assigned, transferred, mortgaged, or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized by this section.

(d) Making loans or committing to make loans to any person located in this state and soliciting compensating deposit balances in connection therewith.

(e) Filing suit in any court in this state to collect any debt or foreclose on any security interest in collateral securing a debt.

(2) A ~~No such~~ financial institution or business trust may not ~~shall~~ be deemed to be transacting business in this state, or be required to qualify ~~so~~ to do so, solely by reason of the performance of any of the acts or business authorized in this section.

Section 14. Section 655.922, Florida Statutes, is amended to read:

655.922 Banking business by unauthorized persons; use of name.—

(1) Only ~~No person other than~~ a financial institution authorized to do business in this state pursuant to the financial institutions codes of any state or federal law may ~~shall, in this state,~~ engage in the business of soliciting or

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receiving funds for deposit, ~~or of~~ issuing certificates of deposit, or ~~of~~ paying checks in this state; and only such financial institution may ~~no person shall~~ establish or maintain a place of business in this state for any of the functions, transactions, or purposes identified ~~mentioned~~ in this subsection. A ~~Any~~ person who violates ~~the provisions of~~ this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This subsection does not prohibit the issuance or sale by a financial institution of traveler's checks, money orders, or other instruments for the transmission or payment of money, by or through employees or agents of the financial institution off the financial institution's premises.

(2) Only ~~No person other than~~ a financial institution authorized to do business ~~shall,~~ in this state as provided under subsection (1) may:

(a) Transact or solicit business under any name or title that contains the words "bank," "banc," "banco," "banque," "banker," "banking," "trust company," "savings and loan association," "savings bank," or "credit union," or words of similar import, in any context or in any manner;

(b) Use any name, word, trademark, service mark, trade name, Internet address, logo, sign, symbol, or device in any context or in any manner; or

(c) Circulate or use any letterhead, billhead, circular, paper, electronic media, Internet website or posting, or writing of any kind or otherwise advertise or represent in any manner,

which indicates or reasonably implies that the business being

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solicited, conducted, or advertised is the kind or character of business transacted or conducted by a financial institution or which is likely to lead any person to believe that such business is that of a financial institution; however, the words "bank," "banc," "banco," "banque," "banker," "banking," "trust company," "savings and loan association," "savings bank," or "credit union," or the plural of any thereof, may be used by, and in the corporate or other name or title of, any company that ~~which~~ is or becomes a ~~financial institution~~ holding company of a financial institution pursuant to state or federal law; any subsidiary of ~~any~~ such ~~financial institution~~ holding company which includes as a part of its name or title all or any part, or abbreviations, of the name or title of the ~~financial institution~~ holding company of which it is a subsidiary; any trade organization or association, whether or not incorporated, functioning for the purpose of promoting the interests of financial institutions or ~~financial institution~~ holding companies, the active members of which are financial institutions or ~~financial institution~~ holding companies; and any international development bank chartered pursuant to part II of chapter 663.

(3) A ~~No~~ person may not use the name, trademark, service mark, trade name, Internet address, or logo of a ~~any~~ financial institution or an affiliate or subsidiary thereof, or use a name similar to that of a financial institution or an affiliate or subsidiary thereof, to market or solicit business from a customer or prospective customer of such institution if:

(a) The solicitation is done without the written consent of the financial institution or its affiliate or subsidiary; and

(b) A reasonable person would believe that the materials originated from, are endorsed by, or are connected with the financial institution or its affiliates or subsidiaries.

(4) A financial institution, affiliate, subsidiary, or service corporation may not do business, solicit, or advertise in this state using a name, trademark, service mark, trade name, Internet address, or logo that may mislead consumers or cause confusion as to the identification of the proper legal business entity or the nature of the financial institution's business.

(5)~~(4)~~ Any court, in a proceeding brought by the office, by a ~~any~~ financial institution the principal place of business of which is in this state, or by any other person residing~~,~~ or whose principal place of business is ~~located,~~ in this state and whose interests are substantially affected thereby, may enjoin any person from violating any provision ~~of the provisions~~ of this section. Except for a financial institution duly chartered by the office, the office may also seek an order from the circuit court for the annulment or dissolution of a corporation or any other business entity found violating any provision of this section. For the purposes of this subsection, the interests of a trade organization or association are deemed to be substantially affected if the interests of ~~any of~~ its members are so affected. ~~In addition,~~ The office may also issue and serve upon any person who violates any provision ~~of the provisions~~ of this section an emergency cease and desist order or a complaint seeking a cease and desist order in accordance with ~~the procedures and in the manner prescribed by~~ s. 655.033. The office is not required to make any finding or determination that a violation of this section is likely to result in

insolvency, substantial dissipation of assets or earnings, or substantial prejudice to any person in association with the issuance of an emergency cease and desist order.

(6)~~(5) Nothing in~~ This section does not ~~shall be construed to~~ prohibit the lawful establishment or operation ~~the lawful operations~~ of a financial institution, affiliate, subsidiary, or service corporation or ~~and nothing in this code shall be construed to~~ prohibit any advertisement or other activity in this state by any person if such prohibition would contravene any applicable federal law that ~~which~~ preempts the law of this state.

Section 15. Section 657.008, Florida Statutes, is amended to read:

657.008 Place of doing business.—

(1) A ~~Every~~ credit union authorized to transact business pursuant to the laws of this state shall have one principal place of doing business as designated in its bylaws and where legal process may be served. A credit union may change its place of business through an amendment to its bylaws.

(2)~~(a)~~ Following ~~With~~ 30 days' prior written notification to the office or within such other time as is approved by the office, a credit union operating in a safe and sound manner may maintain branches without requiring prior office examination and approval at locations other than its main office or relocate branches previously established if the maintenance of such branches is determined by the board of directors to be reasonably necessary to furnish service to its members.

(a) A credit union that requires office examination and approval before establishing or relocating a branch must submit

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a written application in such form and supported by such information, data, and records as the commission or office may require to make all findings necessary for approval. Upon receiving the application and a nonrefundable filing fee for the establishment of the branch, the office shall consider the following in determining whether to reject or approve the application:

1. The sufficiency of the net worth of the credit union in relation to its deposit liabilities, including the proposed branch, and the additional fixed assets, if any, which are proposed for the branch and its operations without undue risk to the credit union or its depositors;

2. The sufficiency of earnings and earnings prospects of the credit union necessary to support the anticipated expenses and operating losses of the branch during its formative or initial years;

3. The sufficiency and quality of management available to operate the branch;

4. The name of the proposed branch in order to determine if it reasonably identifies the branch as a branch of the main office and is not likely to unduly confuse the public; and

5. The substantial compliance of the applicant with the applicable law governing its operations.

(b) If any branch is located outside this state, the cost of examining such branch shall be borne by the credit union. Such cost includes ~~shall include~~, but is ~~shall~~ not ~~be~~ limited to, examiner travel expense and per diem.

(3) A credit union may share office space with one or more credit unions and contract with any person or corporation to

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provide facilities or personnel.

(4) A ~~Any~~ credit union organized under this state or federal law, the members of which are presently, or were at the time of admission into the credit union, employees of the state or a political subdivision or municipality thereof, or members of the immediate families of such employees, may apply for space in any building owned or leased by the state or respective political subdivision or municipality in the community or district in which the credit union does business.

(a) The application shall be addressed to the officer charged with the allotment of space in such building. If space is available, the officer may allot space to the credit union at a reasonable charge for rent or services.

(b) If the governing body having jurisdiction over the building determines that the services rendered by the credit union to the employees of the governing body are equivalent to a reasonable charge for rent or services, available space may be allotted to the credit union without charge for rent or services.

(5)(a) The office may authorize foreign credit unions to establish branches in this state ~~Florida~~ if all of the following criteria are met:

1. The state in which the foreign credit union's home office is located permits Florida credit unions to do business in the state under restrictions that are no greater than those placed upon a domestic credit union doing business in that state. For this purpose, such restrictions must ~~shall~~ include~~, but are not limited to,~~ any fees, bonds, or other charges levied on domestic credit unions doing business in that state.

2. The deposits of such foreign credit union and its proposed Florida branch must ~~shall~~ have insurance of accounts with the National Credit Union Administration.

3. The credit union's field of membership is so limited as to be within that meaning of that term as defined in s. 657.002.

(b) Every foreign credit union operating in this state must ~~Florida shall~~ keep the office informed of every location at which it is operating.

(c) If the office has reason to believe that a foreign credit union is operating a branch in this state in an unsafe and unsound manner, it shall have the right to examine such branch. If, upon examination, the office finds that such branch is operating in an unsafe and unsound manner, it shall require the branch office to make appropriate modifications to bring the ~~such~~ branch operations into compliance with generally accepted credit union operation in this state. The ~~Such~~ foreign credit union shall reimburse the office for the full cost of such ~~this~~ examination. Costs ~~shall~~ include examiner salaries, per diem, and travel expenses.

(d) Any foreign credit union operating in this state shall, in any connection therewith, be subject to suit in the courts of this state~~,~~ by this state and by the residents ~~citizens~~ of this state.

(6) A credit union may provide, directly or through a contract with another company, off-premises armored car services to its members. Armored car services do not constitute a branch for the purposes of this section.

Section 16. Section 657.028, Florida Statutes, is amended to read:

657.028 Activities of directors, officers, committee members, employees, and agents.—

(1) An individual may not disburse funds of the credit union for any extension of credit approved by her or him.

(2) An elected officer, ~~or~~ director, or ~~any~~ committee member, other than the chief executive officer, may not be compensated for her or his service as such.

(3) Except with the prior approval of the office, a person may not serve as an officer, director, or committee member of a credit union if she or he:

(a) Has been convicted of a felony or of an offense involving dishonesty, a breach of trust, a violation of this chapter, or fraud~~, except with the prior approval of the office~~;

(b) Has been adjudicated bankrupt within the previous 7 years;

(c) Has been removed by any regulatory agency as a director, officer, committee member, or employee of a ~~any~~ financial institution~~, except with the prior approval of the office~~;

(d) Has performed acts of fraud or dishonesty, or has failed to perform duties, resulting in a loss that ~~which~~ was subject to a paid claim under a fidelity bond~~, except with the prior approval of the office~~; ~~or~~

(e) Has been found guilty of a violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law; or

(f) Has defaulted on a debt or obligation to a financial

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institution which resulted in a material loss to the financial institution.

(4) A person may not serve as a director of a credit union if she or he is an employee of the credit union, other than the chief executive officer of the credit union.

(5) A director, officer, committee member, ~~officer,~~ agent, or employee of the credit union may not in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting her or his pecuniary interest or the pecuniary interest of any corporation, partnership, or association, other than the credit union, in which she or he or a member of her or his immediate family is directly or indirectly interested.

(6) Within 30 days after election or appointment, a record of the names and addresses of the members of the board, members of committees, ~~and~~ all officers of the credit union, and the credit manager shall be filed with the office on forms prescribed by the commission.

Section 17. Section 657.041, Florida Statutes, is amended to read:

657.041 Insurance; employee benefit plans.—

(1) A credit union may purchase for or make available to its members credit life insurance, credit disability insurance, life savings or depositors life insurance, or any other insurance coverage which may be directly related to the extension of credit or to the receipt of shares or deposits in amounts related to the members' respective ages, shares, deposits, or credit balances, or to any combination thereof.

(2) A credit union may purchase and maintain insurance on

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behalf of any person who is or was a director, officer, employee, or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability arising out of such person's capacity or status with the credit union, whether or not the credit union would have the power to indemnify such person against the asserted liability.

(3) With the prior approval of members of a credit union and the office, the credit union may pay the premiums for reasonable health, accident, and related types of insurance protection for members of the credit union's board of directors, credit committee, supervisory committee, or other volunteer committee established by the board. Any insurance protection purchased must cease upon the insured person's leaving office without residual benefits other than from pending claims, if any, except that the credit union must comply with federal and state laws providing departing officials the right to maintain health insurance coverage at their own expense. The office shall consider the credit union's size and financial condition and the duties of the board or other officials in its consideration of the request for approval for insurance coverage and may withhold approval if the request would create an unsafe or unsound practice or condition for the credit union.

(4) With the prior approval of the board of a credit union and the office, the credit union may fund employee benefit plans. The office shall consider the credit union's size and financial condition and the duties of the employees and may withhold approval if the request would create an unsafe or

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unsound practice or condition for the credit union.

Section 18. Subsection (20) of section 658.12, Florida Statutes, is amended to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(20) "Trust business" means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or ~~and also~~ when conducted by any other business organization for compensation that the office does not consider to be de minimis ~~as its sole or principal business~~.

Section 19. Subsection (4) of section 658.21, Florida Statutes, is amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896, relating to offenses related to financial institutions; or ~~any~~ similar state or federal law. At least two of the proposed directors who are not also proposed officers must ~~shall~~ have had at least 1 year direct experience as an executive officer, regulator, or

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director of a financial institution within the 3 years before ~~of~~ the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 3 years before the date of the application, the office may modify the requirement and allow only one director to have direct financial institution experience within the last 3 years. The proposed president or chief executive officer must ~~shall~~ have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.

Section 20. Subsection (2) of section 658.235, Florida Statutes, is amended to read:

658.235 Subscriptions for stock; approval of major shareholders.—

(2) The directors shall also provide such detailed financial, business, and biographical information as the commission or office may reasonably require for each person who, together with related interests, subscribes to 10 percent or more of the voting stock or nonvoting stock that ~~which~~ is convertible into voting stock of the proposed bank or trust company. The office shall make an investigation of the character, financial responsibility, and financial standing of each such person in order to determine whether he or she is likely to control the bank or trust company in a manner that ~~which~~ would jeopardize the interests of the depositors and creditors of the bank or trust company, the other stockholders, or the general public. The ~~This~~ investigation must ~~shall~~ include

a determination of whether ~~any~~ such person has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 21. Section 658.49, Florida Statutes, is repealed.

Section 22. Subsection (1) of section 663.02, Florida Statutes, is amended to read:

663.02 Applicability of state banking laws.—

(1) International banking corporations having offices in this state are ~~shall be~~ subject to all the provisions of the financial institutions codes and chapter 655 as though such ~~international banking~~ corporations were state banks or trust companies, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions are applicable to such banks or trust companies: s. 655.031, relating to administrative enforcement guidelines; s. 655.032, relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, relating to hearings, proceedings, and related documents and restricted access thereto; s. 655.033, relating to cease and desist orders; s. 655.037, relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, relating to administrative fines and enforcement; s. 655.50, relating to the control of money laundering and

terrorist financing; ~~s. 658.49, relating to loans by banks not exceeding $50,000,~~ and any ~~provision of~~ law for which the penalty is increased under s. 775.31 for facilitating or furthering terrorism. International banking corporations do ~~shall~~ not have the powers conferred on domestic banks by ~~the provisions of~~ s. 658.60, relating to deposits of public funds. ~~The provisions of~~ Chapter 687, relating to interest and usury, applies ~~shall apply~~ to all bank loans ~~not subject to s. 658.49~~.

Section 23. Subsection (1) of section 663.09, Florida Statutes, is amended to read:

663.09 Reports; records.—

(1) An ~~Every~~ international banking corporation doing business in this state shall, at such times and in such form as the commission prescribes, make written reports in the English language to the office, under the oath of one of its officers, managers, or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the commission or office requires. An international banking corporation that maintains two or more offices may consolidate such information in one report unless the office otherwise requires for purposes of its supervision of the condition and operations of each such office. The late filing of such reports is ~~shall be~~ subject to an ~~the imposition of the~~ administrative fine as prescribed under ~~by~~ s. 655.045(2)~~(b)~~. If ~~any~~ such international banking corporation fails ~~shall fail~~ to make ~~any~~ such report, as directed by the office, or if ~~any~~ such report contains a ~~shall contain any~~ false statement knowingly made, the same shall be grounds for revocation of the license of the international banking

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corporation.

Section 24. Subsection (2) of section 663.12, Florida Statutes, is amended to read:

663.12 Fees; assessments; fines.—

(2) Each international bank agency, international branch, and state-chartered investment company shall pay to the office ~~a semiannual assessment~~, ~~payable~~ on or before January 31 and July 31 of each year, a semiannual assessment in an amount determined ~~by rule~~ by the commission by rule and calculated ~~in a manner so as~~ to recover the costs of the office incurred in connection with the supervision of international banking activities licensed under this part. The ~~These~~ rules must ~~shall~~ provide ~~for~~ uniform rates of assessment for all licenses of the same type and~~, shall~~ provide for declining rates of assessment in relation to the total assets of the licensee held in the state, but may ~~shall~~ not result~~,~~ in ~~any event, provide for~~ rates of assessment which exceed the rate applicable to state banks pursuant to s. 658.73, unless the rate ~~of assessment~~ would result in a semiannual assessment of less than $1,000. For the purposes of this subsection, the total assets of an international bank agency, international branch, or state-chartered investment company must ~~shall~~ include amounts due the agency or branch or state investment company from other offices, branches, or subsidiaries of the international banking corporations or other corporations of which the agency, branch, or state-chartered investment company is a part or from entities related to that international banking corporation. ~~Each international representative office, international administrative office, or international trust company representative office shall pay to~~

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~~the office an annual assessment in the amount of $2,000, payable on or before January 31 of each year.~~

Section 25. Subsection (3) of section 663.306, Florida Statutes, is amended to read:

663.306 Decision by office.—The office may, in its discretion, approve or disapprove the application, but it shall not approve the application unless it finds that:

(3) The proposed officers and directors have sufficient experience, ability, standing, and reputation to indicate reasonable promise of successful operation and none of the proposed officers or directors have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 26. Subsection (28) of section 665.013, Florida Statutes, is amended to read:

665.013 Applicability of chapter 658.—The following sections of chapter 658, relating to banks and trust companies, are applicable to an association to the same extent as if the association were a "bank" operating thereunder:

~~(28) Section 658.49, relating to loans by banks not exceeding $50,000~~.

Section 27. Paragraph (c) of subsection (1) of section 665.033, Florida Statutes, is amended to read:

665.033 Conversion of state or federal mutual association to capital stock association.—

(1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.—Any state or

federal mutual association may apply to the office for permission to convert itself into an association operated under the provisions of this chapter in accordance with the following procedures:

(c) The office may approve or disapprove the plan ~~in its discretion~~, but may ~~it shall~~ not approve the plan unless it finds that the association will comply sufficiently with the requirements of the financial institutions codes after conversion to entitle it to become an association operating under the financial institutions codes and the rules of the commission. The office may deny an ~~any~~ application from any federal association that is subject to a ~~any~~ cease and desist order or other supervisory restriction or order imposed by any state or the federal supervisory authority, or insurer, or guarantor or that has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 28. Paragraph (a) of subsection (2) of section 665.034, Florida Statutes, is amended to read:

665.034 Acquisition of assets of or control over an association.—

(2) The office shall issue the certificate of approval only after it has made an investigation and determined that:

(a) The proposed new owner or owners of voting capital stock are qualified by character, experience, and financial responsibility to control the association in a legal and proper manner and none of the proposed new owners have been convicted

of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 29. Subsection (29) of section 667.003, Florida Statutes, is amended to read:

667.003 Applicability of chapter 658.—Any state savings bank is subject to all the provisions, and entitled to all the privileges, of the financial institutions codes except where it appears, from the context or otherwise, that such provisions clearly apply only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions apply to a savings bank to the same extent as if the savings bank were a "bank" operating under such provisions:

~~(29) Section 658.49, relating to loans by banks not exceeding $50,000.~~

Section 30. Paragraph (c) of subsection (1) of section 667.006, Florida Statutes, is amended to read:

667.006 Conversion of state or federal mutual savings bank or state or federal mutual association to capital stock savings bank.—

(1) CONVERSION INTO CAPITAL STOCK SAVINGS BANK.—Any state or federal mutual savings bank or state or federal mutual association may apply to the office for permission to convert itself into a capital stock savings bank operated under the provisions of this chapter in accordance with the following

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procedures:

(c) The office may approve or disapprove the plan ~~in its discretion~~, but may ~~it shall~~ not approve the plan unless it finds that the savings bank will comply sufficiently with the requirements of the financial institutions codes after conversion to entitle it to become a savings bank operating under the financial institutions codes and the rules of the commission. The office may deny any application from a ~~any~~ federal savings bank that is subject to a ~~any~~ cease and desist order or other supervisory restriction or order imposed by any state or the federal supervisory authority, or insurer, or guarantor or that has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 31. Paragraph (a) of subsection (2) of section 667.008, Florida Statutes, is amended to read:

667.008 Acquisition of assets of or control over a savings bank.—

(2) The office shall issue the certificate of approval only after it has made an investigation and determined that:

(a) The proposed new owner or owners of voting capital stock are qualified by character, experience, and financial responsibility to control the savings bank in a legal and proper manner and none of the proposed new owners have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing ~~in Financial Institutions Act~~; chapter 896,

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relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 32. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
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Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

March 5, 2014

The Honorable Joe Negron, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

CS/CS/Senate Bill 1012, relating to Financial Services has been referred to the Appropriations Committee. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Cindy Kynoch, Staff Director

REPLY TO:
❒ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
❒ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/22/14
Meeting Date

Topic Financial Institutions Bill

Bill Number 1017 *(if applicable)*

Name Anthony DiMarco

Amendment Barcode *(if applicable)*

Job Title EVP

Address [redacted] 1001 Thomasville Rd
Street

Phone 224-2265

Tallahassee FL 32303
City *State* *Zip*

E-mail adimarco@flbankers.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Financial Institutions

Bill Number 1012 *(if applicable)*

Name Jared Ross

Amendment Barcode *(if applicable)*

Job Title SVP, Governmental Affairs

Address 3692 Coolidge Ct.
Street

Phone 322-6956

Tallahassee FL 32311
City *State* *Zip*

E-mail jared.ross@fcu.coop

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Credit Union Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number SB 1012 *(if applicable)*

Name Jo Morris Amendment Barcode _____ *(if applicable)*

Job Title Legislative Affairs Director

Address 200 E. Gaines St. Phone _____
Street

Tallahassee FL 32399 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Office of Financial Regulation

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1018
INTRODUCER:	Appropriations Committee; Commerce and Tourism Committee; and Senator Detert
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	**Fav/CS**
2.	Blizzard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1018 modifies several regulatory programs and activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS or department). Specifically, the bill:

- Eliminates the requirement that a private investigative, private security, or recovery service applicant obtain a letter from a fingerprinting technician or physician when a legible set of fingerprints cannot be obtained after two attempts.
- Revises recertification training requirements for Class "G" firearms licensees.
- Permits a Class "G" licensee to carry a .40 caliber handgun or a .45 caliber automatic colt pistol (ACP) handgun while on duty.
- Permits a Class "D" private security guard holding a Class "G" license to carry a concealed weapon while in plain clothes under certain circumstances.
- Permits the Division of Licensing within DACS to access sealed criminal histories for applicants of a concealed weapon license to determine eligibility.
- Standardizes regulations and procedures by which a consumer can pursue a claim against the bond or other security of a health studio, telemarketer, pawnbroker, or seller of travel.
- Prohibits a person soliciting contributions on behalf of a charity from calling donors who have previously communicated to them that they do not wish to receive any more calls.
- Prohibits a telemarketer from accepting novelty payments, such as remotely created checks or payment orders, cash-to-cash money transfers, and cash reload mechanisms.
- Provides that antifreeze and brake fluid registrations expire one year from the date of issuance.

- Clarifies inconsistent language regarding administrative fines for noncompliant petroleum products.
- Requires the department to adopt quality standards and labeling requirements for motor oils.

The modifications to the department's regulatory activities provided in this bill have a minimal impact on state revenues and expenditures. The bill provides $35,745 in nonrecurring funds to the Florida Department of Law Enforcement for costs associated with sealed criminal history records.

II. Present Situation:

The mission of the department is to safeguard the public and support Florida's agricultural economy. The Division of Consumer Services in the Department of Agriculture and Consumer Services (department) is responsible for protecting consumers from unsafe or defective products and deceptive business practices and is tasked with receiving the consumer complaints. This division is also responsible for overseeing and regulating a broad range of business and non-profit activities and entities. These include commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. In addition, the division is responsible for protecting consumers from unfair and unsafe business practices across a wide range of products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices.

The Division of Licensing in the department regulates and licenses private security, private investigative, and recovery services, as well as issuing concealed weapon and firearm licenses.

The present situation for the relevant provisions of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

III. Effect of Proposed Changes:

Division of Licensing

Fingerprint Requirements

Currently, any person who applies for a private investigative, private security, or recovery service license must undergo a background check, which includes an examination of fingerprint records and criminal records.[1] Section 493.6108(1)(a)2., F.S., provides that after a second unsuccessful attempt for legible fingerprints, as determined by the Florida Department of Law Enforcement (FDLE) or the Federal Bureau of Investigation (FBI), the Department of Agriculture and Consumer Services (department) may bypass a fingerprint background check and determine eligibility for licensure by doing a criminal history background check based on the applicant's name. This bypass is only permitted if a written statement signed by a fingerprint technician or a licensed physician affirming that the fingerprints are the best that could be provided, or that a physical condition precluded submittal of a legible set of prints, must be supplied by the applicant.

[1] Section 493.6108(1), F.S.

Section 1 amends s. 493.6108, F.S., to repeal the requirement that a written statement from the applicant, signed by the fingerprint technician or licensed physician, be provided in the event of two illegible fingerprints before the department may determine eligibility for licensure using a name-based criminal history background check conducted by the FBI. According to the department, "removing this requirement saves the applicant time by removing the requirement to consult a physician, thereby speeding up the application process."[2] Additionally, "[t]he written statement did not provide the department with any additional information pertinent to issuing a license."[3]

Annual Firearms Recertification Training

Currently, s. 493.6113(3)(b), F.S., requires holders of a Class "G"[4] statewide firearms license to annually complete four hours of firearms recertification training.[5] Upon completion of annual training, the licensee must submit proof of such training to the department. If documentation of the training is not submitted by the end of the first year of the two-year term of the license, the license is automatically suspended until proof of the training is submitted. If the documentation is not submitted by the end of the second year of the two-year term of the license, the license may not be renewed unless the applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure.[6]

Section 2 amends s. 493.6113, F.S., to clarify that a Class "G" licensee must complete 28 hours of training before they are initially licensed by the department. After initial licensure, a licensee must complete four hours of firearm recertification training by the end of the *first or second* year of the two-year license.

Permitted Firearms

Currently, s. 493.6115(6), F.S., allows a Class "G" licensee to carry a .38 caliber revolver, a .38 caliber or 9 millimeter semi-automatic pistol, or a .357 caliber revolver with .38 caliber ammunition while performing his or her duties authorized under ch. 493, F.S.

According to the department, over the past 10 to 15 years, a significant number of law enforcement agencies have transitioned away from the standard .38 caliber revolver and the 9 millimeter semi-automatic pistol in favor of the .40 caliber or .45 caliber ACP round. Since 2001, a limited number of security agencies guarding critical infrastructure, such as deep-water ports and power plants, have requested and received waivers to carry these calibers. Currently, there are 74 firearms waivers on file with the department. According to a department analysis, in at least one of the granted waivers, the primary reason for the request was that all of the law enforcement agencies in the area carried .40 caliber semi-automatic pistols and that if a situation developed, the ability to interchange ammunition could prove crucial.[7]

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[2] DACS, *Agency Analysis of SB 1018*, 2 (Feb. 25, 2014) (on file with the Committee on Commerce and Tourism).
[3] *Id.*
[4] A Class "G" licensee permits Class "C," "CC," "D," "M," "MA," or "MB" licensees to bear a firearm. Section 493.6115(2), F.S.
[5] The DACS may waive the annual firearms recertification training for certain applicants, such as state and federal law enforcement officers and correctional officers. Section 6113(3)(b)1.-3., F.S.
[6] Initial licensure requires a minimum of 28 hours of range and classroom training, of which no more than 8 hours may be range training. Section 493.6105(5), F.S.
[7] DACS, *Agency Analysis* at 2.

Section 3 amends s. 493.6115, F.S., to allow a Class "G" licensee to carry a .40 caliber handgun or a .45 ACP handgun while performing his or her duties authorized under ch. 493, F.S. The department states that "[t]his change brings the authorized firearm caliber to a caliber level more consistent with what law enforcement agencies have been using for many years."[8] Additionally, "[t]his would be beneficial in the event of an emergency situation where licensees need to work with law enforcement."[9]

Security Officer Uniforms and Clothing

Under s. 493.6305, F.S., which governs uniform requirements for private security officers, a private security officer that has a Class "G" statewide firearms license is only allowed to carry a concealed firearm in plainclothes while performing limited, special assignment duties. Because private security officers regulated under ch. 493, F.S., also includes bodyguards[10] who generally perform their duties while armed and in plain clothes rather than in uniform, the current limitation on carrying a concealed weapon while in plainclothes for limited, special assignment duties is impractical.[11] According to the department, "this restricts the ability of security officers to work as bodyguards because most people needing bodyguards want those bodyguards to be armed and in plain clothes."[12]

Section 4 amends s. 493.6305, F.S., to permit a Class "D" private security officer who holds a Class "G" statewide firearms license and who is performing bodyguard or executive protection services to carry a concealed firearm in plainclothes as needed to provided contracted services to the client.

Sealed Criminal History Records

Currently, under s. 943.059(4), F.S., a person who has had his or her criminal history record sealed may deny or fail to acknowledge the arrests covered in the sealed record unless specific conditions apply. Section 943.059(4), F.S., also specifies what agencies or entities have access to sealed records "for their respective licensing, access authorization, and employment purposes." Currently, the department is not included in the list of agencies or entities.

Section 18 amends s. 943.059, F.S., to prohibit a person seeking a concealed weapon license from the department pursuant to s. 790.06, F.S., from denying or failing to acknowledge any arrest covered in a sealed record. The bill also allows the department to access a sealed record for the purpose of determining an applicant's eligibility for licensure to carry a concealed weapon pursuant to s. 790.06, F.S. Section 20 takes effect January 1, 2015.

[8] *Id.*
[9] *Id.*
[10] Section 493.6101(19), F.S.
[11] DACS, *Agency Analysis* at 3.
[12] *Id.*

Division of Consumer Services

Bond Requirements

Currently, health studios, telemarketers, pawnbrokers, and sellers of travel are generally required to obtain a bond, certificate of deposit, or letter of credit in amounts ranging from $25,000 to $300,000.[13] The security is intended to compensate consumers for future violations of the provisions of the respective regulating statutes or other consumer complaints, such as fraud, misrepresentation, or breach of contract.[14] According to the department, ss. 501.016, 501.611, 539.001(4), and 559.929, F.S., were enacted separately and thus inconsistencies exist regarding how the respective bond programs are administered, especially with regard to how a consumer pursues a claim against the bond or other security.[15]

Sections 5, 9, 16, and 17 amend ss. 501.016, 501.611, 539.001, and 559.929, F.S., respectively, to provide standardized regulations and procedures by which a consumer can pursue a claim against the bond or other security of a health studio, telemarketer, pawnbroker, or seller of travel. Although liability for an injury to a consumer may be determined by an administrative proceeding or through a civil action, claims against the bond or other security may only be paid by order of the department in an administrative proceeding pursuant to ch. 120, F.S.

In order for a consumer to file a claim against the bond or other security, he or she must do so through the department on an approved affidavit within 120 days of the injury or discovery of the injury, or a judgment being entered. Proceedings on the claim must be conducted in accordance with ch. 120, F.S., with the department acting only as a nominal party.

The health studio, telemarketer, pawnbroker, or seller of travel must pay any indebtedness due the consumer as determined by the department within 30 days of a final order being entered. If the business fails to pay within 30 days, the department must make demand upon the surety. If a surety fails to comply with a demand for payment, the department may file an action in circuit court to recover payment up to the amount of the bond or other security. If the court affirms the demand for payment from the surety, the department will be awarded court costs and reasonable attorney fees.

The bill also requires that a bond or other permitted security be filed on a form adopted by the department. Lastly, it requires that a bond or other security provided by a telemarketer be in favor of the department for the use and benefit of any consumer injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of the Florida Telemarketing Act[16] by the telemarketer.

According to the department, these changes will allow more efficient administration of these bond programs.[17]

[13] Sections 501.016, 501.611, 539.001(4), and 559.929, F.S.
[14] Sections 501.016(1), 501.611(4), 501.001(4)2., and 559.929(2), F.S.
[15] DACS, *Agency Analysis* at 3.
[16] Part IV of ch. 501, F.S.
[17] DACS, *Agency Analysis* at 3.

Do Not Call Program/Telephone Solicitations

Under s. 501.059(5), F.S., of the Florida Do Not Call program, a telephone solicitor is prohibited from calling a consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call:

- Made by or on behalf of the seller whose goods or services are being offered; or
- Made on behalf of a charity for which a charitable contribution is being solicited.

Because the definition of a "telephone solicitor" does not include a person soliciting charitable contributions, there is nothing in current law to prohibit people soliciting contributions on behalf of a charity via telephone from calling donors who have previously communicated to them that they do not wish to receive any more solicitation calls.[18]

Section 6 amends s. 501.059, F.S., to prohibit any person soliciting contributions on behalf of a charity via telephone from calling donors who have previously communicated to them that they do not wish to receive any more charitable contribution solicitation calls.

Dance Studio Act

The Dance Studio Act, s. 501.143, F.S., regulates ball room dance studios that provide dance lessons or services in Florida. Regulations under the act include:

- Registration with the department;[19]
- Requirements that every contract with a customer include certain provisions, such as the customer's total payment obligations and cancellation provisions;[20]
- Bond or other similar security requirements;[21] and
- Prohibited practices, such as coercive or misleading sales practices.

The department can seek an injunction or civil penalties for any violation of the act, and violations are generally misdemeanors. The act also permits a consumer to bring an action for treble damages for fraudulent violations of the act.[22]

Ballroom dance studios are the only dance studios currently regulated by the department. According to the department, during the last three fiscal years, it has received 23 complaints related to dance studios and has recovered $23,025 for consumers under its authority to conduct informal mediation processes. Additionally, the department notes that there has not been a bond payout under this program in the last three fiscal years.[23]

[18] DACS, *Agency Analysis* at 4. "Telephone solicitor" is defined as "any natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices." Section 501.059(1)(d), F.S.
[19] Section 501.143(3), F.S.
[20] *Id.* at (4).
[21] *Id.* at (5).
[22] *Id. at* (7), (8), and (10).
[23] DACS, *Agency Analysis* at 4.

Section 7 repeals s. 501.143, F.S., the Dance Studio Act, thus deregulating the industry in Florida. According to the department, complaints related to dance studious would be handled through its non-regulated complaints section.[24]

Telemarketing Payment Methods

There are two major categories of noncash retail payment methods used in telemarketing: conventional payment methods and novelty payment methods.[25] Conventional payment methods include credit cards, debit cards, and other types of electronic fund transfers processed electronically through networks that are monitored for fraud. These payment methods are subject to federal laws that require error resolution procedures and limit a consumer's liability for certain disputed transactions.[26]

Novelty payment methods refers to four types of noncash payments. These methods are remotely created checks and payment orders, cash-to-cash money transfers (such as Western Union and Moneygram), and cash reload mechanisms (such as MoneyPak or ReloadIt).[27] Unlike conventional payment methods, novelty payment methods "are cleared via check clearing and money transfer networks that provide little or no systematic monitoring to detect or deter fraud."[28] Additionally, novelty payment methods do not provide consumers with sufficient recourse when unauthorized transactions or telemarketing fraud occurs.

Due to the lack of adequate consumer protections for novelty payment methods, the Federal Trade Commission (FTC) has found that unscrupulous telemarketers exploit these payment methods to defraud consumers. Schemes employed by fraudulent telemarketers to exploit the weaknesses in novelty payment methods include phony offers such as fake medical discount plans, soliciting for bogus charities, mystery shopper scams, and work at home opportunities.[29] Due to the significant fraudulent activity associated with novelty payment methods, the FTC has proposed an amendment to its Telemarketing Sales Rule that will prohibit telemarketers from accepting novelty payment methods.[30] Currently, the Florida Telemarketing Act,[31] contains no restrictions on payment methods for telemarketers. However, the act prohibits a telephone salesperson from requiring that a customer pay by credit card or expressing a preference of such method of payment.[32]

Sections 8 and 10 amend ss. 501.603 and 501.616, F.S., respectively, to prohibit a telemarketer from accepting novelty payments either directly or indirectly as payment for goods or services.

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[24] *Id.*
[25] Telemarketing Sales Rule, 78 Fed. Reg. 41200, 41201 (proposed July 9, 2013) (to be codified at 16 C.F.R. 310).
[26] *Id.* Federal laws regulating conventional payment methods include the Truth-in-Lending Act, 15 U.S.C. 1601 et seq., Regulation Z, 12 CFR part 1026, the Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., and Regulation E, 12 CFR 1005. *Id.* at n24.
[27] For a more thorough explanation of the different types of novelty payments and their respective susceptibility to telemarketer fraud see *id.* at 41202-41215.
[28] *Id.* at 41201-41202.
[29] *Id.* at 41207-41208, 41212-41213.
[30] *See id.* at 41223-41225.
[31] Part IV of ch. 501, F.S.
[32] Section 501.616(1), F.S.

"Novelty payment" is defined in the bill as a payment method that does not provide a means of systematic monitoring to detect and deter fraud, and it includes the following payment devices:

- A remotely created check, which is a check that is not created by the paying bank and that does not bear the signature of the person on whose account the check is drawn.
- A remotely created payment order, which is a payment instruction or order drawn on a person's account which is initiated or created by the payee and does not bear the signature of the person on whose account the order is drawn and is cleared through the check clearing system.
- A cash-to-cash money transfer, which is the electronic transfer of the value of cash received from one person to another, in a different location, that is sent by a money transfer provider[33] and received in the form of cash.
- A cash reload mechanism,[34] which is a system that makes it possible to convert cash into an electronic form that a person can use to add money to a prepaid card or an online account with a payment intermediary.[35]

The department will also have the discretion to further define novelty payment in rule to identify the ever-changing forms of unsystematic, fraud-prone payment methods.[36] Additionally, the bill repeals the prohibition against a telephone salesperson requiring a customer to pay by credit card or expressing a preference for such method of payment.

Antifreeze and Brake Fluid Registration

Currently, the Division of Consumer Services requires antifreeze and brake fluid distributed in Florida to be registered with the department. Section 501.913(1), F.S., requires each brand of antifreeze to be registered no later than July 1 of each year. Pursuant to s. 526.51, F.S., each brand of brake fluid must be re-registered by June 30 of each year.[37] According to the department, since Fiscal Year 2010-2011, the number of antifreeze applications has increased more than 15 percent and the number of brake fluid applications has increased more than 30 percent.[38]

Sections 11 and 15 amend ss. 501.913 and 526.51, F.S., and **Section 14** repeals s. 526.50, F.S., to provide that antifreeze and brake fluid registrations expire one year from the date of issuance. According to the department, distributing application cycles throughout the year will prevent large backlogs of registrations. The reduced processing time will allow applicants to bring

[33] The term "money transfer provider" is defined in the bill to mean "a person or financial institution that provides cash-to-cash money transfers for a person in the normal course of business, regardless of whether the person holds an account with such person or financial institution."
[34] The term "mechanism" is defined in the bill to mean "a system that is purchased by a person on a prepaid basis, that enables access to the funds via an authorization code or other security measure, and that is not directly used as a general-use prepaid card."
[35] The definitions in the bill are nearly identical to those proposed by the FTC in its proposed rule. 78 Fed. Reg. at 41223-41224.
[36] DACS, *Agency Analysis* at 5.
[37] Section 526.51, F.S., requires brake fluid to be re-registered no later than the last day of the "permit year," which is defined in s. 526.50(6), F.S. as "a period of 12 months commencing July 1 and ending on the next succeeding June 30." Consequently, brake fluid must be re-registered by June 30 of each year.
[38] DACS, *Agency Analysis* at 5-6.

products to market without delays and will benefit from having a full year's registration before having to renew.[39]

Petroleum Product Inspections

Pursuant to ch. 525, F.S., the department regularly conducts inspections on the petroleum distribution system and analyzes samples of petroleum products to ensure the quality and fairness of those products.[40] If a petroleum product fails to meet any standard adopted pursuant to ch. 525, F.S., the department may impose a number of penalties, including levying fines and placing a stop-sale order on the product.[41] For second violations or repeat offenders, the department may impose greater fines, taking into consideration the violator's compliance records. If a new violation of ch. 525, F.S., occurs more than three years after the last-stop order was issued, and during that three-year period no other violation has occurred at the same location, then all previous fines must be disregarded by the department.

Section 12 amends s. 525.16, F.S., to clarify inconsistent language regarding when a previous fine for violating ch. 525, F.S., may be disregarded when administering a fine for a new violation. According to the department, this change makes the language in s. 525.16(1)(a) and (b), F.S., consistent.[42]

Lubricating Oil Standards and Labeling

Pursuant to part I of ch. 526, F.S., the department regulates liquid fuels, lubricating oils, and other similar products. The majority of the requirements of ch. 526, F.S., are designed to prevent deceptive labeling that may mislead consumers as to the nature, quality, or quantity of the product for sale.[43] If labeling requirements are violated, the product is placed under an administrative stop-sale order until it is properly labeled.[44] If the product is not properly labeled within 30 days of the stop-sale order being issued, it must be disposed. Although part I of ch. 526, F.S., permits the department to regulate labeling of lubricating oils, it does not permit the department to establish quality standards for lubricating oils, such as those established by the Society of Automotive Engineers (SAE).[45]

Section 13 creates s. 526.015, F.S., to permit the department to adopt quality standards and labeling requirements specifically for lubricating oils. Quality standards adopted by the department must be comparable to those established by the Society of Automotive Engineers or other similar standard, and labeling requirements must be designed to prevent deceptive or misleading practices. The bill prohibits a person from selling or distributing a lubricating oil that fails to meet standard or labeling requirements adopted by the department. A product that fails to meet such requirements must be placed under a stop-sale order and the lot number of the product must be identified and tagged by the department to prevent its sale. A product that has been placed under a stop-sale order may not be sold or distributed or offered for sale or distribution.

[39] *Id.*
[40] Section 525.01(2), F.S.
[41] Sections 525.16(1)(a); 525.037(2), F.S.
[42] DACS, *Agency Analysis* at 6.
[43] *See* s. 526.01, F.S.
[44] *Id.* at (3).
[45] DACS, *Agency Analysis* at 6-7.

Once a product conforms to standard and labeling requirements or is removed from the premises in a manner approved by the department, a release order is issued.

Sections 19 and 20 amend ss. 205.1969 and 501.015, F.S., to conform cross-references and delete obsolete cross-references.

Section 21 provides an appropriation of $35,745 in nonrecurring funds to the Florida Department of Law Enforcement from the Operating Trust Fund for costs associated with sealed criminal history records. Funds will be transferred from the Division of Licensing Trust Fund within the Department of Agriculture and Consumer Services to support this appropriation.

Section 22 provides an effective date of July 1, 2014, except as otherwise provided in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 1018 repeals s. 501.143, F.S., removing the requirement for dance studios to register with the Department of Agriculture and Consumer Services (department). Dance studios will no longer be required to pay a $300 registration fee.

C. Government Sector Impact:

The modifications to the department's regulatory activities provided in the bill have a minimal fiscal impact on state revenues and expenditures. The department estimates the repeal of the Dance Studio Act will reduce recurring revenues by $58,200 and expenditures by $17,455 in the General Inspection Trust Fund. Additionally, there will be an indeterminate reduction in revenues due to the infrequency of litigation relating to standardizing the bond requirements for health studios, telemarketers, pawnbrokers, and sellers of travel.

The bill appropriates $35,745 in nonrecurring funds to the Florida Department of Law Enforcement from the Operating Trust Fund for costs associated with sealed criminal history records. Funds will be transferred from the Division of Licensing Trust Fund within the Department of Agriculture and Consumer Services to support this appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 493.6108, 493.6113, 493.6115, 493.6305, 501.016, 501.059, 501.603, 501.611, 501.616, 501.913, 525.16, 526.51, 539.001, 559.929, 943.059, 205.1969, and 501.015.

The bill creates section 526.015 of the Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 501.143 and 526.50.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:

- Removes the requirement in the bill that pawnbrokers weigh precious metals only with scales that have been permitted by the DACS;
- Removes the provisions in the bill that repealed the Commercial Weight-Loss Practices Act and the prohibition on the sale of weight-loss pills to minors; and
- Transfers $35,745 from the DACS Division of Licensing Trust Fund to the FDLE for reprogramming costs associated with access to sealed criminal history records.

CS by Commerce and Tourism on March 10, 2014:

The committee substitute:

- Provides that a name-based background check is to be conducted by the FBI;
- Clarifies the definition of "novelty payment";
- Provides standards to guide the department in developing rules for quality and labeling standards for lubricating oils;
- Specifies what provisions of ch. 531, F.S., a scale must be certified under if used by a pawnbroker;
- Removes the updated service of process requirements for out-of-state concealed weapons licensees; and

- Changes the effective date for the department's access to sealed records to January 1, 2015, so that the FDLE has time to update its computer system.

B. Amendments:

None.

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

494376

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 353 - 356.

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

And the title is amended as follows:

Delete lines 32 - 38

and insert:

certain circumstances;

365778

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 770 - 856.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 655 - 656
and insert:
Section 18. Paragraph (a) of subsection (4) and paragraphs (b) and (d) of subsection (7)

365778

11

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

13 And the title is amended as follows:

14 Delete lines 101 - 103

15 and insert:

16 costs in certain circumstances; amending s. 559.929,

771774

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 1090 and 1091
insert:

Section 23. For the 2014-2015 fiscal year, the sum of $35,745 in nonrecurring funds is appropriated to the Department of Law Enforcement from the Operating Trust Fund for contracted services and operating capital outlay related to sealed criminal history records. To support this appropriation, funds in this amount shall be transferred from the Division of Licensing Trust

771774

Fund of the Department of Agriculture and Consumer Services to the Operating Trust Fund of the Department of Law Enforcement.

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

And the title is amended as follows:

Delete line 121

and insert:

F.S.; conforming cross-references; providing an appropriation; providing effective

By the Committee on Commerce and Tourism; and Senator Detert

577-02387-14 20141018c1

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 493.6108, F.S.; removing the requirement that an applicant for private investigative, private security, and repossession services provide a written statement by a fingerprint technician or licensed physician under certain conditions; amending s. 493.6113, F.S.; revising recertification training requirements for Class "G" licensees; amending s. 493.6115, F.S.; adding specific handguns to the list of firearms a Class "G" licensee may carry while performing his or her duties; amending s. 493.6305, F.S.; authorizing specified Class "D" licensees to carry an authorized concealed firearm under certain circumstances; amending s. 501.016, F.S.; requiring a health studio to maintain a bond in favor of the department, rather than the state; authorizing liability for specified injuries to be determined in an administrative proceeding or through a civil action; providing that certain claims may be paid only upon an order of the department issued in an administrative proceeding; requiring that a claim against the bond be filed on a form affidavit adopted by rule of the department; providing the process by which a consumer may file a claim against a bond or other form of security; requiring a health studio to pay the department indebtedness determined by final order within 30 days; providing the process by which the department may make a demand if the health studio

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577-02387-14 20141018c1

fails to timely make the payment; providing that the department shall be awarded attorney fees and costs in certain circumstances; repealing ss. 501.057, 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, and 501.0581, F.S., relating to the Commercial Weight-Loss Practices Act; repealing s. 501.0583, F.S., relating to selling, delivering, bartering, furnishing, or giving weight-loss pills to persons younger than 18 years of age and related penalties and defense; amending s. 501.059, F.S.; prohibiting a telephone solicitor or a person from initiating an outbound telephone call to a consumer, a donor, or a potential donor under certain circumstances; repealing s. 501.143, F.S., relating to the Dance Studio Act; amending s. 501.603, F.S.; defining the term "novelty payment"; conforming a cross-reference; amending s. 501.611, F.S.; requiring the bond required of a commercial telephone seller to be in favor of the department for the use and benefit of a purchaser who is injured by specified acts; requiring that a claim against the bond be filed on a form affidavit adopted by rule of the department; providing procedures that a purchaser must follow in filing a claim against the bond or other form of security; providing for payment of indebtedness by the commercial telephone seller to the department; requiring the department to make demand on a surety if a commercial telephone seller fails to pay certain indebtedness within 30 days and providing a process; providing that attorney fees and

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costs must be awarded to the department in certain circumstances; conforming provisions to changes made by the act; amending s. 501.616, F.S.; prohibiting a commercial telephone seller or salesperson from accepting a novelty payment; deleting a provision that prohibits a commercial telephone seller or salesperson from requiring payment to be made by credit card; amending s. 501.913, F.S.; providing that the registration certificate for each brand of antifreeze distributed in this state expires 1 year from the date of issue; amending s. 525.16, F.S.; requiring all previous fines to be disregarded if a new violation of provisions relating to gasoline and oil inspections has not occurred within 3 years after the date of a previous violation; creating s. 526.015, F.S., relating to lubricating oil standards and labeling requirements; prohibiting a person from selling, distributing, or offering for sale or distribution lubricating oil that does not meet specified standards or labeling requirements; requiring such noncompliant products to be placed under a stop-sale order and the lot identified and tagged by the department; prohibiting a person from selling, distributing, or offering for sale or distribution a product under stop-sale order; requiring the department to issue a release order under certain circumstances; repealing s. 526.50(6), F.S., relating to definition of terms related to the sale of brake fluid; amending s. 526.51, F.S.; providing that a permit authorizing a

registrant to sell brake fluid in this state is valid for a specified period from the date of issue; conforming provisions to changes made by the act; amending s. 539.001, F.S.; requiring that a claim against the bond be filed on a form affidavit adopted by rule of the department; providing the procedure that a consumer must follow in filing a claim against a bond or other form of security filed with the department by a pawnbroker; providing for payment of indebtedness by the pawnbroker to the department; providing the procedure that a consumer must follow if the pawnbroker fails to make the payment; providing that the agency shall be awarded attorney fees and costs in certain circumstances; requiring the weight of a precious metal to be obtained from a device that meets specified requirements; amending s. 559.929, F.S.; requiring that a claim against the bond be filed on a form affidavit adopted by rule of the department; providing the procedure that a consumer must follow in filing a claim against a bond or other form of security filed with the department by a seller of travel; providing for payment of indebtedness by the seller of travel to the department; providing procedures that the agency must follow if the seller of travel fails to pay certain indebtedness within 30 days and providing a process; providing that the agency shall be awarded attorney fees and costs in certain circumstances; amending s. 943.059, F.S.; providing an exception relating to the acknowledgement

of arrests covered by a sealed criminal history record for a person seeking to be licensed to carry a concealed weapon or concealed firearm; providing applicability; amending ss. 205.1969 and 501.015, F.S.; conforming cross-references; providing effective dates.

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

Section 1. Paragraph (a) of subsection (1) of section 493.6108, Florida Statutes, is amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(1) Except as otherwise provided, the department must investigate an applicant for a license under this chapter before it may issue the license. The investigation must include:

(a)1. An examination of fingerprint records and police records. If a criminal history record check of an ~~any~~ applicant under this chapter is performed by means of fingerprint identification, the time limitations prescribed by s. 120.60(1) shall be tolled while ~~during the time~~ the applicant's fingerprints are under review by the Department of Law Enforcement or the United States Department of Justice, Federal Bureau of Investigation.

2. If a legible set of fingerprints, as determined by the Department of Law Enforcement or the Federal Bureau of Investigation, cannot be obtained after two attempts, the Department of Agriculture and Consumer Services may determine the applicant's eligibility based on ~~upon~~ a criminal history

record check under the applicant's name conducted by the Federal Bureau of Investigation ~~Department of Law Enforcement if the fingerprints are taken by a law enforcement agency or the department and the applicant submits a written statement signed by the fingerprint technician or a licensed physician stating that there is a physical condition that precludes obtaining a legible set of fingerprints or that the fingerprints taken are the best that can be obtained~~.

Section 2. Paragraph (b) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the prescribed license fee.

(b) Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms recertification training taught by a Class "K" licensee and has complied with such other health and training requirements that ~~which~~ the department adopts ~~shall adopt~~ by rule. Proof of completion of firearms recertification training shall be submitted to the department upon completion of the training. If the licensee fails to complete the required 4 hours of annual training during ~~documentation of completion of the required training is not submitted by the end of~~ the first year of the 2-year term of the license, the individual's license shall be automatically suspended ~~until proof of the required training is submitted to the department~~. The licensee must complete the minimum number of

hours of range and classroom training required at the time of initial licensure and submit proof of having completed such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during ~~documentation of completion of the required training is not submitted by the end of~~ the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of having completed such training to the department before the license may ~~shall not~~ be renewed ~~unless the renewal applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure~~. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; or

3. The applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2 years of the licensure period.

Section 3. Subsection (6) of section 493.6115, Florida

Statutes, is amended to read:

493.6115 Weapons and firearms.—

(6) In addition to any other firearm approved by the department, a licensee who has been issued a Class "G" license may carry a .38 caliber revolver; ~~or~~ a .380 caliber or 9 millimeter semiautomatic pistol; ~~or~~ a .357 caliber revolver with .38 caliber ammunition only; a .40 caliber handgun; or a .45 ACP handgun while performing duties authorized under this chapter. A ~~No~~ licensee may not carry more than two firearms upon her or his person when performing her or his duties. A licensee may only carry a firearm of the specific type and caliber with which she or he is qualified pursuant to the firearms training described ~~referenced~~ in subsection (8) or s. 493.6113(3)(b).

Section 4. Subsection (4) is added to section 493.6305, Florida Statutes, to read:

493.6305 Uniforms, required wear; exceptions.—

(4) Class "D" licensees who are also Class "G" licensees and who are performing bodyguard or executive protection services may carry their authorized firearm concealed while wearing plain clothes as needed to provide contracted services to the client.

Section 5. Section 501.016, Florida Statutes, is amended to read:

501.016 Health studios; security requirements.—Each health studio that sells contracts for health studio services shall meet the following requirements:

(1) Each health studio shall maintain for each separate business location a bond issued by a surety company admitted to do business in this state. The principal sum of the bond must

~~shall~~ be $25,000, and the bond, when required, must ~~shall~~ be obtained before a business tax receipt may be issued under chapter 205. Upon issuance of a business tax receipt, the licensing authority shall immediately notify the department of such issuance in a manner established by the department by rule. The bond must ~~shall~~ be in favor of the department ~~state~~ for the benefit of any person injured as a result of a violation of ss. 501.012-501.019. Liability for such injuries may be determined in an administrative proceeding of the department pursuant to chapter 120 or through a civil action. However, claims against the bond or certificate of deposit may be paid, in amounts up to the determined liability for such injuries, only by order of the department in an administrative proceeding pursuant to chapter 120. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided by this section may not ~~herein shall in no event~~ exceed the amount of the bond. The original surety bond required by this section shall be filed with the department on a form adopted by department rule.

(2) In lieu of maintaining the bond required in subsection (1), the health studio may furnish to the department on a form adopted by department rule:

(a) An irrevocable letter of credit from any foreign or domestic bank in the amount of $25,000; or

(b) A guaranty agreement that is secured by a certificate of deposit in the amount of $25,000.

The original letter of credit or certificate of deposit submitted in lieu of the bond shall be filed with the

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department. The department shall decide whether the security furnished in lieu of bond by the health studio complies ~~is in compliance~~ with the requirements of this section.

(3) A consumer may file a claim against the bond or other form of security. Such claim must be submitted to the department in writing on a form affidavit approved by department rule within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted in accordance with chapter 120. For proceedings conducted under ss. 120.569 and 120.57, the department may act only as a nominal party.

(4) The health studio shall pay to the department for distribution to the consumer any indebtedness determined by final order of the department within 30 days after the order is entered. If the health studio fails to make timely payment, the department shall make demand upon the surety, which may include an institution issuing a letter of credit or depository on a certificate of deposit. If a surety fails to comply with a demand for payment issued pursuant to a final order, the department may file an action in circuit court pursuant to s. 120.69 to recover payment up to the amount of the bond or other form of security. If the court affirms the department's demand for payment from the surety, the department shall be awarded court costs and reasonable attorney fees.

(5) ~~(3)~~ A health studio that ~~which~~ sells contracts for future health studio services and ~~which~~ collects direct payment on a monthly basis for those services is ~~shall be~~ exempt from the security requirements of subsections (1) and (2) if ~~provided that~~ any service fee charged is ~~a~~ reasonable and fair ~~service~~

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~~fee~~. The number of monthly payments in such a contract must ~~shall~~ be equal to the number of months in the contract. The contract must ~~shall~~ conform to all the requirements for future health studio services contracts ~~as~~ specified in ss. 501.012-501.019 and must ~~shall~~ specify in the terms of the contract the charges to be assessed for those health studio services.

(6)~~(4)~~ If the health studio furnishes the department with evidence satisfactory to the department that the aggregate dollar amount of all current outstanding contracts of the health studio is less than $5,000, the department may~~, at its discretion,~~ reduce the principal amount of the surety bond or other sufficient financial responsibility required in subsections (1) and (2) to a sum of at least ~~not less than~~ $10,000. However, at any time the aggregate dollar amount of such contracts exceeds $5,000, the health studio shall ~~so~~ notify the department and shall ~~thereupon~~ provide the bond or other documentation as required in subsections (1) and (2). Health studios whose bonds have been reduced shall ~~must~~ provide the department with an annually updated list of members. ~~Failure to file an annual report will result in~~ The department shall increase ~~raising~~ the security requirement to $25,000 for a health studio that fails to file an annual report.

(7)~~(5)~~ Each health studio shall furnish the department with a copy of the escrow account which would contain all funds received for future consumer services, whether provided under ~~by~~ contract or otherwise, sold before ~~prior to~~ the business location's full operation and specify a date certain for opening, if such an escrow account is established.

(8)~~(6)~~ Subsections (1) and (2) do ~~shall~~ not apply to a

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health studio that has been operating in compliance with ss. 501.012-501.019 and rules adopted thereunder, ~~continuously~~ under the same ownership and control, continuously for the most recent 5-year period; ~~in compliance with ss. 501.012-501.019 and the rules adopted thereunder and~~ that has not had any civil, criminal, or administrative adjudication against it by any state or federal agency; and that has a satisfactory consumer complaint history. As used in this subsection, the term "satisfactory consumer complaint history" means that there are no unresolved consumer complaints regarding the health studio ~~are~~ on file with the department. A consumer complaint is unresolved if a health studio has not responded to the department's efforts to mediate the complaint or if there has been an adjudication that the health studio has violated ss. 501.012-501.019 or the rules adopted thereunder. Such exemption extends to all current and future business locations of an exempt health studio.

(9)~~(7)~~ This section does not apply to a business, otherwise defined as a health studio, which sells a single contract of 30 days or less to a ~~any~~ member without any option for renewal or any other condition that ~~which~~ establishes any right in the member beyond the term of such contract ~~is exempt from the provisions of this section~~. However, this exemption does ~~shall~~ not apply if the business offers any other health studio contract, regardless of ~~whatever~~ duration, at any time before or during ~~or prior to~~ the existence of such single contract of 30 days or less.

(10)~~(8)~~ Except in the case of a natural disaster or an act of God, a health studio that is exempt from the requirements of

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subsections (1) and (2), but does not have any ~~that has no~~ business locations open for 14 consecutive days, waives its exemption and is considered to be a new health studio for the purposes of ss. 501.012-501.019.

Section 6. Sections 501.057, 501.0571, 501.0573, 501.0575, 501.0577, 501.0579, and 501.0581, Florida Statutes, are repealed.

Section 7. Section 501.0583, Florida Statutes, is repealed.

Section 8. Subsection (5) of section 501.059, Florida Statutes, is amended to read:

501.059 Telephone solicitation.—

(5) A telephone solicitor or person may not initiate an outbound telephone call to a consumer, donor, or potential donor who has previously communicated to the telephone solicitor or person that he or she does not wish to receive an outbound telephone call:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

Section 9. Section 501.143, Florida Statutes, is repealed.

Section 10. Present subsections (8) through (11) of section 501.603, Florida Statutes, are redesignated as subsections (9) through (12), respectively, a new subsection (8) is added to that section, and subsection (2) of that section is amended, to read:

501.603 Definitions.—As used in this part, unless the context otherwise requires, the term:

(2) "Commercial telephone seller" means a person who

engages in commercial telephone solicitation on his or her own behalf or through salespersons. The term~~, except that a commercial telephone seller~~ does not include a salesperson as defined in subsection (11) or a person or entity operating under a valid affidavit of exemption filed with the department according to s. 501.608(1)(b) or exempted from this part by s. 501.604. The term ~~A commercial telephone seller does not include a salesperson as defined in subsection (10). A commercial telephone seller~~ includes, but is not limited to, owners, operators, officers, directors, partners, or other individuals engaged in the management activities of a business entity pursuant to this part.

(8) "Novelty payment" means a payment method that does not provide a means of systematic monitoring to detect and deter fraud. The term includes, but is not limited to, the following payment devices:

(a) A remotely created check, which is a check that is not created by the paying bank and that does not bear the signature of the person on whose account the check is drawn.

(b) A remotely created payment order, which is a payment instruction or order drawn on a person's account which is initiated or created by the payee and which does not bear the signature of the person on whose account the order is drawn and which is cleared through the check clearing system.

(c) A cash-to-cash money transfer, which is the electronic transfer of the value of cash received from one person to another person in a different location which is sent by a money transfer provider and received in the form of cash. As used in this paragraph, the term "money transfer provider" means a

person or financial institution that provides cash-to-cash money transfers for a person in the normal course of business, regardless of whether the person holds an account with such person or financial institution.

(d) A cash reload mechanism, which is a system that makes it possible to convert cash into an electronic form which a person can use to add money to a general-use prepaid card or an online account with a payment intermediary. As used in this paragraph, the term "mechanism" means a system that is purchased by a person on a prepaid basis, that enables access to the funds via an authorization code or other security measure, and that is not directly used as a general-use prepaid card.

Section 11. Section 501.611, Florida Statutes, is amended to read:

501.611 Security.—

(1) An application filed pursuant to s. 501.605 must be accompanied by:

(a) A bond executed by a corporate surety approved by the department and licensed to do business in this state;

(b) An irrevocable letter of credit issued for the benefit of the applicant by a bank whose deposits are insured by an agency of the Federal Government; or

(c) A certificate of deposit in a financial institution insured by an agency of the Federal Government, which may be withdrawn only on the order of the department, except that the interest may accrue to the applicant.

(2) The amount of the bond, letter of credit, or certificate of deposit must be a minimum of $50,000, and the bond, letter of credit, or certificate of deposit must be in

favor of the department for the use and benefit of any purchaser who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of this part by the applicant ~~must be conditioned upon compliance by the applicant with the provisions of this part~~. The department may, at its discretion, establish a bond of a greater amount to ensure the general welfare of the public and the interests of the telemarketing industry.

(3) The bond shall be posted with the department on a form adopted by ~~and shall remain in force throughout the period of licensure with the~~ department rule and shall remain in force throughout the period of licensure.

(4) The department or a ~~any~~ governmental agency, on behalf of an ~~any~~ injured purchaser or a ~~any~~ purchaser herself or himself who is injured by ~~the bankruptcy of~~ the applicant ~~or her or his breach of any agreement entered into in her or his capacity as a licensee~~, may bring and maintain an action to recover against the bond, letter of credit, or certificate of deposit.

(5) A purchaser may file a claim against the bond or other form of security. Such claim must be submitted to the department in writing on a form affidavit approved by department rule within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted in accordance with chapter 120. For proceedings conducted under ss. 120.569 and 120.57, the department must act only as a nominal party.

(6) The commercial telephone seller shall pay to the department for distribution to the consumer any indebtedness

determined by final order of the department within 30 days after the order is entered. If the commercial telephone seller fails to make timely payment, the department shall make demand upon the surety, which may include an institution issuing a letter of credit or depository on a certificate of deposit. If a surety fails to comply with a demand for payment issued pursuant to a final order, the department may file an action in circuit court pursuant to s. 120.69 to recover payment up to the amount of the bond or other form of security. If the court affirms the department's demand for payment from the surety, the department shall be awarded all court costs and reasonable attorney fees.

Section 12. Section 501.616, Florida Statutes, is amended to read:

501.616 Unlawful acts and practices.—

(1) A ~~It shall be unlawful for any~~ commercial telephone seller or salesperson may not directly or indirectly accept a novelty payment as defined by s. 501.603(8) or rule as payment for goods or services offered or sold through telemarketing ~~to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment~~.

(2) A ~~It shall be unlawful for any~~ commercial telephone seller may not ~~to~~ employ~~,~~ or be affiliated with an~~, any~~ unlicensed salesperson.

(3) A ~~It shall be unlawful for any~~ salesperson may not ~~to~~ be employed by~~,~~ or affiliated with~~,~~ an unlicensed commercial telephone seller.

(4) A ~~It shall be unlawful for any~~ commercial telephone seller or salesperson must ~~to~~ be licensed ~~unlicensed~~.

(5) A ~~It shall be unlawful for any~~ salesperson or

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commercial telephone seller may not ~~to~~ otherwise violate ~~the provisions of~~ this part.

(6) A ~~It shall be unlawful for any~~ commercial telephone seller or salesperson may not ~~to~~ make a commercial telephone solicitation phone call before 8 ~~8:00~~ a.m. or after 9 ~~9:00~~ p.m. local time at the called person's location.

(7) A ~~It shall be unlawful for any~~ commercial telephone seller or salesperson making a commercial telephone solicitation call may not intentionally act ~~telephonic solicitations to take any intentional action~~ to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

Section 13. Subsection (1) of section 501.913, Florida Statutes, is amended to read:

501.913 Registration.—

(1) Each brand of antifreeze to be distributed in this state shall be registered with the department before distribution. The person whose name appears on the label, the manufacturer, or the packager shall make application annually to the department on forms provided by the department ~~no later than July 1 of each year~~. The registration certificate expires 1 year from the date of issue. The registrant assumes, by application to register the brand, full responsibility for the registration and the~~,~~ quality~~,~~ and quantity of the product sold, offered, or exposed for sale in this state. If a registered brand is not in production for distribution in this state~~,~~ ~~and~~ to ensure any remaining product that is still available for sale in this ~~the~~

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state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:

(a) The stated brand is no longer in production;

(b) The stated brand will not be distributed in this state; and

(c) All existing product of the stated brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for two subsequent registration periods.

If production resumes, the brand must be reregistered before it is distributed in this state.

Section 14. Paragraph (b) of subsection (1) of section 525.16, Florida Statutes, is amended to read:

525.16 Administrative fine; penalties; prosecution of cases by state attorney.—

(1)

(b) If a~~, 3 years after the day of issuance of the last stop-sale order for a violation under this chapter, no~~ new violation does not occur ~~has occurred~~ at the same location while the business is under the same ~~during the~~ proprietorship within 3 years after the date of issuance of the last previous stop-sale order ~~of the same person~~, all previous fines shall be disregarded when administering a fine for a new ~~the next~~ violation.

Section 15. Section 526.015, Florida Statutes, is created to read:

526.015 Lubricating oil standards; labeling requirements.—

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(1) A person may not sell or distribute, or offer for sale or distribution, a lubricating oil that fails to meet a quality standard, such as those established by the Society of Automotive Engineers or other similar standard, or a labeling requirement designed to prevent deceptive or misleading practices as adopted by rule of the department.

(2) A product that fails to meet a standard or labeling requirement adopted by rule of the department shall be placed under a stop-sale order by the department, and the lot number of the product shall be identified and tagged by the department to prevent its sale.

(3) A person may not sell or distribute, or offer for sale or distribution, a product that has been placed under a stop-sale order.

(4) If a product is made to conform to standards and labeling requirements or is removed from the premises in a manner approved by the department, the department shall issue a release order.

Section 16. Subsection (6) of section 526.50, Florida Statutes, is repealed.

Section 17. Subsection (1) of section 526.51, Florida Statutes, is amended to read:

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms supplied by the department. The applicant shall provide ~~give~~ his or her name and address~~, and~~ the brand name of the brake fluid, the state in which ~~that~~ he or she owns the brand name and has complete control over the

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product sold thereunder in this state, and ~~provide~~ the name and address of the resident agent in this state. If the applicant does not own the brand name but wishes to register the product with the department, a notarized affidavit that gives the applicant full authorization to register the brand name, which must be ~~and that is~~ signed by the owner of the brand name, must accompany the application for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name shall maintain complete control over each product sold under that brand name in this state. All first-time applications for a brand and formula combination must be accompanied by a certified report from an independent testing laboratory, setting forth the analysis of the brake fluid which shows its quality meets ~~to be not less than~~ the minimum specifications established by the department for brake fluids. A sample of at least ~~not less than~~ 24 fluid ounces of brake fluid shall be submitted~~,~~ in a container with a label printed in the same manner that it ~~or containers, with labels representing exactly how the containers of brake fluid~~ will be labeled when sold, and the sample and container shall be analyzed and inspected by the department in order to verify ~~that~~ compliance with the department's specifications and labeling requirements ~~may be verified~~. Upon approval of the application, the department shall register the brand name of the brake fluid and issue to the applicant a permit, valid for 1 year from the date of issue, authorizing the registrant to sell the brake fluid in

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this state ~~during the permit year specified in the permit~~.

(b) An ~~Each~~ applicant shall pay a fee of $100 with each application. A permit may be renewed by application to the department, accompanied by a renewal fee of $50, on or before the expiration of the previously issued ~~last day of the permit year immediately preceding the~~ permit ~~year for which application is made for renewal of registration~~. To reregister a previously registered brand and formula combination, an applicant must submit a completed application and all materials as required in this section to the department before the expiration of the previously issued ~~first day of the~~ permit ~~year~~. A brand and formula combination for which a completed application and all materials required in this section are not received before the expiration of the previously issued ~~first day of the~~ permit ~~year~~ may not be registered with the department until a completed application and all materials required in this section have been received and approved. If the brand and formula combination was previously registered with the department and a fee, application, or materials required in this section are received after the expiration of the previously issued ~~first day of the~~ permit ~~year~~, a penalty of $25 ~~accrues, which~~ shall be added to the fee. Renewals shall be accepted only on brake fluids that do not have a ~~no~~ change in formula, composition, or brand name. A ~~Any~~ change in formula, composition, or brand name of a ~~any~~ brake fluid constitutes a new product that must be registered in accordance with this part.

(c) If a registered brand and formula combination is no longer in production for distribution in this state, in order to ensure that any remaining product still available for sale in

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this state is properly registered, ~~if a registered brand and formula combination is no longer in production for distribution in this state,~~ the registrant must submit a notarized affidavit on company letterhead to the department certifying that:

1. The stated brand and formula combination is no longer in production;

2. The stated brand and formula combination will not be distributed in this state; and

3. Either all existing product of the stated brand and formula combination will be removed by the registrant from the state within 30 days after the expiration of the registration or that the registrant will reregister the brand and formula combination for 2 ~~two~~ subsequent years ~~registration periods~~.

If production resumes, the brand and formula combination must be reregistered before it is again distributed in this state.

Section 18. Paragraph (a) of subsection (4), paragraphs (b) and (d) of subsection (7), and paragraph (b) of subsection (8) of section 539.001, Florida Statutes, are amended to read:

539.001 The Florida Pawnbroking Act.—

(4) ELIGIBILITY FOR LICENSE.—

(a) To be eligible for a pawnbroker's license, an applicant must:

1. Be of good moral character;

2. Have a net worth of at least $50,000 or file with the agency a bond, issued by a surety company qualified to do business in this state, in the amount of $10,000 for each license. In lieu of the bond required in this section, the applicant may establish a certificate of deposit or an

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irrevocable letter of credit in a Florida banking institution in the amount of the bond. The original bond, certificate of deposit, or letter of credit shall be filed with the agency on a form adopted by agency rule, and the agency shall be the beneficiary to said document. The bond, certificate of deposit, or letter of credit must ~~shall~~ be in favor of the agency for the use and benefit of any consumer who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of ~~any provision of~~ this section by the pawnbroker. Such liability may be enforced either by proceeding in an administrative action or by filing a judicial suit at law ~~in a court of competent jurisdiction~~. However, in such court suit, the bond, certificate of deposit, or letter of credit posted with the agency may ~~shall~~ not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond, certificate of deposit, or letter of credit shall be amenable to and enforceable only by and through administrative proceedings before the agency. It is the intent of the Legislature that such bond, certificate of deposit, or letter of credit ~~shall~~ be applicable and liable only for the payment of claims duly adjudicated by order of the agency. The bond, certificate of deposit, or letter of credit shall be payable on a pro rata basis as determined by the agency, but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or letter of credit. A consumer may file a claim against the bond, certificate of deposit, or letter of credit. Such claim must be submitted in writing to the agency on a form affidavit approved by agency rule within 120 days after an alleged injury has

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occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted in accordance with chapter 120. For proceedings conducted under ss. 120.569 and 120.57, the agency may act only as a nominal party. The pawnbroker shall pay to the agency for distribution to the consumer any indebtedness determined by final order of the agency within 30 days after the order is entered. If the pawnbroker fails to make timely payment, the agency shall make demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. If a surety fails to comply with a demand for payment pursuant to a final order, the agency may file an action pursuant to s. 120.69 in circuit court to recover payment, up to the amount of the bond or other form of security. If the agency is successful and the court affirms the agency's demand for payment from the surety, the agency shall be awarded all court costs and reasonable attorney fees;

3. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years and not be acting as a beneficial owner for someone who has been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years; and

4. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been

convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years, and not be acting as a beneficial owner for someone who has been convicted, of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years.

(7) ORDERS IMPOSING PENALTIES.—

(b) Upon a finding as set forth in paragraph (a), the agency may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine of up to ~~not to exceed~~ $5,000 for each act that ~~which~~ constitutes a violation of this section, ~~or~~ a rule, or an order.

3. Directing that the pawnbroker cease and desist specified activities.

4. Refusing to license or revoking or suspending a license.

5. Placing the licensee on probation for a period of time, subject to such conditions as the agency may specify.

(d)1. ~~When the agency,~~ If a violation of this section occurs and the agency has reasonable cause to believe that a person is operating in violation of this section, ~~has reasonable cause to believe that a person is operating in violation of this section,~~ the agency may bring a civil action in the appropriate court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty of up to ~~not to exceed~~ $5,000 for each violation, restitution and damages for injured customers, court costs, and reasonable attorney ~~attorney's~~ fees.

2. The agency may terminate an ~~any~~ investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to satisfy any other relief authorized in this section ~~herein~~ and requested by the agency.

(8) PAWNBROKER TRANSACTION FORM.—

(b) The front of the pawnbroker transaction form must include:

1. The name and address of the pawnshop.

2. A complete and accurate description of the pledged goods or purchased goods, including the following information, if applicable:

a. Brand name.

b. Model number.

c. Manufacturer's serial number.

d. Size.

e. Color, as apparent to the untrained eye.

f. Precious metal type, weight, and content, if known. Weight shall be obtained from a device properly approved by the

agency and in compliance with ss. 531.39 and 531.40.

g. Gemstone description, including the number of stones.

h. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.

i. Any other unique identifying marks, numbers, names, or letters.

Notwithstanding sub-subparagraphs a.-i., in the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metal or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered.

3. The name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller.

4. The date and time of the transaction.

5. The type of identification accepted from the pledgor or seller, including the issuing agency and the identification number.

6. In the case of a pawn:

a. The amount of money advanced, which must be designated as the amount financed;

b. The maturity date of the pawn, which must be 30 days after the date of the pawn;

c. The default date of the pawn and the amount due on the default date;

d. The total pawn service charge payable on the maturity

date, which must be designated as the finance charge;

e. The amount financed plus the finance charge that must be paid to redeem the pledged goods on the maturity date, which must be designated as the total of payments;

f. The annual percentage rate, computed according to ~~the~~ regulations adopted by the Federal Reserve Board under the federal Truth in Lending Act; and

g. The front or back of the pawnbroker transaction form must include a statement that:

(I) Any personal property pledged to a pawnbroker within this state which is not redeemed within 30 days after ~~following~~ the maturity date of the pawn, or if the 30th day is not a business day, ~~then~~ the following business day, is automatically forfeited to the pawnbroker, and absolute right, title, and interest in and to the property vests in and is deemed conveyed to the pawnbroker by operation of law, and ~~no~~ further notice is not necessary;

(II) The pledgor is not obligated to redeem the pledged goods; and

(III) If the pawnbroker transaction form is lost, destroyed, or stolen, the pledgor must immediately advise the issuing pawnbroker in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt.

(IV) A pawn may be extended upon mutual agreement of the parties.

7. In the case of a purchase, the amount of money paid for the goods or the monetary value assigned to the goods in connection with the transaction.

8. A statement that the pledgor or seller of the item represents and warrants that it is not stolen, that it has no liens or encumbrances against it, and that the pledgor or seller is the rightful owner of the goods and has the right to enter into the transaction.

A ~~Any~~ person who knowingly gives false verification of ownership or gives a false or altered identification and who receives money from a pawnbroker for goods sold or pledged commits:

a. If the value of the money received is less than $300, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the value of the money received is $300 or more, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 19. Section 559.929, Florida Statutes, is amended to read:

559.929 Security requirements.—

(1) An application must be accompanied by a performance bond in an amount set by the department under paragraph (a), paragraph (b), or paragraph (c). The surety on such bond must ~~shall~~ be a surety company authorized to do business in the state.

(a) Each seller of travel which ~~that~~ certifies its business activities under s. 559.9285(1)(a) shall provide a performance bond in an amount up to ~~not to exceed~~ $25,000, or in the amount of $50,000 if the seller of travel is offering vacation certificates.

(b) Each seller of travel which ~~that~~ certifies its business

activities under s. 559.9285(1)(b) shall provide a performance bond in an amount up to ~~not to exceed~~ $100,000, or in the amount of $150,000 if the seller of travel is offering vacation certificates.

(c) Each seller of travel which ~~that~~ certifies its business activities under s. 559.9285(1)(c) shall provide a performance bond in an amount up to ~~not to exceed~~ $250,000, or in the amount of $300,000 if the seller of travel is offering vacation certificates.

(2) The bond must ~~shall~~ be in favor of the department on a form adopted by rule of the department for the use and benefit of a ~~any~~ traveler who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation ~~of any provision~~ of this part by the seller of travel. Such liability may be enforced either by proceeding in an administrative action as specified in subsection (3) or by filing a judicial suit at law ~~in a court of competent jurisdiction~~. However, in such court suit the bond posted with the department shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond shall be amenable to and enforceable only by and through administrative proceedings before the department. It is the intent of the Legislature that such bond is ~~shall be~~ applicable and liable only for the payment of claims duly adjudicated by order of the department. The bond must ~~shall~~ be open to successive claims, but the aggregate amount awarded may not exceed the amount of the bond. In addition to the foregoing, a bond provided by a registrant or applicant for registration which certifies its business

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activities under s. 559.9285(1)(b) or (c) must ~~shall~~ be in favor of the department, with payment in the following order of priority:

(a) All expenses for prosecuting the registrant or applicant in an ~~any~~ administrative or civil action under this part, including attorney fees ~~for attorneys~~ and fees for other professionals, court costs or other costs of the proceedings, and all other expenses incidental to the action.

(b) The ~~All~~ costs and expenses of investigation before ~~prior to~~ the commencement of an administrative or civil action under this part.

(c) An ~~Any~~ unpaid administrative fine imposed by final order or an ~~any~~ unpaid civil penalty imposed by final judgment under this part.

(d) Damages or compensation for a ~~any~~ traveler injured as provided in this subsection.

(3) A ~~Any~~ traveler may file a claim against the bond. Such claim must ~~which shall~~ be submitted to the department ~~made~~ in writing on a form affidavit approved by department rule ~~to the department~~ within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted ~~held~~ in accordance with chapter 120. The department may act only as a nominal party in proceedings conducted under ss. 120.569 and 120.57.

(4) Any indebtedness determined by final order of the department must be paid by the seller of travel to the department within 30 days after the order is entered, for distribution to the traveler. If the seller of travel fails to make payment within the 30 days, the department shall make

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demand upon the surety, which includes an institution issuing a letter of credit or depository on a certificate of deposit. Upon failure of a surety to comply with a demand for payment pursuant to a final order, the department may file an action in circuit court to recover payment, up to the amount of the bond or other form of security pursuant to s. 120.69. If the department is successful and the court affirms the department's demand for payment from the surety, the department shall be allowed all court costs incurred and reasonable attorney fees to be fixed and collected as a part of the costs of the suit.

(5)~~(4)~~ If ~~In any situation in which~~ the seller of travel is currently the subject of an administrative, civil, or criminal action by the department, the Department of Legal Affairs, or the state attorney relating to ~~concerning~~ compliance with this part, the right to proceed against the bond as provided in subsection (3) is ~~shall be~~ suspended until ~~after~~ any enforcement action becomes final.

(6)~~(5)~~ The department may waive the bond requirement on an annual basis if the seller of travel has had 5 or more consecutive years of experience as a seller of travel in this state ~~Florida~~ in compliance with this part, has not had a ~~any~~ civil, criminal, or administrative action instituted against the seller of travel in the vacation and travel business by a ~~any~~ governmental agency or an ~~any~~ action involving fraud, theft, misappropriation of property, violation of a ~~any~~ statute pertaining to business or commerce with a ~~any~~ terrorist state, or moral turpitude, and has a satisfactory consumer complaint history with the department, and certifies its business activities under s. 559.9285. Such waiver may be revoked if the

seller of travel violates ~~any provision of~~ this part. A seller of travel which ~~that~~ certifies its business activities under s. 559.9285(1)(b) or (c) is not entitled to the waiver provided in this subsection.

Section 20. Effective January 1, 2015, paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may

not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is

confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile

Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; ~~or~~

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; ~~or.~~

8. Is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. This exception applies only to the determination of an applicant's eligibility in accordance with s. 790.06.

Section 21. Section 205.1969, Florida Statutes, is amended to read:

205.1969 Health studios; consumer protection.—A county or municipality may not issue or renew a business tax receipt for the operation of a health studio pursuant to ss. 501.012-501.019 ~~or ballroom dance studio pursuant to s. 501.143,~~ unless such business exhibits a current license, registration, or letter of exemption from the Department of Agriculture and Consumer Services.

Section 22. Subsection (6) of section 501.015, Florida Statutes, is amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

(6) Be considered a new health studio and is ~~shall be~~ subject to the requirements of s. 501.016 each time the health studio changes ownership or, in the case of corporate ownership, each time the stock ownership is changed so as to effectively put the health studio under new management or control, notwithstanding s. 501.016(8) ~~the provisions of s. 501.016(6)~~. A change of ownership does not occur within the meaning of this subsection if:

(a) Substantially the same stockholders form a new corporate entity;

(b) In the opinion of the department, the change does not effectively place the health studio under new management and control; and

(c) The health studio has a satisfactory complaint history with the department.

Section 23. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 13, 2014

I respectfully request that **Senate Bill #1018**, relating to Department of Agriculture and Consumer Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic DOACS Bill/Amendment Bill Number SB 1018 *(if applicable)*

Name DAVID Sigerson Amendment Barcode 365778 *(if applicable)*

Job Title

Address 2410 VAN BUREN ST Phone 954 336 3544
Street

Hollywood FL 33020 E-mail sigersonatlaw@aol.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing CAPITAL PAWN

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Department of Agriculture and Consumer Svcs. Bill Number SB 1018 *(if applicable)*

Name Jonathan Rees Amendment Barcode *(if applicable)*

Job Title Deputy Legislative Affairs Director

Address 400 S. Monroe St. Phone (850) 617-7700
Street

Tallahassee FL 32399 E-mail Jonathan.Rees@freshfromflorida.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Department of Agriculture and Consumer Services

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1030
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Bradley and others
SUBJECT:	Low-THC Cannabis
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Erickson	Cannon	CJ	**Favorable**
3.	Looke	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1030 creates s. 456.60, F.S., in order to allow the compassionate use of low-THC cannabis. The bill allows certain patients whose Florida-licensed physician registers them with the Department of Health (DOH) to use low-THC cannabis under limited circumstances. The bill defines low-THC cannabis as containing no more than 0.8 percent of tetrahydrocannabinol (THC) and at least 10 percent of cannabidiol (CBD).

The bill provides for patients who receive an order for low-THC cannabis by their physician to be added to a registry that is created and maintained by the DOH and to receive an identification card. Such a patient may purchase or acquire low-THC cannabis in an amount no greater than the physician's order and only from a dispensing organization that is approved by the DOH.

The bill exempts patients and their legal representatives from the legal restrictions on the purchase, acquisition, possession, and medical use of low-THC cannabis. Approved dispensing organizations, including owners, managers, and employees, are exempted from similar restrictions under certain parameters.

The bill encourages state universities with both medical and agricultural programs to develop or participate in Federal Food and Drug Administration-approved research on low-THC cannabis.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Treatment of Marijuana in Florida

Florida law defines cannabis as "all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin"[1] and places it, along with other sources of THC, on the list of Schedule 1 controlled substances.[2] Schedule 1 controlled substances are substances that have a high potential for abuse and no currently accepted medical use in the United States. As a Schedule 1 controlled substance, possession and trafficking in cannabis carry criminal penalties that vary from a first degree misdemeanor[3] up to a first degree felony with a mandatory minimum sentence of 15 years in state prison and a $200,000 fine.[4] Paraphernalia[5] that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, is also prohibited and carries criminal penalties ranging from a first degree misdemeanor to a third degree felony.[6]

Medical Marijuana in Florida: The Necessity Defense

Despite the fact that the use, possession, and sale of marijuana are prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State*[7] where the First District Court of Appeal found that "section 893.03 does not preclude the defense of medical necessity" for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.

In the cited case, the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the First District found that the Jenks met the criteria for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

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[1] Section 893.02(c), F.S.
[2] Section 893.03(c)7. and 37., F.S.
[3] This penalty is applicable to possession or delivery of less than 20 grams of cannabis. See s. 893.13(3) and (6)(b), F.S.
[4] Trafficking in more than 25 pounds, or 300 plants, of cannabis is a first degree felony with a mandatory minimum sentence that varies from 3 to 15 years in state prison depending on the quantity of the cannabis possessed, sold, etc. See s. 893.135(1)(a), F.S.
[5] This term is defined in s. 893.145, F.S.
[6] Section 893.147, F.S.
[7] 582 So.2d 676 (Fla. 1st DCA 1991), *review denied*, 589 So.2d 292 (Fla. 1991)

Medical Marijuana Laws in Other States

Currently, 20 states and the District of Columbia[8] have some form of law that permits the use of marijuana for medicinal purposes. These laws vary widely in detail but most are similar in that they touch on several recurring themes. Most state laws include the following in some form:

- A list of medical conditions for which a practitioner can recommend the use of medical marijuana to a patient.
  - Nearly every state that permits the use of marijuana for medicinal purposes has a list of applicable medical conditions, though the particular conditions vary from state to state. Most states also include a way to expand the list either by allowing a state agency or board to add medical conditions to the list or by including a "catch-all" phrase.[9] Most states require that the patient receive certification from at least one, but often two, physicians designating that the patient has a qualifying condition before the patient may be issued an identification card needed for the acquisition of medical marijuana.
- Provisions for the patient to designate one or more caregivers who can possess the medical marijuana and assist the patient in preparing and using the medical marijuana.
  - The number of caregivers allowed and the qualifications to become a caregiver vary from state to state. Most states allow one or two caregivers and require that they be at least 21 years of age and, typically, cannot be the patient's physician. Caregivers are generally allowed to purchase or grow marijuana for the patient, be in possession of the allowed quantity of marijuana, and aid the patient in using the marijuana, but are strictly prohibited from using the marijuana themselves.
- A required identification card for the patient, caregiver, or both that is typically issued by a state agency.
- A registry of people who have been issued an identification card.
- A method for registered patients and caregivers to obtain medical marijuana.
  - There are two general methods by which patients can obtain medical marijuana. They must either self-cultivate the marijuana in their homes or the state allows specified marijuana points-of-sale or dispensaries. The regulations governing such dispensaries vary widely.
- General restrictions on where medical marijuana may be used.
  - Typically, medical marijuana may not be used in public places, such as parks and on buses, or in areas where there are more stringent restrictions placed on the use of drugs, such as in or around schools or in prisons.

State Medical Marijuana Laws and Their Interaction with the Federal Government

The Federal Controlled Substances Act lists Marijuana as a schedule 1 drug with no accepted medical uses. Under federal law possession, manufacturing, and distribution of marijuana is a

[8] These states include Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois (effective 2014), Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and Illinois was the most recent state to pass medical marijuana legislation in August of 2013. Illinois legislation became effective in January, 2014. See http://www.ncsl.org/issues-research/health/state-medical-marijuana-laws.aspx. (last visited on March 19, 2014).
[9] An example is California's law that includes "any other chronic or persistent medical symptom that either: Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990, or if not alleviated, may cause serious harm to the patient's safety or physical or mental health."

crime.[10] Although a state's medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under the guidelines established in that state, such laws do not protect individuals from prosecution under federal law if the federal government enforces those laws.

In August of 2013, the United States Justice Department (USDOJ) issued a publication entitled "Smart on Crime: Reforming the Criminal Justice System for the 21st Century."[11] This document details the federal government's current stance on low-level drug crimes and contains the following passage:

> … the Attorney General is announcing a change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels, will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug kingpins.

In addition, the USDOJ published on August 29, 2013, a memorandum with the subject "Guidance regarding Marijuana Enforcement." This memorandum makes clear that the USDOJ considers small-scale marijuana use to be a state matter which states may choose to punish or not, and, while larger operations would fall into the purview of the USDOJ, those operations that adhere to state laws legalizing marijuana in conjunction with robust regulatory systems would be far less likely to come under federal scrutiny.[12] These announcements generally indicate the USDOJ's current unwillingness to prosecute such cases and its inclination to leave such prosecutions largely up to state authorities.

Tetrahydrocannabinol

Tetrahydrocannabinol (THC) is the major psychoactive constituent of marijuana. The potency of marijuana, in terms of psychoactivity, is dependent on THC concentration and is usually expressed as percent of THC per dry weight of material.

Average THC concentration in marijuana is 1 - 5 percent and the form of marijuana known as *sinsemilla* is derived from the unpollinated female cannabis plant and is preferred for its high THC content (up to 17 percent THC). Recreational doses are highly variable and users often titer their own dose. A single intake of smoke from a pipe or joint is called a hit (approximately 1/20th of a gram). The lower the potency or THC content the more hits are needed to achieve the desired effects.[13]

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[10] The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. See http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm#cntlsbd. (last visited on March 19, 2014).
[11] See http://www.justice.gov/ag/smart-on-crime.pdf. (last visited on March 19, 2014).
[12] See USDOJ memo on "Guidance Regarding Marijuana Enforcement," August 29, 2013, available at http://www.justice.gov/iso/opa/resources/305201382913275685746 7.pdf (last visited on March 19, 2014).
[13] Drugs and Human Performance Fact Sheet for Cannabis / Marijuana, National Highway Traffic Safety Administration, available at http://www.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm (last visited on March 19, 2014).

Marinol is a currently-approved drug[14] that consists of a man-made form of THC known as dornabinol.[15] Marinol is used to treat anorexia associated with weight loss in patients with AIDS and nausea and vomiting associated with cancer chemotherapy in patients who have failed to adequately respond to conventional antiemetic treatments. Marinol has a variety of side-effects including a cannabinoid dose-related "high."[16]

Cannabidiol

Cannabidiol (CBD) is another cannabinoid that is found in marijuana and, although THC has psychoactive effects, CBD and other cannabinoids are not known to cause intoxication.[17] Some evidence shows that CBD is effective in treating seizure disorders,[18,19] although much of this evidence is anecdotal. Currently, the drug Epidiolex, which is a liquid form of highly purified CBD extract, was approved by the FDA in November 2013, as an orphan drug[20] that may be used to treat Dravet syndrome.[21,22]

Dravet Syndrome

Also known as Severe Myoclonic Epilepsy of Infancy (SMEI), Dravet syndrome is a rare form of intractable epilepsy that begins in infancy.[23] Initial seizures are most often prolonged events and, in the second year of life, other seizure types begin to emerge. Individuals with Dravet syndrome face a higher incidence of SUDEP (sudden unexplained death in epilepsy) and typically have associated conditions that also need to be properly treated and managed. These conditions include:

- Behavioral and developmental delays;
- Movement and balance issues;
- Orthopedic conditions;
- Delayed language and speech issues;
- Growth and nutrition issues;
- Sleeping difficulties;
- Chronic infections;
- Sensory integration disorders; and

[14] The drug is approved by the US Food and Drug Administration.
[15] See http://www.marinol.com/about-marinol.cfm (last visited on March 19, 2014).
[16] For Marinol prescribing information, see http://www.rxabbvie.com/pdf/marinol_PI.pdf (last visited on March 19, 2014).
[17] This information is from GW Pharmaceuticals, see http://www.gwpharm.com/FAQ.aspx (last visited on March 19, 2014).
[18] See http://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/ (last visited on March 19, 2014).
[19] See also the presentation to the Florida House Criminal Justice Subcommittee on the Charlotte's Web strain of marijuana on January 9, 2014.
[20] An orphan drug is defined as a drug that is intended for the safe and effective treatment, diagnosis, or prevention of rare diseases/disorders that affect fewer than 200,000 people in the U.S., or that affect more than 200,000 persons but are not expected to recover the costs of developing and marketing a treatment drug. See http://www.fda.gov/forindustry/DevelopingProductsforrareDiseasesConditions/default.htm. (last visited on March 19, 2014).
[21] See http://www.gwpharm.com/LGS%20Orphan%20Designation.aspx (last visited on March 19, 2014).
[22] Dravet syndrome is a rare form of childhood epilepsy. See http://www.ninds.nih.gov/disorders/dravet_syndrome/dravet_syndrome.htm (last visited on March 19, 2014).
[23] Dravet Syndrome Foundation, http://www.dravetfoundation.org/dravet-syndrome/what-is-dravet-syndrome (last visited on April 16, 2014).

- Disruptions of the autonomic nervous system (which regulates bodily functions such as temperature regulation and sweating).

Individuals with Dravet syndrome do not outgrow the condition. Current treatment options are extremely limited and constant care and supervision are typically required.

III. Effect of Proposed Changes:

Section 1 creates s. 456.60, F.S., to allow the compassionate use of low-THC cannabis. The bill:

- Defines the terms:
  - "Dispensing organization" to mean an organization approved by the Department of Health (DOH) to cultivate, process, and dispense low-THC cannabis;
  - "Low-THC cannabis" to mean a substance that contains no more than 0.8 percent of any THC and at least 10 percent of CBD and which is dispensed from a dispensing organization;
  - "Medical use" to mean the administration of the ordered amount of low-THC cannabis with the exception of possession, use, or administration by smoking and the transfer of low-THC cannabis to a person other than the qualified patient or his or her legal representative;
  - "Qualified patient" to mean a Florida resident who has been added to the compassionate use registry by a Florida-licensed physician; and
  - "Smoking" to mean burning or igniting a substance and inhaling the smoke. The term smoking does not include the use of a vaporizer.
- Effective January 1, 2015, allows Florida-licensed physicians to order low-THC cannabis for a patient suffering from a physical medical condition, or treatment for a medical condition, that chronically produces symptoms of seizure or severe and persistent muscle spasms. The physician may only order low-THC cannabis if:
  - The patient is a permanent resident of Florida;
  - The physician has treated the patient for his or her symptoms for at least two months;
  - The physician, along with a second physician for patients under the age of 18, determines the risk of ordering low-THC cannabis are reasonable;
  - The physician registers as the orderer for the named patient on the registry, updates the registry with the order's contents, and deactivates the patient's registration when treatment is discontinued;
  - The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis; and
  - The physician submits the treatment plan quarterly to the University of Florida's College of Pharmacy for research on the safety and efficacy of low-THC cannabis.
- Requires physicians to undergo eight hours of education, including passing an examination, offered by the Florida Medical Association relating to clinical indications, appropriate delivery mechanisms, contraindications, and relevant state and federal laws governing ordering, dispensing, and possessing low-THC cannabis. The bill requires the first course and examination to be presented by October 1, 2014, and at least annually thereafter, allows subsequent courses to be used to satisfy eight hours of continuing medical education. The bill allows the coursework to be offered in a distance learning format.

- Requires the DOH, by January 1, 2015, to:
  - Create a secure, electronic, and online registry for the registration of physicians and patients which must be able to be accessed by law enforcement and the dispensing organization in order to verify patient orders. The dispensing organization must be able to record the low-THC cannabis dispensed, and the registry must prevent an active registration of a patient by multiple physicians.
  - Authorize at least one, but no more than four, dispensing organizations to ensure reasonable statewide accessibility and availability of low-THC cannabis as necessary. The DOH must develop an application form and impose initial and biennial renewal fees that are sufficient to cover the costs of administering their responsibilities. An applicant for approval as a dispensing organization must be able to demonstrate:
    - The technical and technological ability to cultivate and produce low-THC cannabis;
    - The ability to secure the premises, resources, and personnel necessary to operate;
    - The ability to maintain accountability of all cannabis-related products and to prevent diversion of those substances;
    - An infrastructure reasonably located to dispense low-THC cannabis statewide or regionally as determined by the DOH;
    - The financial ability to maintain operations for the duration of the two-year licensure cycle;
    - That all owners, managers, and employees have been fingerprinted and passed a level II background screening;
    - Any additional criteria determined by the DOH as necessary to safely function as a dispensary; and
    - Monitor physician registration and ordering of low-THC cannabis in order to take disciplinary action as needed.
  - Implement a process for issuing identification cards to patients registered in the compassionate use registry which expire one year after the date issued. Once expired, a patient who continues to be registered and is being treated with low-THC cannabis may be issued a new card.
- Requires the DOH to monitor and inspect the activities of each approved dispensing organization for compliance with the requirements of this section of law.
- Allows the DOH to adopt rules pertaining to submission of patient information to the compassionate use registry for the issuance of identification cards and recordkeeping requirements in order to demonstrate compliance with the section. Specifically, the recordkeeping requirements must include production and finished product testing for quality.
- Requires a dispensing organization to maintain compliance with all listed criteria for approval at all times and to verify before dispensing any low-THC cannabis that a patient has an active registration and that the patient's order matches the one recorded on the registry and has not already been filled. When the dispensing organization dispenses any low-THC cannabis, it must record the date, time, quantity, and form of the cannabis dispensed. A dispensing organization must also make records, premises, resources, products, and vehicles available for inspection by the DOH and law enforcement agencies.

- Creates exceptions from all other sections of law to provide that:
  - Qualified patients and their legal representatives may purchase, acquire, and possess for that patient's medical use up to the ordered amount of low-THC cannabis; and
  - Dispensing organizations, including their owners, managers, and employees, may acquire, possess, cultivate, and dispose of excess product in reasonable quantities to produce low-THC cannabis and possess, process, and dispense low-THC cannabis.
- Provides that dispensing organizations and their owners, managers, and employees are not subject to licensure and regulation under ch. 465, F.S., relating to pharmacies.
- Requires the DOH to establish an Office of Compassionate Use under the deputy state health officer to administer the act, including access to the compassionate use registry.

Section 2 creates s. 385.30, F.S., to encourage state universities with both medical and agricultural research programs to develop or participate in Federal Food and Drug Administration-approved studies and clinical research treatment plans using low-THC cannabis which are directed toward refractory or intractable epilepsy relief in pediatric patients. A participating university may request from the DOH a grant of up $100,000 annually. In order to be eligible for the grant, the participating university's medical college or medical school must submit a report to the DOH by January 1 of each year which contains, at minimum, the gender and age of each participating patient, the names of the participating physicians, and the level of seizure reduction in each participating patient. The bill exempts the DOH's grant award decisions from the requirements of ch. 120, F.S.

Section 3 creates s. 1004.441, F.S., to exempt universities conducting research on low-THC cannabis from the prohibitions in ch. 893, F.S. The bill specifies that the research may include, but is not limited to, the agricultural development, production, clinical research, and use of liquid medical derivatives of low-THC cannabis for the treatment for refractory or intractable epilepsy and allows current state and privately obtained research funds to be used to support such research.

Section 4 allows the DOH to submit a budget amendment request using excess funds from the Biomedical Research Trust Fund to implement the act during fiscal year 2014-2015.

Section 5 establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 1030 may have a positive fiscal impact on private sector organizations that are approved by the DOH to become dispensing organizations.

C. Government Sector Impact:

The Department of Health (DOH)

The DOH indicates the need for $120,000 to fund the creation of the compassionate use registry and will require further funds to maintain the registry, as well as to approve and monitor the dispensing organizations.[24] However, these costs should be fully offset by the revenue generated through initial license fees and renewal fees charged to the dispensing organizations.

The DOH will incur a recurring increase in workload associated with monitoring physician registration and ordering of low-THC cannabis. The impact is indeterminate.

The DOH may experience a recurring increase in workload associated with enforcement and regulation duties under the bill. The impact is indeterminate.

The DOH may experience an indeterminate negative fiscal impact to establish an Office of Compassionate Use.

The DOH will incur nonrecurring costs for rulemaking, which current budget authority is adequate to absorb.

The Florida Department of Law Enforcement (FDLE) and County Crime Labs

Section 1 of the bill may generate additional revenue for the FDLE due to an increase in the number of criminal history checks performed. The current cost for a state record check is $24.[25] The number of additional criminal history record checks is indeterminate.

VI. Technical Deficiencies:

None.

[24] Analysis of SB 1030 (July 1, 2014), Florida Department of Health (on file with Senate Committee on Health Policy and the Senate Committee on Criminal Justice). All information in the "Fiscal Impact" section of this analysis relevant to the DOH is from the DOH analysis.

[25] The cost for a state and national criminal history record check is $40.50 ($24 goes into the FDLE Operating Trust Fund and $16.50 from each request is forwarded to the Federal Bureau of Investigation).

VII. Related Issues:

Unless exempted from public records, the personal identifying information placed into the compassionate use registry will be available to the general public. SB 1700 creates that public records exemption.

Regarding the bill's requirements for fingerprints and background screening for owners, managers, and employees of dispensing organizations, the FDLE recommends participation in the state and federal fingerprint retention program to ensure that all arrests of individuals screened which occur after the initial criminal history screening, are made known to the DOH. Under that program, after the bill becomes effective, both the FDLE and the Federal Bureau of Investigation will retain the fingerprints, search the fingerprints against incoming arrests, and notify the DOH if the retained fingerprints match an incoming arrest.[26]

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 456.60, 385.30, and 1004.441.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The CS:

- Changes the name of "low-THC marijuana" to "low-THC cannabis" throughout the bill;
- Amends the amounts of THC and CBD required to qualify as low-THC cannabis from no more than .5 percent THC to no more than .8 percent THC and from at least 15 percent CBD to at least 10 percent CBD;
- Modifies patient eligibility to remove the requirement to exhaust all other treatment options and to reduce the period of time that the physician must have treated the patient for the medical conditions or symptoms from 6 months to 2 months;
- Requires a physician to undergo 8 hours of education, including passing an examination, relating to clinical indications for the appropriate use of low-THC cannabis, and other practice-related topics, prior to ordering low-THC cannabis for a patient;
- Requires the DOH to implement the compassionate use database, approve dispensing organizations, and establish an Office of Compassionate Use by January 1, 2015, so that physicians may begin ordering low-THC cannabis for appropriate patients by that date;
- Requires the DOH to implement a process for timely issuing identification cards, which expire one year after issued, to registered patients by January 1, 2015;
- Requires the DOH to monitor and inspect the activities of each dispensing organization to ensure compliance with the requirements of the section;

[26] Analysis of SB 1030 (March 3, 2014), Florida Department of Law Enforcement.

- Requires the dispensing organizations to make all records, premises, resources, finished product and byproducts, and vehicles available for inspection by the DOH and law enforcement;
- Encourages and authorizes state universities to develop or participate in US Food and Drug Administration approved studies and clinical research of low-THC cannabis directed toward refractory or intractable epilepsy relief in pediatric patients, notwithstanding ch. 893. Provides up to a $100,000 grant annually for this purpose; and
- Authorizes the DOH to submit a budget amendment, using excess funds in the Biomedical Research Trust Fund, to fund the program.

CS by Health Policy on March 11, 2014:
The CS:

- Changes the name of "medical-grade marijuana" to "low-THC marijuana" throughout the bill;
- Amends a typo in the definition of "low-THC marijuana"; and
- Changes "prescribe" to "order" throughout the bill to avoid a conflict with other statutes that define prescriptions as being filled at a pharmacy.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 456.60, Florida Statutes, is created to read:

456.60 Compassionate use of low-THC cannabis.—

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

(a) "Dispensing organization" means an organization approved by the department to cultivate, process, and dispense

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low-THC cannabis pursuant to this section.

(b) "Low-THC cannabis" means a substance that contains no more than 0.8 percent of any tetrahydrocannabinol and at least 10 percent cannabidiol and that is dispensed only from a dispensing organization.

(c) "Medical use" means administration of the ordered amount of low-THC cannabis. The term does not include the possession, use, or administration by smoking. The term also does not include the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative on behalf of the qualified patient.

(d) "Qualified patient" means a resident of this state who has been added to the compassionate use registry by a physician licensed under chapter 458 or chapter 459 to receive low-THC cannabis from a dispensing organization.

(e) "Smoking" means burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer.

(2) PHYSICIAN ORDERING.—Effective January 1, 2015, a physician licensed under chapter 458 or chapter 459 who has examined and treated a patient suffering from a physical medical condition, or from treatment for a medical condition, which chronically produces symptoms of seizures or severe and persistent muscle spasms may order for the patient's medical use low-THC cannabis to treat or alleviate such symptoms if all of the following conditions apply:

(a) The patient is a permanent resident of this state.

(b) The physician has treated the patient for his or her

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symptoms or a medical condition in which his or her symptoms were present for at least 2 months.

(c) The physician determines the risks of ordering low-THC cannabis are reasonable in light of the potential benefit for that patient. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.

(d) The physician registers as the orderer of low-THC cannabis for the named patient on the compassionate use registry maintained by the department and updates the registry to reflect the contents of the order. The physician shall inactivate the patient's registration when treatment is discontinued.

(e) The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis.

(f) The physician submits the patient treatment plan quarterly to the University of Florida College of Pharmacy for research on the safety and efficacy of low-THC cannabis on patients with such symptoms.

(3) PHYSICIAN EDUCATION.—Before ordering low-THC cannabis for use by a patient in this state, the appropriate board shall require the ordering physician licensed under chapter 458 or chapter 459 to successfully complete an 8-hour course and subsequent examination offered by the Florida Medical Association which must encompass the clinical indications for the appropriate use of low-THC cannabis, the appropriate delivery mechanisms, the contraindications for such use, as well

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as the relevant state and federal laws governing the ordering, dispensing, and possessing of such substance. The first course and examination shall be presented by October 1, 2014, and shall be administered at least annually thereafter. Successful completion of the course may be used by a physician to satisfy 8 hours of the continuing medical education requirements required by his or her respective board for licensure renewal. The course may be offered in a distance learning format.

(4) DUTIES OF THE DEPARTMENT.—

(a) By January 1, 2015, the department shall:

1. Create a secure, electronic, and online compassionate use registry for the registration of physicians and patients as provided under this section. The registry must be accessible to law enforcement agencies and to a dispensing organization in order to verify patient authorization for low-THC cannabis and record the low-THC cannabis dispensed. The registry must prevent an active registration of a patient by multiple physicians.

2. Authorize at least one, but no more than four, dispensing organizations, to ensure reasonable statewide accessibility and availability as necessary for patients registered in the compassionate use registry and who are ordered low-THC cannabis under this section. The department shall develop an application form and impose an initial application and biennial renewal fee that is sufficient to cover the costs of administering this section. An applicant for approval as a dispensing organization must be able to demonstrate:

a. The technical and technological ability to cultivate and produce low-THC cannabis.

b. The ability to secure the premises, resources, and

personnel necessary to operate as a dispensing organization.

c. The ability to maintain accountability of all raw materials, finished product, and any byproducts to prevent diversion or unlawful access to or possession of these substances.

d. An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department.

e. The financial ability to maintain operations for the duration of the 2-year approval cycle.

f. That all owners, managers, and employees have been fingerprinted and successfully passed background screening pursuant to s. 435.04.

3. Implement a process for timely issuing identification cards to patients registered in the compassionate use registry. The identification card expires 1 year after the date issued. A new identification card may be issued to a patient for whom a physician continues registration and treatment with low-THC cannabis.

(b) The department shall monitor physician registration and the ordering of low-THC cannabis for ordering practices that could facilitate unlawful diversion or misuse of low-THC cannabis, and take disciplinary action as indicated.

(c) The department shall monitor and inspect the activities of each approved dispensing organization for compliance with this section.

(d) The department may adopt rules pertaining to:

1. The submission of relevant information to the compassionate use registry in order to issue patient

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identification cards; and

2. Recordkeeping requirements to demonstrate compliance with this section, including maintaining records for the production and finished product testing of low-THC cannabis.

(e) The department shall establish the Office of Compassionate Use under the direction of the Deputy State Health Officer to administer this section, including access to the compassionate use registry under ss. 385.30 and 456.61.

(5) DISPENSING ORGANIZATION.—

(a) An approved dispensing organization shall:

1. Maintain compliance with the criteria demonstrated for selection and approval under subparagraph (4)(a)2. as a dispensing organization at all times;

2. Maintain and make records available for inspection and desk review by the department and law enforcement agencies; and

3. Make all premises, resources, raw materials, finished product, byproducts, and vehicles available for inspection by the department and law enforcement agencies.

(b) Before dispensing low-THC cannabis to a qualified patient, the dispensing organization shall verify that the patient has an active registration in the compassionate use registry, the order presented matches the order contents as recorded in the registry, and the order has not already been filled. Upon dispensing the low-THC cannabis, the dispensing organization shall record in the registry the date, time, quantity, and form of low-THC cannabis dispensed.

(6) EXCEPTIONS TO OTHER SECTIONS OF LAW.—

(a) Notwithstanding any other section of law, but subject to the requirements of this section, a qualified patient and the

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qualified patient's legal representative may purchase, acquire, and possess for the patient's medical use up to the amount of low-THC cannabis ordered to the patient.

(b) Notwithstanding any other section of law, but subject to the requirements of this section, an approved dispensing organization and its owners, managers, and employees may acquire, possess, cultivate, and lawfully dispose of excess product in reasonable quantities to produce low-THC cannabis and possess, process, and dispense low-THC cannabis.

(c) An approved dispensing organization is not subject to licensure and regulation under chapter 465, and the owners, managers, and employees of a dispensing organization are not subject to licensure and regulation for the practice of pharmacy under chapter 465.

Section 2. Section 385.30, Florida Statutes, is created to read:

385.30 State university participation in approved studies and clinical treatment plans.—

(1) All state universities with both medical and agricultural research programs, including those that have satellite campuses or research agreements with other similar institutions, are encouraged to develop or participate in Federal Drug Administration-approved studies and clinical research treatment plans using low-THC cannabis as defined in s. 456.60 which are directed toward refractory or intractable epilepsy relief in pediatric patients as authorized by s. 1004.441.

(2) Each state university that is selected to participate in a Federal Drug Administration-approved study or clinical

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treatment plan described in subsection (1) may request from the Department of Health a grant of up to $100,000 annually.

(3) To be eligible for the annual grant, the participating medical college or medical school must submit a report to the Department of Health by January 1 of each year which contains, at a minimum:

(a) The gender and age of each patient participating in the study or clinical treatment plan during the calendar year;

(b) The names of participating physicians; and

(c) The level of seizure reduction in each participating patient during the calendar year.

(4) The grant award decisions of the Department of Health pursuant to this section are not subject to chapter 120.

Section 3. Section 1004.441, Florida Statutes, is created to read:

1004.441 Refractory and intractable epilepsy treatment and research.—Notwithstanding chapter 893, state universities with both medical and agricultural research programs, including those that have satellite campuses or research agreements with other similar institutions, may conduct research on low-THC cannabis as defined in s. 456.60. This research may include, but is not limited to, the agricultural development, production, clinical research, and use of liquid medical derivatives of low-THC cannabis for the treatment for refractory or intractable epilepsy. Current state or privately obtained research funds may be used to support the activities authorized by this section.

Section 4. The Department of Health may submit a budget amendment request using excess funds from the Biomedical Research Trust Fund to implement this act during the 2014-2015

617332

state fiscal year.

Section 5. This act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to low-THC cannabis; creating s. 456.60, F.S.; defining terms; authorizing specified physicians to order low-THC cannabis for use by specified patients; providing conditions; providing education requirements for physicians; providing duties of the Department of Health; requiring the department to create a compassionate use registry; providing requirements for the registry; requiring the department to authorize a specified number of dispensing organizations; authorizing the department to adopt specified rules; requiring the department to establish the Office of Compassionate Use; providing for inspections of dispensing organizations by the department and law enforcement agencies; providing requirements and duties for a dispensing organization; providing exceptions to specified laws; creating s. 385.30, F.S.; encouraging state universities with both medical and agricultural programs to participate in specified Federal Drug Administration-approved research directed toward refractory or intractable epilepsy relief in pediatric patients; authorizing

participating state universities to annually request a grant from the department; requiring a state university that requests a grant to submit a specified report to the department; providing applicability; creating s. 1004.441, F.S.; authorizing state universities with both medical and agricultural programs to conduct specified research on low-THC cannabis; authorizing the use of current state or privately obtained research funds to support such research; authorizing the department to submit a budget amendment request to use excess funds in the Biomedical Research Trust Fund to implement this act; providing an effective date.

379848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (617332)

Delete line 134
and insert:
compassionate use registry under s. 456.61, and s. 385.30.

By the Committee on Health Policy; and Senators Bradley, Bean, Brandes, Galvano, Sobel, Soto, Gardiner, Stargel, and Simpson

588-02462-14 20141030c1

A bill to be entitled

An act relating to low-THC marijuana and cannabis; creating s. 456.60, F.S.; defining terms; authorizing specified physicians to order low-THC marijuana for use by specified patients; providing conditions; providing duties of the Department of Health; requiring the department to create a compassionate use registry; providing requirements for the registry; requiring the department to authorize a specified number of dispensing organizations; providing requirements and duties for a dispensing organization; providing exceptions to specified laws; amending s. 893.02, F.S.; revising the definition of the term "cannabis" for purposes of the Florida Comprehensive Drug Abuse Prevention and Control Act and as applicable to certain criminal offenses proscribing the sale, manufacture, delivery, possession, or purchase of cannabis, to which penalties apply; providing an effective date.

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

Section 1. Section 456.60, Florida Statutes, is created to read:

456.60 Compassionate use of low-THC marijuana.—

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

(a) "Dispensing organization" means an organization approved by the department to cultivate, process, and dispense low-THC marijuana pursuant to this section.

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

588-02462-14 20141030c1

(b) "Low-THC marijuana" means a substance that contains no more than 0.5 percent of any tetrahydrocannabinol and at least 15 percent cannabidiol and that is dispensed only from a dispensing organization.

(c) "Medical use" means administration of the ordered amount of low-THC marijuana. The term does not include the possession, use, or administration by smoking. The term also does not include the transfer of low-THC marijuana to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative on behalf of the qualified patient.

(d) "Qualified patient" means a resident of this state who has been added to the compassionate use registry by a physician licensed under chapter 458 or chapter 459 to receive low-THC marijuana from a dispensing organization.

(e) "Smoking" means burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer.

(2) PHYSICIAN ORDERING.—A physician licensed under chapter 458 or chapter 459 who has examined and treated a patient suffering from a physical medical condition, or from treatment for a medical condition, which chronically produces symptoms of seizures or severe and persistent muscle spasms may order for the patient's medical use low-THC marijuana to treat or alleviate such symptoms if no other satisfactory alternative treatment options exist for that patient and all of the following conditions apply:

(a) The patient is a permanent resident of this state.

(b) The physician has treated the patient for his or her

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

symptoms or a medical condition in which his or her symptoms were present for at least 6 months.

(c) The physician has tried alternate treatment options that have not alleviated the patient's symptoms.

(d) The physician determines the risks of ordering low-THC marijuana are reasonable in light of the potential benefit for that patient. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.

(e) The physician registers as the orderer of low-THC marijuana for the named patient on the compassionate use registry maintained by the department and updates the registry to reflect the contents of the order. The physician shall inactivate the patient's registration when treatment is discontinued.

(f) The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC marijuana.

(g) The physician submits the patient treatment plan quarterly to the University of Florida College of Pharmacy for research on the safety and efficacy of low-THC marijuana on patients with such symptoms.

(3) DUTIES OF THE DEPARTMENT.—The department shall:

(a) Create a secure, electronic, and online compassionate use registry for the registration of physicians and patients as provided under this section. The registry must be accessible to law enforcement agencies and to a dispensing organization in

order to verify patient authorization for low-THC marijuana and record the low-THC marijuana dispensed. The registry must prevent an active registration of a patient by multiple physicians.

(b) Authorize at least one, but no more than four, dispensing organizations, to ensure reasonable statewide accessibility and availability as necessary for patients registered in the compassionate use registry and who are ordered low-THC marijuana under this section. The department shall develop an application form and impose an initial application and biennial renewal fee that is sufficient to cover the costs of administering this section. An applicant for approval as a dispensing organization must be able to demonstrate:

1. The technical and technological ability to cultivate and produce low-THC marijuana.

2. The ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization.

3. The ability to maintain accountability of all raw materials, finished product, and any byproducts to prevent diversion or unlawful access to or possession of these substances.

4. An infrastructure reasonably located to dispense low-THC marijuana to registered patients statewide or regionally as determined by the department.

5. The financial ability to maintain operations for the duration of the 2-year approval cycle.

6. That all owners, managers, and employees have been fingerprinted and successfully passed background screening pursuant to s. 435.04.

7. Additional criteria determined by the department to be necessary to safely implement this section.

(c) Monitor physician registration and ordering of low-THC marijuana for ordering practices which could facilitate unlawful diversion or misuse of low-THC marijuana, and take disciplinary action as indicated.

(4) DISPENSING ORGANIZATION.—An approved dispensing organization shall maintain compliance with the criteria demonstrated for selection and approval under subsection (3) as a dispensing organization at all times. Before dispensing low-THC marijuana to a qualified patient, the dispensing organization shall verify that the patient has an active registration in the compassionate use registry, the order presented matches the order contents as recorded in the registry, and the order has not already been filled. Upon dispensing the low-THC marijuana, the dispensing organization shall record in the registry the date, time, quantity, and form of low-THC marijuana dispensed.

(5) EXCEPTIONS TO OTHER SECTIONS OF LAW.—

(a) Notwithstanding any other section of law, but subject to the requirements of this section, a qualified patient and the qualified patient's legal representative may purchase, acquire, and possess for the patient's medical use up to the amount of low-THC marijuana ordered to the patient.

(b) Notwithstanding any other section of law, but subject to the requirements of this section, an approved dispensing organization and its owners, managers, and employees may acquire, possess, cultivate, and lawfully dispose of excess product in reasonable quantities to produce low-THC marijuana

and possess, process, and dispense low-THC marijuana.

(c) An approved dispensing organization is not subject to licensure and regulation under chapter 465, and the owners, managers, and employees of a dispensing organization are not subject to licensure and regulation for the practice of pharmacy under chapter 465.

Section 2. Subsection (3) of section 893.02, Florida Statutes, is amended to read:

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

(3) "Cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include any plant of the genus *Cannabis* that contains 0.5 percent or less of tetrahydrocannabinol and more than 15 percent of cannabidiol; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin, if possessed or used in conformance with s. 456.60.

Section 3. This act shall take effect July 1, 2014.

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 25, 2014

I respectfully request that **Senate Bill # 1030**, relating to Low-THC Marijuana and Cannabis, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 28, 2014

I respectfully request that **Senate Bill #1030**, relating to Low-THC Marijuana and Cannabis, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

SENATE APPROPRIATIONS
RECEIVED
14 MAR 28 AM 11:27
STAFF DIR. _____ STAFF

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic SB 1030 Bill Number 1030 *(if applicable)*

Name Gary Stein Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 7035 Belt Line Loop Phone (812) 973-3835
Street

Wesley Chapel FL 33545 E-mail gstein@hecac.info
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Self

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Low-THC Cannabis

Bill Number SB 1030 *(if applicable)*

Name Ron Watson

Amendment Barcode *(if applicable)*

Job Title Lobbyist

Address 3738 Mundon Way
Street
Tallahassee FL 32309
City *State* *Zip*

Phone (850) 567-1202

E-mail watson.strategies@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Low THC Cannabis

Bill Number 1030 *(if applicable)*

Name Tim Stanfield

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 215 S. Monroe St, 32301
Street

Phone 577-0398

E-mail tstanfield@cfhlaw.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Low-THC Cannabis

Bill Number CS/SB 1030 *(if applicable)*

Name Holley Moseley

Amendment Barcode _____ *(if applicable)*

Job Title Co-founder Caring 4 Florida

Address P.O. Box 154 *Street*

Phone 850 232 0004

Gulf Breeze, FL 32562 *City* *State* *Zip*

E-mail caring4florida@gmail.com

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

Representing Caring 4 Florida - RayAnn Moseley

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Cannabis

Bill Number SB 1030 *(if applicable)*

Name Louis Rotando

Amendment Barcode *(if applicable)*

Job Title

Address 302 Pinestraw Circle *Street*

Phone 407-699-9361

Altamonte Springs FL 32714 *City State Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Fla. Medical Cannabis Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Bill Number 1030 *(if applicable)*

Topic _____

Amendment Barcode _____ *(if applicable)*

Name BRIAN PITTS

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1032
INTRODUCER:	Appropriations Committee; Criminal Justice Committee; and Senator Latvala
SUBJECT:	Subsurface Rights
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Fav/CS**
2.	Sumner/Harkness	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1032 requires sellers of residential property to provide prospective purchasers with a subsurface rights disclosure summary when selling residential property. It provides a form for the disclosure summary to be included in the contract for sale or incorporated by reference. It defines the terms "seller" and "subsurface rights."

This bill has no fiscal impact on state government.

II. Present Situation:

In February 2014, the Florida Attorney General sent a News Release to approximately 18,000 homeowners who had purchased real property without knowledge that the mineral rights to the property had been severed. The Attorney General notified the homeowners they had the option to receive those mineral rights by completing a certification form. The seller agreed to cease the practice of reserving mineral rights until the Florida Legislature provided guidance on the issue.[1]

Generally in real estate transactions the landowner is entitled to the surface of the property and all that is below it if the deed does not contain a reservation limiting the estate.[2] An express reservation to sever the mineral rights generally creates two separate estates with the mineral estate being the dominate estate. The owner of the mineral estate has the right of ingress and

[1] Attorney General Pam Bondi News Release, February 7, 2014.
[2] 36 Fla Jur. 2d Mines and Minerals 54.

egress to explore for, locate, and remove the minerals but may not abuse the surface estate.[3] Without a reference to the mineral rights on the face of the deed, homeowners may be unaware the seller has retained those rights.

III. Effect of Proposed Changes:

The bill requires sellers of residential property to provide prospective purchasers with a disclosure summary at or before the execution of the contract for sale if any of the subsurface rights or right of re-entry are or will be severed or retained by the seller.

The bill provides the disclosure summary must be must be conspicuous, in boldface type, and in a form substantially similar to the language provided in the bill. If the disclosure summary is not included in the contract for sale, the contract must refer to and incorporate by reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary.

The bill defines "subsurface rights" as all minerals, mineral fuels, and other resources, including but not limited to, oil, gas, coal, oil shale, uranium, metals, and phosphate, whether or not it may be mixed with any other substance, found, or located beneath the surface of the earth.

The bill defines "seller" as any seller of real property which, at the time of sale, is zoned for residential use and where a new dwelling is being constructed, is to be constructed, or has been constructed since the last transfer of property.

The bill provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[3] P & N Inv. Corp. v. Florida Ranchettes, Inc., 220 So. 2d 451, at 453 (Fla.1st DCA 1969).

B. Private Sector Impact:

Under CS/CS/SB 1032, sellers of residential real property will incur minor costs to provide prospective purchasers with a disclosure summary of any subsurface rights or rights of re-entry that are or will be severed or retained by the seller.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 689.29 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The committee substitute makes minor technical changes. It changes the effective date from July 1, 2014 to October 1, 2014.

CS by Criminal Justice on March 10, 2014:
The committee substitute removes the criminal penalty for knowingly violating the disclosure requirements. It requires that the disclosure summary be included in the contract or as an attachment and incorporated by reference rather than on a separate form and provided three days prior to entering into the contract.

B. Amendments:

None.

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

804196

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 689.29, Florida Statutes, is created to read:

689.29 Disclosure of subsurface rights to prospective purchaser.—

(1) A seller must provide a prospective purchaser of residential property with a disclosure summary at or before the

804196

execution of a contract if the seller or an affiliated or related entity has previously severed or retained or will sever or retain any of the subsurface rights or right of entry. The disclosure summary must be conspicuous, in boldface type, and in a form substantially similar to the following:

SUBSURFACE RIGHTS
DISCLOSURE SUMMARY

SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE SELLER OR AN AFFILIATED OR RELATED ENTITY OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, OR REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE.

...(Purchaser’s Initials)...

(2) If the disclosure summary is not included in the contract for sale, the contract for sale must refer to and incorporate by reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary required under this section.

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

804196

(a) "Seller" means a seller of real property which, at the time of sale, is zoned for residential use and is property upon which a new dwelling is being constructed or will be constructed pursuant to the contract for sale with the seller or has been constructed since the last transfer of the property.

(b) "Subsurface rights" means the rights to all minerals, mineral fuels, and other resources, including, but not limited to, oil, gas, coal, oil shale, uranium, metals, and phosphate, whether or not they are mixed with any other substance found or located beneath the surface of the earth.

Section 2. This act shall take effect October 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to subsurface rights; creating s. 689.29, F.S.; requiring a seller to provide a prospective purchaser with a subsurface rights disclosure summary when selling residential property; providing a form for the disclosure summary; requiring the disclosure summary to be included in the contract for sale or incorporated by reference into the contract for sale; defining the terms "seller" and "subsurface rights"; providing an effective date.

By the Committee on Criminal Justice; and Senator Latvala

591-02376-14 20141032c1

A bill to be entitled

An act relating to subsurface rights; creating s. 689.29, F.S.; requiring a seller to provide a prospective purchaser with a subsurface rights disclosure summary; providing the form for the disclosure summary; requiring the disclosure summary to be included in the contract for sale or attached to the contract for sale; defining the term "subsurface rights"; defining the term "seller"; providing an effective date.

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

Section 1. Section 689.29, Florida Statutes, is created to read:

689.29 Disclosure of subsurface rights to prospective purchaser.—

(1) The seller must provide a prospective purchaser of residential property with a disclosure summary at or before the execution of the contract for sale if any of the subsurface rights or right of re-entry are or will be severed or retained by the seller. The disclosure summary must be conspicuous, in boldfaced type, and in a form substantially similar to the following:

SUBSURFACE RIGHTS
DISCLOSURE SUMMARY

SUBSURFACE RIGHTS ARE OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE OWNER OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE OWNER. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, AND REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION.

...(Buyer Initials)...

(2) The disclosure summary must be included in the contract for sale or attached to the contract for sale. If attached, the contract for sale must refer to and incorporate by reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary required under this section.

(3) As used in this section, the term "subsurface rights" means the rights to all minerals, mineral fuels, and other resources, including, but not limited to, oil, gas, coal, oil shale, uranium, metals, and phosphate, whether or not it may be mixed with any other substance, found, or located beneath the surface of the earth.

(4) As used in this section, the term "seller" means any seller of real property which, at the time of sale, is zoned for residential use and is property upon which a new dwelling is being constructed, is to be constructed, or has been constructed since the last transfer of the property.

Section 2. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA
20th District

March 11, 2014

The Honorable Joe Negron, Chair
Senate Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

I respectfully request that Senate Bill 1032/Residential Property Sales be placed on the agenda of the Senate Committee on Appropriations at your earliest convenience. The bill was favorably referred from the Senator Committee on Criminal Justice on March 10, 2014.

This bill would require sellers of residential real property to provide written notification to prospective homebuyers of the seller's intent to retain subsurface mineral rights.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: Cindy Kynoch, Staff Director; Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
❒ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Sub Surface Rights

Bill Number SB 1032 *(if applicable)*

Name Amy Datz

Amendment Barcode *(if applicable)*

Job Title Retired Environmental Scientist

Address 1130 Circle View Ave.
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 322-7579

E-mail Qualiedrtz@Mac.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Environmental Caucus of FL.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/22/2014
Meeting Date

Topic _____ Bill Number 1032 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 1044
INTRODUCER:	Appropriations Committee; Agriculture Committee; Communications, Energy, and Public Utilities Committee; and Senator Simpson
SUBJECT:	Building Construction Policies
DATE:	April 25, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Weidenbenner	Becker	AG	**Fav/CS**
3.	Blizzard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1044 revises the statutes for the energy-related duties, powers, and functions of the Department of Agriculture and Consumer Services (DACS or department). Specifically the bill:

- Authorizes the department to promote all forms of renewable energy, not simply solar.
- Authorizes the Florida Energy Systems Consortium to participate with the department and other entities in aiding and promoting the commercialization of renewable energy.
- Authorizes the Commissioner of Agriculture to appoint a member of the Southern States Energy Board (SSEB).
- Repeals obsolete statutes creating the rebates for solar energy systems and energy efficient appliances, together with making conforming changes.
- Authorizes the department to post information on its website relating to alternative fueling stations and electric vehicle charging stations that are available to the public and
- Adds a representative of the Office of Energy within the department to the Florida Building Commission.

In addition, the bill:

- Gives local government the option of requiring a return receipt request when sending notices by certified mail to alleged violators of local codes and ordinances.
- Reduces the proof of experience required to obtain a license as a water well contractor.

- Provides that proof of worker's compensation may be presented electronically when an employer applies for a building permit, and that such proof may be submitted and retained electronically.
- Authorizes the Department of Health (DOH) to grant variances from the Florida Building Code relating to public swimming pools and public bathing places and requires building officials to recognize and enforce these variance orders.
- Requires an application to DOH for an operating permit for a public swimming pool before an application may be filed for a building permit.
- Specifies inspection criteria for construction or modification of manufactured buildings or building modules.
- Prohibits an agency or local government from requiring that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code, except when the equipment is being replaced or moved during reroofing.
- Provides that make-up air is not required for range hood exhaust systems meeting specified criteria, in a single family dwelling.
- Authorizes building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and provides specific procedures for those interpretations.
- Allows site plans or building permits to be maintained at the worksite in the original form or in the form of an electronic copy.
- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program.
- Provides an additional fire safety alarm option for homeowners making renovations.
- Revises the requirements for a building energy-efficiency rating system.
- Exempts certain tents from the Florida Fire Prevention Code.
- Removes the requirement that a member of the Fire Code Interpretation Committee notify the committee that he or she is unable to respond to a request for a nonbinding interpretation of the Florida Fire Prevention Code, before an alternate can respond.
- Allows an owner of improved real property and the insurer of that property to explicitly agree in writing to make payment on any claim to a third party instead of the insured named in the policy.
- Provides an effective date of July 1, 2014, unless otherwise provided.

The bill does not appear to have a fiscal impact on state revenues or expenditures.

II. Present Situation:

Office of Energy

The Office of Energy is the state entity primarily responsible for non-regulatory energy matters, including coordinating with federal entities on energy issues, administering federal energy programs delegated to the state, and administering state energy rebate programs. The Office of Energy, currently located in the DACS, has been located in the Executive Office of the Governor, the Department of Community Affairs, and the Department of Environmental Protection.

Section 377.6015, F.S., provides the department's primary powers and duties relating to energy resources, including:

- Administering the Florida Renewable Energy and Energy-Efficient Technologies Grants Program;
- Developing policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant;
- Administering the Florida Green Government Grants Act and setting annual priorities for grants;
- Administering specified information gathering and reporting functions;
- Administering the provisions of the Florida Energy and Climate Protection Act;
- Advocating for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions;
- Participating in the Public Service Commission's Florida Energy Efficiency and Conservation Act proceedings to adopt goals; and
- Adopting rules in order to implement these powers and duties.

Section 377.703, F.S., sets forth the following additional functions of the DACS relating to energy:

- Submission of an annual report to the Governor and Legislature reflecting its activities, which must include recommendations for energy conservation programs for the state;
- Promoting the development and use of renewable energy resources by:
  - Establishing goals and strategies for increasing the use of solar energy in this state;
  - Aiding and promoting the commercialization of solar energy technology, in cooperation with the Florida Solar Energy Center and other agencies;
  - Identifying barriers to greater use of solar energy systems in this state; and
  - In cooperation with specified entities, investigating opportunities for solar electric vehicles and other solar energy manufacturing, distribution, installation, and financing efforts which will enhance this state's position as the leader in solar energy research, development, and use; and
- Promoting energy conservation in all energy use sectors throughout the state.

Southern States Energy Compact

Section 377.711, F.S., establishes Florida as a member of the Southern States Energy Compact. The compact is performed by the Southern States Energy Board (SSEB or board). The SSEB is a non-profit interstate compact organization created by state law in 1960 and consented to by Congress[1] with a broad mandate to contribute to the economic and community well-being of the southern region.[2] Its mission is to enhance economic development and the quality of life through innovations in energy and environmental policies, programs, and technologies. The board's membership includes sixteen southern states and two territories: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia, and West Virginia. Each jurisdiction is represented by the Governor and a legislator from the House and Senate. A

[1] Public Laws 87-563 and 92-440.
[2] http://www.sseb.org/about/ last accessed 2/20/2014.

Governor serves as the chair and legislators serve as vice-chair and treasurer. Ex-officio non-voting board members include a federal representative appointed by the President of the United States, the Southern Legislative Conference Energy and Environment Committee Chair, and the SSEB's executive director, who serves as secretary.

The SSEB pursues its mission through the creation of programs in the fields of energy and environmental policy research, development and implementation, science and technology exploration, and related areas of concern. The SSEB serves its members directly by providing assistance designed to develop effective energy and environmental policies and programs and represents its members before governmental agencies at all levels. The board's long-term goals are to:

- Perform essential services that provide direct scientific and technical assistance to state governments;
- Develop, promote, and recommend policies and programs on energy, environment, and economic development that encourage sustainable development;
- Provide technical assistance to executive and legislative policy-makers and the private sector in order to achieve synthesis of energy, environment, and economic issues that ensure energy security and supply;
- Facilitate the implementation of energy and environmental policies between federal, state, and local governments and the private sector;
- Sustain business development throughout the region by eliminating barriers to the use of efficient energy and environmental technologies; and
- Support improved energy efficient technologies that pollute less and contribute to a clean global environment while protecting indigenous natural resources for future generations.

Core funding for the board comes from the appropriations of its eighteen member jurisdictions. Each member's share of support is determined by a formula written into the original compact. The SSEB also is authorized to accept funds from any state, federal agency, interstate agency, institution, person, firm, or corporation provided those funds are used for the board's purposes and functions. In addition, the SSEB maintains an associate members program comprised of industry partners who provide an annual contribution to the board.

Section 377.712, F.S., provides for Florida's participation on the SSEB, including requiring the Governor, President of the Senate, and Speaker of the House of Representatives to each appoint one member to the SSEB.[3] The section also authorizes departments, agencies, and officers of the state and its subdivisions to cooperate with the SSEB if the activities have been approved by either the Governor or the Florida Department of Health.

Rebate Programs

Section 377.802, F.S., provides the purpose of the Florida Energy and Climate Protection Act. Among these purposes is providing incentives for the purchase of energy-efficient appliances and rebates for solar energy equipment installations for residential and commercial buildings.

[3] Currently the Florida members are Governor Rick Scott, Senator Anitere Flores, and Representative Jose Felix Diaz.

Section 377.806, F.S., creates the Solar Energy System Incentives Program. The program was created in 2006 and was administered by the Florida Energy Office within the Florida Energy and Climate Commission (FECC). The purpose of the program was to provide financial incentives (rebates on a portion of the purchase price) for the purchase and installation of solar energy systems that meet specified requirements. Rebates were available for both solar photovoltaic systems that produce electricity and solar thermal systems that produce heat. The amounts of the rebates were as follows:

- For a photovoltaic system, the rebate amount was $4 per watt based on the total wattage rating of the system, with the maximum amount per system installation of:
  - $20,000 for a residence and
  - $100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.
- For a solar thermal system:
  - $500 for a residence and
  - $15 per 1,000 Btu up to a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.
- For a solar thermal pool heater, the rebate amount was $100 per installation.

The rebate was available only for the purchase and installation between July 1, 2006, and June 30, 2010, for new solar energy systems of two kilowatts or larger for a solar photovoltaic system. A photovoltaic system is a solar energy system that provides at least 50 percent of a building's hot water consumption for a solar thermal system, or a solar thermal pool heater. Application for a rebate had to be made within 120 days after the purchase of the solar energy equipment.

The FECC was to determine and publish the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued was subject to the appropriations in any fiscal year for this program.

The Legislature provided annual funding for the program, as follows:

- FY 2006-07 $2.5 million in general revenue
- FY 2007-08 $3.5 million in general revenue
- FY 2008-09 $5.0 million in general revenue
- FY 2009-10 $14.4 million in federal American Recovery and Reinvestment Act (ARRA) 2009 funds

The program was more popular than anticipated. Additionally, the FECC did not announce that funds for the program had been depleted until several months after the fact. These factors contributed to a backlog of over 12,000 applications and approximately $49 million of rebate applications had accumulated as of October 2010. The rebate applications dated as far back as June 2009.[4]

[4] See http://freshfromflorida.s3.amazonaws.com/Office_of_Energy_Annual_Report_2011.pdf. (last visited Mar. 27, 2014).

Section 377.807, F.S., authorized the FECC to develop and administer a consumer rebate program for residential energy-efficient appliances consistent with federal law.[5] The Office of Energy applied for federal funds for this rebate program and received a U.S. Department of Energy (USDOE) ARRA Stimulus Grant of $17,585,000 to be used exclusively for ENERGY STAR appliance rebate programs. The rebate program consisted of two phases designed to focus on replacing appliances that provided savings in energy and water. In phase one, customers received a rebate for 20 percent of the value of their appliance. In addition, a bonus of $75 was provided to customers to recycle old appliances. At the conclusion of phase one, $2,531,143 million remained from the original grant. The USDOE suggested the Office of Energy use these funds and State Energy Program Grant funds to create a rebate program for air conditioning appliances. Phase two focused on residential central air conditioners and heat pumps. Customers received $1,500 for a combination of replacing appliances and having a home duct test completed. [6]

Florida Energy Systems Consortium

Section 1004.648, F.S., creates the Florida Energy Systems Consortium (FESC or consortium) to promote collaboration among experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state. The FESC is to focus on the research and development of innovative energy systems that will lead to alternative energy strategies, improved energy efficiencies, and expanded economic development for the state.

The FESC consists of all of the state universities and is administered by a director appointed by the president of the University of Florida. The director reports to the DACS. The consortium has an oversight board consisting of the vice president for research or other appropriate representative appointed by the university president of each member of the consortium. The oversight board is responsible for the technical performance and financial management of the FESC.

The goal of the FESC is to become a world leader in energy research, education, technology, and energy systems analysis through collaborative research and development across the State University System and the industry. In so doing, the FESC is to:

- Coordinate and initiate increased collaborative interdisciplinary energy research among the universities and the energy industry;
- Assist in the creation and development of a Florida-based energy technology industry through efforts that will expedite commercialization of innovative energy technologies by taking advantage of the energy expertise within the state university system, high-technology incubators, industrial parks, and industry-driven research centers;
- Provide a state resource for objective energy systems analysis;
- Develop education and outreach programs to prepare a qualified energy workforce and informed public; and

[5] Chapter 2009-36, Laws of Florida.
[6] http://freshfromflorida.s3.amazonaws.com/Office_of_Energy_Annual_Report_2011.pdf, pages 19-20, last accessed 2/21/1014.

- Solicit and leverage state, federal, and private funds for the purpose of conducting education, research, and development in the area of sustainable energy.

The statute creates a steering committee that is responsible for ensuring the success of the consortium's mission. The steering committee consists of the university representatives included in the Centers of Excellence proposals for the FESC and the Center of Excellence in Ocean Energy Technology-Phase II; a university representative appointed by the president of Florida International University; and a representative of the DACS.

The FESC must, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the DACS regarding its activities, including, but not limited to, education and research related to, and the development and deployment of, alternative energy technologies.

Florida Building Commission

Section 553.74, F.S., creates the Florida Building Commission (commission), which develops the Florida Building Code, including the Energy Efficiency Code for Building Construction. The commission approves products for statewide acceptance and administers the Building Code Training Program. The commission is composed of 26 members, appointed by the Governor subject to confirmation by the Senate. The membership must be composed of:

- One architect registered to practice in this state and actively engaged in the profession;
- One structural engineer registered to practice in this state and actively engaged in the profession;
- One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession;
- One electrical contractor certified to do business in this state and actively engaged in the profession;
- One member from fire protection engineering or technology who is actively engaged in the profession;
- One general contractor certified to do business in this state and actively engaged in the profession;
- One plumbing contractor licensed to do business in this state and actively engaged in the profession;
- One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession;
- One residential contractor licensed to do business in this state and actively engaged in the profession;
- Three members who are municipal or district codes enforcement officials, one of whom is also a fire official;
- One member who represents the Department of Financial Services;
- One member who is a county codes enforcement official;
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state;
- One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry;

- One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession;
- One member who is a representative of a municipality or a charter county;
- One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry;
- One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management;
- One member who is a representative of the insurance industry;
- One member who is a representative of public education;
- One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession;
- One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED);
- One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state; and
- One member who shall be the chair.

The commission, which is housed within the Department of Business and Professional Regulation, is a 26-member technical body responsible for the development, maintenance and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance and administers the Building Code Training Program.

Code Enforcement Notices

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. Pursuant to s. 162.12(1), F.S., notices may be provided by:

- Certified mail to the address listed in the tax collector's office for tax notices, or to any other address provided by the property owner in writing to the local government for the purpose of receiving notices. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs s. 162.12(2)(b)1. and 2., F.S;[7]
- Hand delivery by the sheriff, code inspector, or other designated person;
- Leaving the notice at the violator's residence with any person residing there above the age of 15; or,
- For commercial premises, leaving the notice with the manager or other person in charge.[8]

In addition to the noticing provisions outlined in s. 162.12(1), F.S., the code enforcement board may serve notice through publication or posting methods.[9]

[7] Relating to publication of notices and the physical posting of notices, respectively.
[8] *See* ss. 162.12(1)(b)-(d), F.S.
[9] *See* s.162.12(2), F.S.

Pool Construction and Operation in Florida

The DOH estimates that there are approximately 37,000 public pools in Florida.[10] A "public swimming pool" or "public pool" is defined as:

> A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.[11]

A "public bathing place" is defined as:

> A body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.[12]

In 2012, the Legislature determined that local building departments would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the DOH would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.[13] In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. Application for an operating permit must include the following:

- Description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- Method and manner of water purification, treatment, disinfection, and heating;
- Safety equipment and standards to be used; and
- Any other pertinent information deemed necessary by the DOH.[14]

[10] E-mail from DOH staff (March 27, 2014).
[11] Section 514.011(2), F.S.
[12] Section 514.011(4), F.S.
[13] Chapter 2012-184, Laws of Fla.
[14] Section 514.031(1), F.S.

If the DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and departmental rules, the DOH will issue a permit. However, if the DOH determines that the pool is not in compliance with state laws and departmental rules, the DOH will deny the application for a permit. The denial must be in writing and must list the circumstances for the denial. Upon correction of those circumstances, the applicant may reapply for a permit.[15] The operating permit must be renewed annually and posted in a conspicuous place.[16]

Manufactured Buildings and Building Modules per the Florida Building Code

Section 553.72, F.S., provides that the Florida Building Code (code) is "a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state," and its enforcement "will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer." The Florida Building Commission adopts requirements, within the Florida Building Code, for construction or modification of manufactured buildings and building modules, to address:[17]

- Submission to and approval by the department of manufacturers' drawings and specifications, including any amendments.
- Submission to and approval by the department of manufacturers' internal quality control procedures and manuals, including any amendments.
- Minimum inspection criteria.

"Manufactured building" or "modular building" means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured for installation or erection as a finished building or as part of a finished building, including, but not limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a manufacturer certified in conformance with this part, but does not include a mobile home.[18]

"Module" means a separately transported three-dimensional component of a manufactured building which contains all or a portion of structural systems, electrical systems, plumbing systems, mechanical systems, fire systems, and thermal systems.[19]

Florida Building Code Interpretation

Section 553.775, F.S., authorizes the Florida Building Code to be interpreted by building officials, local enforcement agencies, and the commission, and provides specific procedures to be used when interpreting the code.

[15] *Id.*
[16] Section 514.031(4), F.S.
[17] Section 553.37(1), F.S.
[18] Section 553.36(13), F.S.
[19] Section 553.36(15), F.S.

The Florida Accessibility Code for Building Construction (accessibility code), an element of the code, is adopted by the commission and prescribes requirements related to ensuring access for the disabled for new construction activity, including things such as ramps, door widths, and particular plumbing fixtures. The accessibility code combines requirements imposed by the federal regulations that implement the Americans with Disabilities Act and Florida-specific requirements described in part I of ch. 553, F.S.

In accordance with s. 120.565, F.S., the commission may render declaratory statements relating to the provisions of the accessibility code not attributable to the Americans with Disabilities Act Accessibility Guidelines. However, the accessibility code may not be interpreted by building officials, local enforcement agencies, and the commission.

Florida Building Code Compliance and Mitigation Program

The department administers the Florida Building Code Compliance and Mitigation Program, which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the Florida Building Code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.[20] The program is geared toward persons *licensed* in the design and construction industries, but does not address those *employed* in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with department.[21]

Building Energy-Efficiency Rating System

In 1993, the Legislature enacted the Florida Building Energy-Efficiency Rating Act[22] in order to identify systems for rating the energy efficiency of buildings, and encourage the consideration of energy-efficiency rating systems in the market.[23] The current statutory definition of such a rating system specifically relies upon identification by "the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Center."[24] Information about a building's energy-efficiency must be provided to a prospective purchaser of real property, if available. Prior to contracting for construction, renovation, or acquisition of a public building, the building must be rated pursuant to the system provided for in s. 553.995, F.S. Public bodies proposing to contract must consider energy-efficiency ratings when comparing contract alternatives.[25]

III. Effect of Proposed Changes:

Section 1 amends s. 162.12, F.S., to give local government the option of requiring a return receipt request when sending notices by certified mail to alleged violators of codes and ordinances.

[20] Section 553.841(2), F.S.
[21] Section 553.841(3), F.S.
[22] Chapter 93-249, s.12, Laws of Fla.
[23] Section 553.991, F.S.
[24] Section 553.993(3), F.S.
[25] Section 553.997(1), F.S.

Section 2 amends s. 373.323, F.S., to reduce the proof of experience required to obtain a license as a water-well contractor.

Section 3 amends s. 377.6015, F.S., to remove language stating that the Department of Agriculture and Consumer Services (DACS) is to represent Florida in the Southern Energy Compact.

Section 4 amends s. 377.703, F.S., regarding the additional duties of the DACS relating to energy by:

- Adding a requirement that the department's annual report to the Governor and the Legislature contain recommendations on energy efficiency as well as the current recommendations on energy conservation;
- Changing the requirements relating to the department's duties to promote solar energy to the promotion of renewable energy; and
- Adding the Florida Energy Systems Consortium to the list of entities the DACS is to cooperate with, in aiding and promoting the commercialization of renewable energy.

Section 5 amends s. 377.712, F.S., to authorize the Commissioner of Agriculture to appoint a member of the Southern States Energy Board, increasing the Florida membership to a total of four. Current law authorizes departments, agencies, and officers of this state, and its subdivisions to cooperate with the board in the furtherance of any of its activities pursuant to the compact, provided such proposed activities have been made known to and approved by either the Governor or the Department of Health. The bill changes the approval portion of this provision to approval by either the Governor or the Governor's appointee to the Board.

Section 6 amends s. 377.801, F.S., to change the designated sections of the statute that may be cited as the "Florida Energy and Climate Protection Act," conforming to the repeal of some sections previously included as part of that act.

Section 7 amends s. 377.802, F.S., to delete language that refers to the solar energy and energy-efficient appliance rebate programs as the existing statutes creating these rebates are repealed in section 9 of the bill.

Section 8 amends s. 377.803, F.S., to delete definitions contained in the Florida Energy and Climate Protection Act for the terms: "solar energy system," "solar photovoltaic system," and "solar thermal system."

Section 9 repeals sections 377.806 and 377.807, F. S., creating the solar energy and energy-efficient appliance rebate programs. These programs are no longer operational.

Section 10 creates s. 377.815, F.S., to authorize the DACS to post information on its website relating to alternative fueling stations and electric vehicle charging stations that are available to the public.

Section 11 amends s. 440.103, F.S., to allow proof that compensation has been secured for an employer's employees, which is required as a condition of applying for a building permit, to be

shown electronically or physically. It also cross references s. 553.79(19), F.S., and states that site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy.

Section 12 amends s. 514.0115, F.S., to allow the department, pursuant to procedures adopted in department rule, to grant variances from the provisions of the Florida Building Code relating to public swimming pools and bathing places when the owner establishes that compliance would be a hardship.

Section 13 amends s. 514.03, F.S., to require those desiring to construct, develop, or modify a public swimming pool to apply to the DOH for an operating permit before applying for a building permit. This section takes effect October 1, 2014.

Section 14 amends s. 514.031, F.S., to create additional requirements for an application for an operating permit for a public swimming pool. This section takes effect October 1, 2014.

Section 15 amends s. 553.37, F.S., to add inspection criteria that must be adopted by the Florida Building Commission within the Florida Building Code. The criteria require the approved inspection agency to do the following:

- Observe the first building built, or the first unit assembled with components, and all its subsystems, after certification of the manufacturer;
- Continue observation of the manufacturing process until the agency determines that the manufacturer's quality control program and the plans approved by the agency will result in a building and components that meet or exceed the applicable Florida Building Code requirements;
- Thereafter, with respect to manufactured buildings, inspect each module produced at least once during the manufacturing process and to inspect at least 75 percent of the subsystems of each module; and
- Inspect at least 75 percent of the manufactured building components or 20 percent of storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

Section 16 amends s. 553.721, F.S., to delete obsolete language.

Section 17 amends s. 553.73, F.S., to prohibit an agency or local government from requiring that existing mechanical equipment located on or above the surface of a roof comply with the requirements of the Florida Building Code relating to roof-mounted mechanical units except when the equipment is being replaced or is being removed during reroofing. The bill also provides that, in a single-family dwelling, make-up air is not required for range hood exhaust systems capable of exhausting either 400 cubic feet per minute or less or more than 400 cubic feet per minute but no more than 800 cubic feet per minute, if there are no gravity vent appliances within the conditioned living space of the structure.

Section 18 amends s. 553.74, F.S., to add one member to the Florida Building Commission who is a representative of the DACS' Office of Energy. The bill specifies the additional member be appointed by the Governor, and encourages the Commissioner of Agriculture to recommend a list of candidates for consideration.

Section 19 amends s. 553.77, F.S., to require building officials to recognize and enforce variance orders issued by Department of Health (DOH) relating to public swimming pools.

Section 20 amends 553.775, F.S., to authorize building officials, local enforcement agencies, and the commission to interpret the accessibility code and to remove language restricting declaratory statements to Florida-specific requirements of the accessibility code.

Section 21 amends s. 553.79, F.S., to allow site plans or building permits to be maintained at the worksite in the original form or in the form of an electronic copy. The section also prohibits a local enforcing agency from issuing a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit. A certificate of completion or occupancy may not be issued until the operating permit is issued. The local enforcing agency shall conduct their review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the DOH, if necessary, but may not delay the building permit application review while awaiting comment. This section takes effect October 1, 2014.

Section 22 amends s. 553.80, F.S., to make a technical change.

Section 23 amends s. 553.841, F.S., to revise education and training requirements of the Florida Building Code Compliance and Mitigation program. In addition to maintaining a thorough knowledge of the code, participants in the design and construction industry should have a thorough knowledge of:

- Code compliance and enforcement;
- Duties related to consumers;
- Project completion; and
- Compliance of design and construction to protect against consumer harm and storm damage.

The bill also contains a legislative finding that there is a need for the program to provide education and outreach concerning compliance with the Florida Fire Prevention Code, construction plan and permitting requirements, and construction liens. The bill further expands the program to include methods for design and construction compliance.

Section 24 amends s. 553.883, F.S., to provide that one-family and two-family dwellings and townhouses that are undergoing a repair may use smoke alarms with a non-removable, non-replaceable, 10-year battery, instead of hardwiring a smoke alarm into the electrical system. Effective January 15, 2015, a battery-powered smoke alarm that is newly installed or replaces an existing battery-powered smoke alarm must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least 10 years. All fire alarms, smoke detectors, smoke alarms, and ancillary components that are electronically connected to a system as part of an Underwriters Laboratories listed centrally-monitored fire alarm station are exempt from these battery requirements.

Section 25 amends s. 553.993, F.S., to revise the definition of the term "building energy-efficiency rating system" to require that the system include:

- The ability to provide reliable and scientifically-based analysis of a building's energy consumption or energy features;

- The ability to compare similar building types in similar climate zones;
- Use of standard calculations, formulas, and scoring methods;
- National applicability;
- Clearly defined and researched baselines or benchmarks;
- Ratings that are performed by qualified professionals;
- A labeling and recognition program with specific criteria or levels;
- Residential program benchmarks that must be consistent with national building standards and home energy rating standards; and
- At least one level of oversight performed by a group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods.

Section 26 amends s. 633.202, F.S., to exempt tents 30 feet by 30 feet or smaller from the Florida Fire Prevention Code.

Section 27 amends s. 633.212, F.S., to remove the requirement that a member of the Fire Code Interpretation Committee must notify the committee that he or she is unable to respond, before an alternate member can respond to a request for a nonbinding interpretation.

Section 28 amends s. 713.32, F.S., to allow an owner of improved real property and the insurer of that property to explicitly agree in writing to make payment on any claim to a third party. Currently, the insurer must pay the insured named in the policy.

Section 29 provides that, except as otherwise provided, this bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, section 6 of the Florida Constitution provides that "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The title of CS/CS/CS/SB 1044 states the bill relates to "building construction policies." CS/CS/CS/SB 1044 includes items relating to both building construction and energy policy that may implicate the requirements of Article III, section 6 of the state constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/CS/SB 1044 provides that a building energy-efficient rating system require at least one level of oversight performed by an organized and balanced group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods. This new requirement may create jobs for some professionals, but may exclude others operating under the current rating system, resulting in business and job loss.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 162.12, 373.323, 377.6015, 377.703, 377.712, 377.801, 377.802, 377.803, 553.74, 440.103, 514.0115, 514.03, 514.031, 553.37, 553.721, 553.73, 553.74, 553.77, 553.775, 553.79, 553.80, 553.841, 553.883, 553.993, 633.202, 633.212, and 713.32.

This bill creates section 377.815 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 377.806 and 377.807.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 24, 2014:
The Committee Substitute:

- Incorporates the provisions of CS/CS/SB 1106, relating to building construction, water well contractor licensing, public swimming pools, and payment of insurance proceeds on claims for damages to improved real property.

- Revises the method of appointment of a representative of the Department of Agriculture and Consumer Services to the Florida Building Commission.
- Authorizes an appointee of the Governor to approve proposed activities relating to the Southern States Energy Compact.

CS/CS by Agriculture on March 31, 2014:
A section of the CS made certain duties of the Florida Solar Energy Center permissive instead of mandatory and it removed the requirement that all solar systems manufactured or sold in Florida must be certified by the Florida Solar Energy Center. The CS/CS removes those provisions of the bill which will keep the present law "as is."

CS by Communications, Energy, and Public Utilities on March 11, 2014:
Corrects technical deficiencies identified in the pre-meeting bill analysis on the original bill and makes other technical changes.

B. Amendments:

None.

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

788564

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete line 153

and insert:

member appointed by the Governor ~~Department of~~

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

And the title is amended as follows:

Delete line 16

and insert:

788564

authorizing the member appointed by the Governor to approve proposed

810258

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 234 and 235
insert:

Section 10. Section 377.816, Florida Statutes, is created to read:

377.816 Qualified energy conservation bond allocation.—

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

(a) "Eligible issuer" means an entity that is created under or pursuant to the constitution or laws of this state and that

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is authorized by this state to issue bonds or enter into a lease-purchase agreement, or any other entity in this state authorized to issue qualified energy conservation bonds pursuant to the Internal Revenue Code.

(b) "Office" means the Office of Energy within the Department of Agriculture and Consumer Services.

(c) "Qualified energy conservation bond" means a bond described in 26 U.S.C. s. 54D(a).

(d) "Qualified project" means a project eligible to be financed pursuant to 26 U.S.C. s. 54D(f).

(2) ALLOCATION OF STATE VOLUME LIMITATION.—

(a) The office shall establish an allocation program for allocating or reallocating the qualified energy conservation bond volume limitation provided by 26 U.S.C. s. 54D. The allocation program must provide notification of all mandatory allocations required or authorized pursuant to the Internal Revenue Code.

1. All mandatory allocations pursuant to 26 U.S.C. s. 54D(e)(2)(A) shall be allocated to eligible issuers as provided therein.

2. An eligible issuer receiving a mandatory allocation pursuant to subparagraph 1. may elect to reallocate all or any portion of its allocation back to the state pursuant to 26 U.S.C. s. 54D(e)(2)(B).

(b) The office may reallocate to eligible issuers in the state any allocation that was retained by the state from the original federal allocation or any allocation that is waived by an eligible issuer pursuant to subparagraph (a)2.

(c) Each eligible issuer receiving an allocation shall

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notify the department in writing of the amount of bonds issued and any other information relating to the bonds or the allocation at such time and in such manner as is required by the office.

(d) A bond subject to the limitations provided in 26 U.S.C. s. 54D may not be issued in this state unless issued pursuant to this section.

(3) INFORMATION AVAILABILITY.—The office shall determine the amount of qualified energy conservation bond allocations for each qualified issuer in this state under 26 U.S.C. s. 54D and shall make such information available upon request to any person or agency.

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

And the title is amended as follows:

Between lines 29 and 30

insert:

creating s. 377.816, F.S.; defining terms; requiring the Office of Energy to establish a program for allocating or reallocating a federally qualified energy conservation bond volume limitation; providing program requirements;

331712

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment

Delete lines 347 - 352
and insert:
Agriculture and Consumer Services' Office of Energy. The Commissioner of Agriculture is encouraged to recommend a list of candidates for consideration.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete line 361
and insert:
Section 10. Section 162.12, Florida Statutes, is amended to read:
162.12 Notices.—
(1) All notices required by this part must be provided to the alleged violator by:
(a) Certified mail, and at the option of the local

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government return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

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2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 11. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure

examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from ~~three of the following persons:~~

~~a.~~ a water well contractor and a letter from~~.~~

~~b. A water well driller.~~

~~c. A water well parts and equipment vendor.~~

~~d.~~ a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 12. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and

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receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(19), for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 13. Subsection (5) of section 514.0115, Florida Statutes, is amended to read:

514.0115 Exemptions from supervision or regulation; variances.—

(5) The department may grant variances from any rule adopted under this chapter pursuant to procedures adopted by department rule. The department may also grant, pursuant to procedures adopted by department rule, variances from the provisions of the Florida Building Code specifically pertaining

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to public swimming pools and bathing places when requested by the pool owner or their representative to relieve hardship in cases involving deviations from the Florida Building Code provisions, when it is shown that the hardship was not caused intentionally by the action of the applicant, where no reasonable alternative exists, and the health and safety of the pool patrons is not at risk.

Section 14. Effective October 1, 2014, section 514.03, Florida Statutes, is amended to read:

514.03 Approval necessary to construct, develop, or modify public swimming pools or public bathing places.—

(1) A person or public body desiring to construct, develop, or modify a public swimming pool must submit an application, containing the information required under s. 514.031(1)(a)1.-5. to the department for an operating permit before filing an application for a building permit under s. 553.79. A copy of the final inspection required under s. 514.031(1)(a)6. shall be submitted to the department upon receipt by the applicant. The application shall be deemed incomplete pursuant to s. 120.60 until such copy is submitted to the department.

(2) Local governments or local enforcement districts may determine compliance with the general construction standards of the Florida Building Code, pursuant to s. 553.80. Local governments or local enforcement districts may conduct plan reviews and inspections of public swimming pools and public bathing places for this purpose.

Section 15. Effective October 1, 2014, paragraph (a) of subsection (1) of section 514.031, Florida Statutes, is amended, present paragraphs (b) and (c) of that subsection are

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redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection, to read:

514.031 Permit necessary to operate public swimming pool.—

(1) It is unlawful for any person or public body to operate or continue to operate any public swimming pool without a valid permit from the department, such permit to be obtained in the following manner:

(a) Any person or public body desiring to operate any public swimming pool shall file an application for an operating ~~a~~ permit with the department, on application forms provided by the department, and shall accompany such application with:

1. A description of the structure, its appurtenances, and its operation.

2.~~1.~~ A description of the source or sources of water supply, and the amount and quality of water available and intended to be used.

3.~~2.~~ The method and manner of water purification, treatment, disinfection, and heating.

4.~~3.~~ The safety equipment and standards to be used.

5. A copy of the final inspection from the local enforcement agency as defined in s. 553.71.

6.~~4.~~ Any other pertinent information deemed necessary by the department.

(b) The applicant shall respond to a request for additional information due to an incomplete application for an operating permit pursuant to s. 120.60. Upon receipt of an application, whether complete or incomplete, as required in s. 514.03 and as set forth under this section, the department shall review and provide to the local enforcement agency and the applicant any

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comment or proposed modifications on the information received pursuant to subparagraphs 1.-5.

Section 16. Paragraph (c) of subsection (1) of section 553.37, Florida Statutes, is amended to read:

553.37 Rules; inspections; and insignia.—

(1) The Florida Building Commission shall adopt within the Florida Building Code requirements for construction or modification of manufactured buildings and building modules, to address:

(c) ~~Minimum~~ Inspection criteria, which shall require the approved inspection agency to:

1. Observe the first building built, or with regard to components, observe the first unit assembled, after certification of the manufacturer, from start to finish, inspecting all subsystems: electrical, plumbing, structural, mechanical, or thermal.

2. Continue observation of the manufacturing process until the approved inspection agency determines that the manufacturer's quality control program, in conjunction with the application of the plans approved by the approved inspection agency, will result in a building and components that meet or exceed the applicable Florida Building Code requirements.

3. Thereafter, inspect each module produced during at least one point of the manufacturing process and inspect at least 75 percent of the subsystems of each module: electrical, plumbing, structural, mechanical, or thermal.

4. With respect to components, inspect at least 75 percent of the manufactured building components and at least 20 percent of the storage sheds that are not designed for human habitation

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and that have a floor area of 720 square feet or less.

Section 17. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. ~~Beginning in the 2013-2014 fiscal year,~~ Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be $925,000 each fiscal year. The funds collected from the

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surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 18. Subsection (15) of section 553.73, Florida Statutes, is amended, and subsection (18) is added to that section, to read:

553.73 Florida Building Code.—

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except when ~~until~~ the equipment is being ~~required to be removed or~~ replaced or moved during reroofing and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(18) In a single-family dwelling, make-up air is not required for range hood exhaust systems capable of exhausting:

(a) 400 cubic feet per minute or less; or

(b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

Section 19. Subsection (7) is added to section 553.77, Florida Statutes, to read:

553.77 Specific powers of the commission.—

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health pursuant to s.

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514.0155(5)(a), including any conditions attached to the granting of the variance.

Section 20. Section 553.775, Florida Statutes, is amended to read:

553.775 Interpretations.—

(1) It is the intent of the Legislature that the Florida Building Code and the Florida Accessibility Code for Building Construction be interpreted by building officials, local enforcement agencies, and the commission in a manner that protects the public safety, health, and welfare at the most reasonable cost to the consumer by ensuring uniform interpretations throughout the state and by providing processes for resolving disputes regarding interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction which are just and expeditious.

(2) Local enforcement agencies, local building officials, state agencies, and the commission shall interpret provisions of the Florida Building Code and the Florida Accessibility Code for Building Construction in a manner that is consistent with declaratory statements and interpretations entered by the commission, except that conflicts between the Florida Fire Prevention Code and the Florida Building Code shall be resolved in accordance with s. 553.73(11)(c) and (d).

(3) The following procedures may be invoked regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction:

(a) Upon written application by any substantially affected person or state agency or by a local enforcement agency, the commission shall issue declaratory statements pursuant to s.

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120.565 relating to the enforcement or administration by local governments of the Florida Building Code or the Florida Accessibility Code for Building Construction.

(b) When requested in writing by any substantially affected person or state agency or by a local enforcement agency, the commission shall issue a declaratory statement pursuant to s. 120.565 relating to this part and ss. 515.25, 515.27, 515.29, and 515.37. Actions of the commission are subject to judicial review under s. 120.68.

(c) The commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 business days.

1. The commission shall coordinate with the Building Officials Association of Florida, Inc., to designate panels composed of five members to hear requests to review decisions of local building officials. The members must be licensed as building code administrators under part XII of chapter 468 and must have experience interpreting and enforcing provisions of the Florida Building Code and the Florida Accessibility Code for Building Construction.

2. Requests to review a decision of a local building official interpreting provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction may be initiated by any substantially affected person, including an owner or builder subject to a decision of a local building

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official or an association of owners or builders having members who are subject to a decision of a local building official. In order to initiate review, the substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name and address of the county or municipality in which provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction are being interpreted.

b. The name and address of the local building official who has made the interpretation being appealed.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the local interpretation of the Florida Building Code or the Florida Accessibility Code for Building Construction.

d. A statement of the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which are being interpreted by the local building official.

e. A statement of the interpretation given to provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction by the local building official and the manner in which the interpretation was rendered.

f. A statement of the interpretation that the petitioner contends should be given to the provisions of the Florida Building Code or the Florida Accessibility Code for Building

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Construction and a statement supporting the petitioner's interpretation.

g. Space for the local building official to respond in writing. The space shall, at a minimum, require the local building official to respond by providing a statement admitting or denying the statements contained in the petition and a statement of the interpretation of the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which the local jurisdiction or the local building official contends is correct, including the basis for the interpretation.

3. The petitioner shall submit the petition to the local building official, who shall place the date of receipt on the petition. The local building official shall respond to the petition in accordance with the form and shall return the petition along with his or her response to the petitioner within 5 days after receipt, exclusive of Saturdays, Sundays, and legal holidays. The petitioner may file the petition with the commission at any time after the local building official provides a response. If no response is provided by the local building official, the petitioner may file the petition with the commission 10 days after submission of the petition to the local building official and shall note that the local building official did not respond.

4. Upon receipt of a petition that meets the requirements of subparagraph 2., the commission shall immediately provide copies of the petition to a panel, and the commission shall publish the petition, including any response submitted by the local building official, on the Building Code Information System

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in a manner that allows interested persons to address the issues by posting comments.

5. The panel shall conduct proceedings as necessary to resolve the issues; shall give due regard to the petitions, the response, and to comments posed on the Building Code Information System; and shall issue an interpretation regarding the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction within 21 days after the filing of the petition. The panel shall render a determination based upon the Florida Building Code or the Florida Accessibility Code for Building Construction or, if the code is ambiguous, the intent of the code. The panel's interpretation shall be provided to the commission, which shall publish the interpretation on the Building Code Information System and in the Florida Administrative Register. The interpretation shall be considered an interpretation entered by the commission, and shall be binding upon the parties and upon all jurisdictions subject to the Florida Building Code or the Florida Accessibility Code for Building Construction, unless it is superseded by a declaratory statement issued by the Florida Building Commission or by a final order entered after an appeal proceeding conducted in accordance with subparagraph 7.

6. It is the intent of the Legislature that review proceedings be completed within 21 days after the date that a petition seeking review is filed with the commission, and the time periods set forth in this paragraph may be waived only upon consent of all parties.

7. Any substantially affected person may appeal an interpretation rendered by a hearing officer panel by filing a

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petition with the commission. Such appeals shall be initiated in accordance with chapter 120 and the uniform rules of procedure and must be filed within 30 days after publication of the interpretation on the Building Code Information System or in the Florida Administrative Register. Hearings shall be conducted pursuant to chapter 120 and the uniform rules of procedure. Decisions of the commission are subject to judicial review pursuant to s. 120.68. The final order of the commission is binding upon the parties and upon all jurisdictions subject to the Florida Building Code or the Florida Accessibility Code for Building Construction.

8. The burden of proof in any proceeding initiated in accordance with subparagraph 7. is on the party who initiated the appeal.

9. In any review proceeding initiated in accordance with this paragraph, including any proceeding initiated in accordance with subparagraph 7., the fact that an owner or builder has proceeded with construction may not be grounds for determining an issue to be moot if the issue is one that is likely to arise in the future.

This paragraph provides the exclusive remedy for addressing requests to review local interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction and appeals from review proceedings.

(d) Upon written application by any substantially affected person, contractor, or designer, or a group representing a substantially affected person, contractor, or designer, the commission shall issue or cause to be issued a formal

interpretation of the Florida Building Code or the Florida Accessibility Code for Building Construction as prescribed by paragraph (c).

(e) Local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review under this subsection and may not be appealed to the commission if the local governing body finds that there is an immediate danger to the health and safety of the public.

(f) Upon written application by any substantially affected person, the commission shall issue a declaratory statement pursuant to s. 120.565 relating to an agency's interpretation and enforcement of the specific provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which the agency is authorized to enforce. This subsection does not provide any powers, other than advisory, to the commission with respect to any decision of the State Fire Marshal made pursuant to chapter 633.

(g) The commission may designate a commission member who has demonstrated expertise in interpreting building plans to attend each meeting of the advisory council created in s. 553.512. The commission member may vary from meeting to meeting, shall serve on the council in a nonvoting capacity, and shall receive per diem and expenses as provided in s. 553.74(3).

(h) The commission shall by rule establish an informal process of rendering nonbinding interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction. The commission is specifically authorized to refer interpretive issues to organizations that represent those engaged in the construction industry. The commission shall

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immediately implement the process before completing formal rulemaking. It is the intent of the Legislature that the commission create a process to refer questions to a small, rotating group of individuals licensed under part XII of chapter 468, to which a party may pose questions regarding the interpretation of code provisions. It is the intent of the Legislature that the process provide for the expeditious resolution of the issues presented and publication of the resulting interpretation on the Building Code Information System. Such interpretations shall be advisory only and nonbinding on the parties and the commission.

(4) In order to administer this section, the commission may adopt by rule and impose a fee for filing requests for declaratory statements and binding and nonbinding interpretations to recoup the cost of the proceedings which may not exceed $125 for each request for a nonbinding interpretation and $250 for each request for a binding review or interpretation. For proceedings conducted by or in coordination with a third party, the rule may provide that payment be made directly to the third party, who shall remit to the department that portion of the fee necessary to cover the costs of the department.

~~(5) The commission may render declaratory statements in accordance with s. 120.565 relating to the provisions of the Florida Accessibility Code for Building Construction not attributable to the Americans with Disabilities Act Accessibility Guidelines. Notwithstanding the other provisions of this section, the Florida Accessibility Code for Building Construction and chapter 11 of the Florida Building Code may not~~

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~~be interpreted by, and are not subject to review under, any of the procedures specified in this section. This subsection has no effect upon the commission's authority to waive the Florida Accessibility Code for Building Construction as provided by s. 553.512.~~

Section 21. Effective October 1, 2014, present subsections (11) through (18) of section 553.79, Florida Statutes, are redesignated as subsections (12) through (19), respectively, a new subsection (11) is added to that section, and present subsection (18) is amended, to read:

553.79 Permits; applications; issuance; inspections.—

(11) The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to s. 514.031. A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct their review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the Department of Health, if necessary, but may not delay the building permit application review while awaiting comment from the Department of Health.

(19) ~~(18)~~ For the purpose of inspection and record retention, site plans or building permits ~~for a building~~ may be maintained in the original form or in the form of an electronic copy at the worksite. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

Section 22. Paragraph (b) of subsection (6) of section

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553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(6) Notwithstanding any other law, state universities, community colleges, and public school districts shall be subject to enforcement of the Florida Building Code under this part.

(b) If a state university, state community college, or public school district elects to use a local government's code enforcement offices:

1. Fees charged by counties and municipalities for enforcement of the Florida Building Code on buildings, structures, and facilities of state universities, state colleges, and public school districts may not be more than the actual labor and administrative costs incurred for plans review and inspections to ensure compliance with the code.

2. Counties and municipalities shall expedite building construction permitting, building plans review, and inspections of projects of state universities, state community colleges, and public schools ~~school districts~~ that are subject to the Florida Building Code according to guidelines established by the Florida Building Commission.

3. A party substantially affected by an interpretation of the Florida Building Code by the local government's code enforcement offices may appeal the interpretation to the local government's board of adjustment and appeal or to the commission under s. 553.775 if no local board exists. The decision of a local board is reviewable in accordance with s. 553.775.

This part may not be construed to authorize counties, municipalities, or code enforcement districts to conduct any

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permitting, plans review, or inspections not covered by the Florida Building Code. Any actions by counties or municipalities not in compliance with this part may be appealed to the Florida Building Commission. The commission, upon a determination that actions not in compliance with this part have delayed permitting or construction, may suspend the authority of a county, municipality, or code enforcement district to enforce the Florida Building Code on the buildings, structures, or facilities of a state university, state community college, or public school district and provide for code enforcement at the expense of the state university, state community college, or public school district.

Section 23. Subsections (1) and (2) of section 553.841, Florida Statutes, are amended to read:

553.841 Building code compliance and mitigation program.—

(1) The Legislature finds that knowledge and understanding by persons licensed or employed in the design and construction industries of the importance and need for complying with the Florida Building Code and related laws is vital to the public health, safety, and welfare of this state, especially for protecting consumers and mitigating damage caused by hurricanes to residents and visitors to the state. The Legislature further finds that the Florida Building Code can be effective only if all participants in the design and construction industries maintain a thorough knowledge of the code, code compliance and enforcement, duties related to consumers, and changes that ~~additions thereto which~~ improve construction standards, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage.

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Consequently, the Legislature finds that there is a need for a program to provide ongoing education and outreach activities concerning compliance with the Florida Building Code, the Florida Fire Prevention Code, construction plan and permitting requirements, construction liens, and hurricane mitigation.

(2) The Department of Business and Professional Regulation shall administer a program, designated as the Florida Building Code Compliance and Mitigation Program, to develop, coordinate, and maintain education and outreach to persons required to comply with the Florida Building Code and related provisions as specified in subsection (1) and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for design and construction compliance and mitigation of storm-related damage. The program shall also operate a clearinghouse through which design, construction, and building code enforcement licensees, suppliers, and consumers in this state may find others in order to exchange information relating to mitigation and facilitate repairs in the aftermath of a natural disaster.

Section 24. Section 553.883, Florida Statutes, is created to read:

553.883 Smoke alarms in one-family and two-family dwellings and townhomes.—One-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Florida Building Code, may use smoke alarms powered by 10-year nonremovable, nonreplaceable batteries in lieu of retrofitting such dwelling with smoke alarms powered by the dwelling's electrical system. Effective January 1, 2015, a battery-powered smoke alarm that is newly installed or replaces an existing

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battery-powered smoke alarm must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least 10 years. All fire alarms, smoke detectors, smoke alarms, and ancillary components that are electronically connected to a system as part of a UL Listed centrally-monitored fire alarm station are exempt from the battery requirements of this section.

Section 25. Subsection (3) of section 553.993, Florida Statutes, is amended to read:

553.993 Definitions.—For purposes of this part:

(3) "Building energy-efficiency rating system" means a whole building energy evaluation system that provides a reliable and scientifically-based analysis of a building's energy consumption or energy features and allows a comparison to similar building types in similar climate zones where applicable. Specifically, the rating system shall use standard calculations, formulas, and scoring methods; be applicable nationally; compare a building to a clearly defined and researched baseline or benchmark; require qualified professionals to conduct the rating or assessment; and provide a labeling and recognition program with specific criteria or levels. Residential program benchmarks for new construction must be consistent with national building standards. Residential building program benchmarks for existing construction must be consistent with national home energy rating standards. The building energy-efficiency rating system shall require at least one level of oversight performed by an organized and balanced group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods ~~established by~~

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~~the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy Center~~.

Section 26. Subsection (15) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(15)~~(a)~~ For one-story or two-story structures that are less than 10,000 square feet, whose occupancy is defined in the Florida Building Code and the Florida Fire Prevention Code as business or mercantile, a fire official shall enforce the wall fire-rating provisions for occupancy separation as defined in the Florida Building Code.

(16)(a)~~(b)~~ A structure, located on property that is classified for ad valorem purposes as agricultural, which is part of a farming or ranching operation, in which the occupancy is limited by the property owner to no more than 35 persons, and which is not used by the public for direct sales or as an educational outreach facility, is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference. This paragraph does not include structures used for residential or assembly occupancies, as defined in the Florida Fire Prevention Code.

(b) A tent up to 30 feet by 30 feet is exempt from the Florida Fire Prevention Code, including the national codes incorporated by reference.

Section 27. Subsection (1) of section 633.212, Florida Statutes, is amended to read:

633.212 Legislative intent; informal interpretations of the Florida Fire Prevention Code.—It is the intent of the

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Legislature that the Florida Fire Prevention Code be interpreted by fire officials and local enforcement agencies in a manner that reasonably and cost-effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations. It is the further intent of the Legislature that such processes provide for the expeditious resolution of the issues presented and that the resulting interpretation of such issues be published on the website of the division.

(1) The division shall by rule establish an informal process of rendering nonbinding interpretations of the Florida Fire Prevention Code. The division may contract with and refer interpretive issues to a third party, selected based upon cost effectiveness, quality of services to be performed, and other performance-based criteria, which has experience in interpreting and enforcing the Florida Fire Prevention Code. It is the intent of the Legislature that the division establish a Fire Code Interpretation Committee composed of seven persons and seven alternates, equally representing each area of the state, to which a party can pose questions regarding the interpretation of the Florida Fire Prevention Code provisions. The alternate member may respond to a nonbinding interpretation if a ~~the~~ member ~~notifies the Fire Code Interpretation Committee that he or she~~ is unable to respond.

Section 28. Section 713.32, Florida Statutes, is amended to read:

713.32 Insurance proceeds liable for demands.—The proceeds of any insurance that by the terms of the policy contract are

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payable to the owner of improved real property or a lienor and actually received or to be received by him or her because of the damage, destruction, or removal by fire or other casualty of an improvement on which lienors have furnished labor or services or materials shall, after the owner or lienor, as the case may be, has been reimbursed therefrom for any premiums paid by him or her, be liable to liens or demands for payment provided by this part to the same extent and in the same manner, order of priority, and conditions as the real property or payments under a direct contract would have been, if the improvement had not been so damaged, destroyed, or removed. The insurer may only pay the proceeds of the policy of insurance to the insured named in the policy or to an entity that the owner and the insurer have explicitly agreed to in writing before payment and thereupon any liability of the insurer under this part shall cease. The named insured who receives any proceeds of the policy shall be deemed a trustee of the proceeds, and the proceeds shall be deemed trust funds for the purposes designated by this section for a period of 1 year from the date of receipt of the proceeds. This section shall not apply to that part of the proceeds of any policy of insurance payable to a person, including a mortgagee, who holds a lien perfected before the recording of the notice of commencement or recommencement.

Section 29. Except as otherwise provided in this act, this act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete lines 2 - 37

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and insert:

An act relating to building construction policies; amending s. 377.6015, F.S.; removing a provision relating to representation in the Southern States Energy Compact; amending s. 377.703, F.S.; requiring the Department of Agriculture and Consumer Services to include in its annual report recommendations for energy efficiency; expanding the promotion of the development and use of renewable energy resources from goals related to solar energy to renewable energy in general; requiring the department to cooperate with the Florida Energy Systems Consortium in the development and use of renewable energy resources; amending s. 377.712, F.S.; authorizing the Commissioner of Agriculture to appoint a member to the Southern States Energy Board; authorizing the department to approve proposed activities relating to furtherance of the Southern States Energy Compact; amending s. 377.801, F.S.; conforming a cross-reference; amending s. 377.802, F.S.; amending the purpose of the Florida Energy and Climate Protection Act; amending s. 377.803, F.S.; conforming provisions to changes made by the act; creating s. 377.815, F.S.; authorizing the department to post on its website information relating to alternative fueling stations or electric vehicle charging stations; defining the term “alternative fuel”; authorizing the owner or operator of an alternative fueling station or an electric vehicle charging station to report certain

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information; amending s. 553.74, F.S.; adding a member to the Florida Building Commission as a representative of the Department of Agriculture and Consumer Services' Office of Energy; deleting obsolete provisions; repealing ss. 377.806 and 377.807, F.S., relating to the Solar Energy System Incentives Program and the Energy-Efficient Appliance Rebate Program, respectively; amending s. 162.12, F.S.; providing an additional method for local governments to provide notices to alleged code enforcement violators; amending s. 373.323, F.S.; revising the requirements of an applicant to take the water well contractor licensure examination; amending s. 440.103, F.S.; authorizing an employer to present certain documents electronically or physically in order to show proof and certify to the permit issuer that it has secured compensation for its employees; authorizing site plans or electronically transferred building permits to be maintained at the worksite in their original form or by electronic copy; requiring such plans or permits to be open to inspection by the building official or authorized representative; amending s. 514.0115, F.S.; authorizing the Department of Health to grant certain variances relating to public swimming pools and bathing places; amending s. 514.03, F.S.; requiring application for an operating permit before filing an application for a building permit for a public swimming pool; amending s. 514.031, F.S.; providing additional requirements for obtaining a public

swimming pool operating permit; providing a procedure for an applicant to respond to a request for additional information; requiring the Department of Health to review and provide to the local enforcement agency and the applicant any comments or proposed modifications to information submitted in the application; amending s. 553.37, F.S.; specifying inspection criteria for construction or modification of manufactured buildings or modules; amending s. 553.721, F.S.; making a technical change; amending s. 553.73, F.S.; authorizing an agency or local government to require rooftop equipment to be installed in compliance with the Florida Building Code if the equipment is being replaced or removed during reroofing and is not in compliance with the Florida Building Code's roof-mounted mechanical units requirements; providing that make-up air is not required for certain range hood exhaust systems; amending s. 553.77, F.S.; requiring building officials to recognize and enforce certain variance orders issued by the Department of Health; amending s. 553.775, F.S.; authorizing building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction; specifying procedures for such interpretations; deleting provisions relating to declaratory statements and interpretations of the Florida Accessibility Code for Building Construction, to conform; amending s. 553.79, F.S.; prohibiting a

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local enforcing agency from issuing a building permit for a public swimming pool without proof of application for an operating permit; requiring issuance of an operating permit before a certificate of completion or occupancy is issued; requiring the local enforcing agency to review the building permit application upon filing; authorizing such agency to confer with the Department of Health if it doesn't delay review of the application; authorizing site plans or building permits to be maintained at the worksite in their original form or in the form of an electronic copy; requiring the permit to be open to inspection; amending s. 553.80, F.S.; requiring counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of certain public schools, rather than certain public school districts; amending s. 553.841, F.S.; revising education and training requirements of the Florida Building Code Compliance and Mitigation Program; creating s. 553.883, F.S.; authorizing use of smoke alarms powered by 10-year nonremovable, nonreplaceable batteries in certain circumstances; requiring use of such alarms by a certain date; providing an exemption; amending s. 553.993, F.S.; revising the definition of the term "building energy-efficiency rating system" to require consistency with certain national standards for new construction and existing construction; providing for oversight; amending s. 633.202, F.S.; exempting

certain tents from the Florida Fire Prevention Code; amending s. 633.212, F.S.; removing the requirement that an alternate member of the Fire Code Interpretation Committee provide notice to the committee in order to respond to a nonbinding interpretation when a member is unable to respond; amending s. 713.32, F.S.; revising the payment of proceeds of an insurance policy on real property; providing effective dates.

By the Committees on Agriculture; and Communications, Energy, and Public Utilities; and Senator Simpson

A bill to be entitled

An act relating to energy policies; amending s. 377.6015, F.S.; removing a provision relating to representation in the Southern States Energy Compact; amending s. 377.703, F.S.; requiring the Department of Agriculture and Consumer Services to include in its annual report recommendations for energy efficiency; expanding the promotion of the development and use of renewable energy resources from goals related to solar energy to renewable energy in general; requiring the department to cooperate with the Florida Energy Systems Consortium in the development and use of renewable energy resources; amending s. 377.712, F.S.; authorizing the Commissioner of Agriculture to appoint a member to the Southern States Energy Board; authorizing the department to approve proposed activities relating to furtherance of the Southern States Energy Compact; amending s. 377.801, F.S.; conforming a cross-reference; amending s. 377.802, F.S.; amending the purpose of the Florida Energy and Climate Protection Act; amending s. 377.803, F.S.; conforming provisions to changes made by the act; creating s. 377.815, F.S.; authorizing the department to post on its website information relating to alternative fueling stations or electric vehicle charging stations; defining the term "alternative fuel"; authorizing the owner or operator of an alternative fueling station or an electric vehicle charging station to report certain information;

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amending s. 553.74, F.S.; adding a member to the Florida Building Commission as a representative of the Department of Agriculture and Consumer Services' Office of Energy; deleting obsolete provisions; repealing ss. 377.806 and 377.807, F.S., relating to the Solar Energy System Incentives Program and the Energy-Efficient Appliance Rebate Program, respectively; providing an effective date.

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

Section 1. Paragraphs (f) through (i) of subsection (2) of section 377.6015, Florida Statutes, are redesignated as paragraphs (e) through (h), respectively, and present paragraph (e) of that section is amended to read:

377.6015 Department of Agriculture and Consumer Services; powers and duties.—

(2) The department shall:

~~(e) Represent Florida in the Southern States Energy Compact pursuant to ss. 377.71-377.712.~~

Section 2. Paragraphs (f), (h), and (i) of subsection (2) of section 377.703, Florida Statutes, are amended to read:

377.703 Additional functions of the Department of Agriculture and Consumer Services.—

(2) DUTIES.—The department shall perform the following functions, unless as otherwise provided, consistent with the development of a state energy policy:

(f) The department shall submit an annual report to the Governor and the Legislature reflecting its activities and

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making recommendations for ~~of~~ policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the residents of this state ~~people of Florida~~. The report must ~~shall~~ include a report from the Florida Public Service Commission on electricity and natural gas and information on energy conservation programs conducted and underway in the past year and ~~shall~~ include recommendations for energy efficiency and conservation programs for the state, including~~, but not limited to, the following factors~~:

1. Formulation of specific recommendations for improvement in the efficiency of energy utilization in governmental, residential, commercial, industrial, and transportation sectors.

2. Collection and dissemination of information relating to energy efficiency and conservation.

3. Development and conduct of educational and training programs relating to energy efficiency and conservation.

4. An analysis of the ways in which state agencies are seeking to implement s. 377.601(2), the state energy policy, and recommendations for better fulfilling this policy.

(h) The department shall promote the development and use of renewable energy resources, in conformance with chapter 187 and s. 377.601, by:

1. Establishing goals and strategies for increasing the use of renewable ~~solar~~ energy in this state.

2. Aiding and promoting the commercialization of renewable energy resources ~~solar energy technology~~, in cooperation with the Florida Energy Systems Consortium, the Florida Solar Energy Center, Enterprise Florida, Inc., and any other federal, state, or local governmental agency that ~~which~~ may seek to promote

research, development, and the demonstration of renewable ~~solar~~ energy equipment and technology.

3. Identifying barriers to greater use of renewable energy resources ~~solar energy systems~~ in this state, and developing specific recommendations for overcoming identified barriers, with findings and recommendations to be submitted annually in the report to the Governor and Legislature required under paragraph (f).

4. In cooperation with the Department of Environmental Protection, the Department of Transportation, the Department of Economic Opportunity, Enterprise Florida, Inc., the Florida Energy Systems Consortium, the Florida Solar Energy Center, and the Florida Solar Energy Industries Association, investigating opportunities, pursuant to the national Energy Policy Act of 1992, the Housing and Community Development Act of 1992, and any subsequent federal legislation, for renewable energy resources, ~~solar~~ electric vehicles, and other renewable ~~solar~~ energy manufacturing, distribution, installation, and financing efforts that ~~which will~~ enhance this state's position as the leader in renewable ~~solar~~ energy research, development, and use.

5. Undertaking other initiatives to advance the development and use of renewable energy resources in this state.

In the exercise of its responsibilities under this paragraph, the department shall seek the assistance of the renewable ~~solar~~ energy industry in this state and other interested parties and may ~~is authorized to~~ enter into contracts, retain professional consulting services, and expend funds appropriated by the Legislature for such purposes.

(i) The department shall promote energy efficiency and conservation in all energy use sectors throughout the state and be ~~shall constitute~~ the state agency primarily responsible for this function. The Department of Management Services, in consultation with the department, shall coordinate the energy conservation programs of all state agencies and review and comment on the energy conservation programs of all state agencies.

Section 3. Section 377.712, Florida Statutes, is amended to read:

377.712 Florida participation.—

(1)(a) The Governor shall appoint one member of the Southern States Energy Board. The member or the Governor may designate another person as the deputy or assistant to such member.

(b) The Commissioner of Agriculture may appoint one member of the Southern States Energy Board. The member or the commissioner may designate another person as the assistant or deputy to such member.

(c) ~~(b)~~ The President of the Senate shall appoint one member of the Southern States Energy Board. The member or the president may designate another person as the assistant or deputy to such member.

(d) ~~(c)~~ The Speaker of the House of Representatives shall appoint one member of the Southern States Energy Board. The member or the speaker may designate another person as the assistant or deputy to such member.

(2) Any supplementary agreement entered into under s. 377.711(6) requiring the expenditure of funds may ~~shall~~ not

become effective as to Florida until the required funds are appropriated by the Legislature.

(3) Departments, agencies, and officers of this state, and its subdivisions are authorized to cooperate with the board in the furtherance of ~~any of~~ its activities pursuant to the compact, provided such proposed activities have been made known to, and have the approval of, ~~either~~ the Governor or the Department of Agriculture and Consumer Services ~~Department of Health~~.

Section 4. Section 377.801, Florida Statutes, is amended to read:

377.801 Short title.—Sections 377.801-377.804 ~~377.801-377.807~~ may be cited as the "Florida Energy and Climate Protection Act."

Section 5. Section 377.802, Florida Statutes, is amended to read:

377.802 Purpose.—This act is intended to provide incentives for Florida's citizens, businesses, school districts, and local governments to take action to diversify the state's energy supplies, reduce dependence on foreign oil, and mitigate the effects of climate change by providing funding for activities designed to achieve these goals. The grant programs in this act are intended to stimulate capital investment in and enhance the market for renewable energy technologies and technologies intended to diversify Florida's energy supplies, reduce dependence on foreign oil, and combat or limit climate change impacts. ~~This act is also intended to provide incentives for the purchase of energy efficient appliances and rebates for solar energy equipment installations for residential and commercial~~

~~buildings.~~

Section 6. Section 377.803, Florida Statutes, is amended to read:

377.803 Definitions.—As used in ss. 377.801-377.804 ~~ss. 377.801-377.807~~, the term:

(1) "Act" means the Florida Energy and Climate Protection Act.

(2) "Department" means the Department of Agriculture and Consumer Services.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.

(4) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in s. 366.91, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

(5) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.

~~(6) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that would normally require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.~~

~~(7) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.~~

~~(8) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.~~

Section 7. Section 377.815, Florida Statutes, is created to read:

377.815 Alternative fueling stations and electric vehicle charging stations.—The Department of Agriculture and Consumer Services may post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use in this state.

(1) As used in this section, the term "alternative fuel" means nontraditional transportation fuel, such as pure methanol, ethanol, and other alcohols; blends of 85 percent or more of alcohol with gasoline; natural gas and liquid fuels domestically produced from natural gas; liquefied petroleum gas; coal-derived liquid fuels; hydrogen; electricity; pure biodiesel; fuels, other than alcohol, derived from biological materials; and P-series fuels.

(2) An owner or operator of an alternative fueling station that is available in this state may report the following information to the department:

(a) The type of alternative fuel available;

(b) The station's name, address, or location; or

(c) The fees or costs associated with the alternative fuel that is available for purchase.

(3) The owner or operator of an electric vehicle charging station that is available in this state may report the following information to the department:

(a) The station's name, address, or location; or

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(b) The fees or costs, if any, associated with the electric vehicle charging services provided by the station.

Section 8. Subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation for administrative purposes. Members are appointed by the Governor subject to confirmation by the Senate. The commission is composed of 27 ~~26~~ members, consisting of the following:

(a) One architect registered to practice in this state and actively engaged in the profession. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors Association, the Florida Refrigeration and Air Conditioning Contractors Association, and the Mechanical Contractors Association of Florida are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor certified to do business in this state and actively engaged in the profession. The Florida Association of Electrical Contractors ~~Association~~ and the National Electrical Contractors Association, Florida Chapter,

are encouraged to recommend a list of candidates for consideration.

(e) One member from fire protection engineering or technology who is actively engaged in the profession. The Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(f) One general contractor certified to do business in this state and actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(g) One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is encouraged to recommend a list of candidates for consideration.

(h) One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors' ~~Contractors~~ National Association are encouraged to recommend a list of candidates for consideration.

(i) One residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(j) Three members who are municipal or district codes enforcement officials, one of whom is also a fire official. The

Building Officials Association of Florida and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(k) One member who represents the Department of Financial Services.

(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.

(m) One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.

(n) One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

(o) One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(p) One member who is a representative of a municipality or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.

(q) One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry. The Florida Building Material Association, the Florida Concrete and Product ~~Products~~ Association, and the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.

(r) One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(s) One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

(t) One member who is a representative of public education.

(u) One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).

(w) One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

(x) One member who is a representative of the Department of Agriculture and Consumer Services' Office of Energy who is appointed from a list of three nominees provided by the

Commissioner of Agriculture. If the Governor refuses to appoint a nominee within 60 days after receipt of such list, the Governor shall inform the commissioner and the commissioner shall submit a new list of three nominees.

(y) ~~(x)~~ One member who shall be the chair.

~~Any person serving on the commission under paragraph (c) or paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.~~

Section 9. Sections 377.806 and 377.807, Florida Statutes, are repealed.

Section 10. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Energy Policies

Bill Number SB 1044 *(if applicable)*

Name Jonathan Rees

Amendment Barcode _____ *(if applicable)*

Job Title Deputy Legislative Affairs Director

Address 400 S. Monroe St.
Street
Tallahassee FL 32399
City *State* *Zip*

Phone (850) 617-7700

E-mail Jonathan.Rees@FreshFromFlorida.com

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

Representing Florida Department of Agriculture and Consumer Services

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-22-2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

Topic Energy — Bill Number CS/CS/SB 1044 *(if applicable)*

Name Susan Glickman — Amendment Barcode _____ *(if applicable)*

Job Title Florida Director

Address PO Box 310 *Street* — Phone 727-742-9003

Indian Rocks Bch FL 33785 *City State Zip* — E-mail susan@cleanenergy.org

Speaking: ☐ For ☐ Against ☐ Information

Representing Southern Alliance for Clean Energy

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1068
INTRODUCER:	Health Policy Committee and Senator Latvala
SUBJECT:	Massage Therapy
DATE:	April 23, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Fav/CS**
2.	Brown	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1068 requires applicants for licensure as a massage therapist and certain persons with ownership in or management responsibilities for a massage establishment to submit to background screening. The bill requires the Board of Massage Therapy (board) and the Department of Health (DOH) to deny an application for new or renewal licensure under ch. 480, F.S., if any person who is screened is determined to have been convicted of or entered a plea of guilty or nolo contendere to specified criminal acts. The bill also requires the DOH to suspend the license of a massage therapist or massage establishment if it learns that the massage therapist or person who is subject to background screening for the massage establishment license has been convicted of or entered a plea of guilty or nolo contendere to one of the specified criminal acts. The bill exempts specified physician-owned entities from the massage establishment licensure requirements.

The Florida Department of Law Enforcement (FDLE) anticipates an increase in Operating Trust Fund revenue of approximately $3 million in Fiscal Year 2014-2015 under the bill and approximately $283,000 in subsequent years. The FDLE anticipates that additional workload created under the bill can be absorbed within existing FDLE spending authority.
The DOH anticipates that additional workload created under the bill can be absorbed within existing DOH spending authority.

II. Present Situation:

Florida Regulation of Massage Therapists and Massage Establishments

Massage therapists and massage establishments in Florida are regulated by the Board of Massage Therapy within the Department of Health (DOH) under the Massage Practice Act (ch. 480, F.S.). A person must be licensed as a massage therapist to practice massage for compensation, unless otherwise specifically exempted under the Massage Practice Act.[1] In order to be licensed as a massage therapist, an applicant must: [2]

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a massage school approved by the board or apprenticeship program; and
- Pass an examination.

Licensed massage therapists may practice in a licensed massage establishment, at a client's residence or office, or at a sports event, convention, or trade show.[3] Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in sexual activity outside the scope of the profession, is prohibited.[4]

Section 480.43, F.S., provides that a massage establishment license is required at any facility where massage therapy services are offered by a licensed massage therapist. Massage establishment licenses may not be transferred to a new owner but may be transferred to a new location, subject to certain conditions. The board's rules address insurance, compliance with building codes, and safety and sanitary requirements,[5] and require that massage therapy establishments be inspected prior to initial licensure and annually thereafter.[6]

The next biennial renewal date for licenses issued under the Massage Practice Act is August 31, 2015.[7]

The Care Provider Background Screening Clearinghouse

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (clearinghouse). The clearinghouse establishes a single data source for background screening results of persons required to be screened by law for employment in positions that provide services to children, the elderly, and disabled individuals.[8] The clearinghouse also allows the results of criminal history checks to be shared among specified state agencies,[9] thereby reducing duplicative screenings for individuals requiring multiple screenings by multiple agencies.

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[1] s. 480.047(1)(a), F.S.; s. 480.034, F.S.
[2] s. 480.041 and 480.042, F.S.
[3] S. 480.046(1)(n), F.S.
[4] s. 480.0485, F.S.
[5] Rule 64B7-26.003, F.A.C.
[6] See Rules 64B7-26.004 and 64B7-26.004, F.A.C.
[7] Florida Department of Health, Board of Massage Therapy, *Renewal Information* http://floridasmassagetherapy.gov/renewals/ (last visited March 10, 2014).
[8] s. 435.12(1), F.S
[9] *Id.*

Fingerprints submitted for inclusion in the clearinghouse are sent to the FDLE electronically as a scanned image and retained by the FDLE for five years, subject to further retention on a renewal basis.[10] The FDLE searches the retained prints against incoming Florida arrests and must report the results to the Agency for Health Care Administration (AHCA) for inclusion in the clearinghouse, thus avoiding the need for future state screens and related fees. A digital photograph of the person screened is taken at the time the fingerprints are taken and retained by the FDLE in electronic format as well. This enables accurate identification of the person when he or she changes jobs or is otherwise presented with a situation requiring screening. Retained fingerprints must be resubmitted for a Federal Bureau of Investigation (FBI) national criminal history check every five years until such time as the FBI implements its own retention program. Once the FBI implements its retention program, the need for any future screening by the specified agencies of persons in the clearinghouse will be eliminated.[11]

The clearinghouse is in the process of being implemented by six designated state agencies. Currently, the clearinghouse is active and being used by the AHCA and the DOH.[12]

Health Practitioner Background Screening

Current law requires physicians, chiropractors, podiatrists, nurses, specified persons in connection with an application for a pharmacy permit, and persons licensed or registered under part XIV of ch. 468, F.S.,[13] to submit to background screening as a condition of licensure[14] and, in some cases, licensure renewal.[15] The fingerprints of all of these practitioners are currently entered into the clearinghouse.[16] In addition, some health care practitioners may be required to undergo background screening as a condition of employment or volunteer service in a facility or with an organization that provides care to children, the elderly, or persons with disabilities.[17]

Massage therapists and the owners or operators of massage establishments do not undergo a criminal background screening prior to licensure. Applicants are required to self-report criminal offenses on their applications,[18] and licensees must self-report subsequent violations to the DOH within 30 days after conviction.[19]

III. Effect of Proposed Changes:

Section 1 amends s. 456.0135, F.S., to add applicants for licensure as massage therapists or persons with specified interests or positions in a massage establishment under ch. 480, F.S., to the list of applicants required to provide electronic fingerprints to the FDLE for an FBI national

[10] s. 435.12(2)(a), F.S.
[11] Florida Senate, *CS/CS/SB 320*, 8 (Feb. 28, 2012), *available at* http://www.flsenate.gov/Session/Bill/2012/0320/Analyses/2012s0320.bha.PDF (last visited March 7, 2014).
[12] *See* Agency for Health Care Administration, *Care Provider Background Screening Clearinghouse* http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/BGS_results.shtml, (last visited March 8, 2014).
[13] Orthotists, prosthetists, pedorthists, orthotic fitters, orthotic fitter assistants, and orthotist and prosthetist residents.
[14] *See* ss. 458.311(1)(g), 459.0055(1)(j), 460.406(2)(f), 461.006(1)(e), 464.008(1)(b), 464.009(4), 465.022
[15] ss. 456.039(4)(a), F.S.
[16] Conversation with Jennifer Wenhold, Florida Department of Health (March 7, 2014).
[17] *See, e.g.*, s. 943.0542, F.S.
[18] Florida Department of Health, *SB 1086 Bill Analysis* (Feb. 18, 2014) (on file with the Senate Health Policy Committee).
[19] s. 456.072(1)(x), F.S.

criminal history check. The bill also requires that all fingerprints submitted to the FDLE must be retained by the FDLE and enrolled in the national retained fingerprint arrest notification program. The DOH is not required to request that the FDLE forward retained prints of an applicant for renewal to the FBI if the fingerprints are already enrolled in the national program. The bill adds a specific requirement for the DOH to submit the fingerprints of all practitioners subject to this section to the clearinghouse.

Section 2 amends s. 456.074, F.S., to require the DOH to issue an emergency order suspending the license of a massage therapist or massage establishment when it learns that the massage therapist or person who is subject to background screening in connection with the massage establishment license has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following Florida laws or similar provision in another jurisdiction:

- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025, F.S., relating to luring or enticing a child;
- Section 787.06, F.S., relating to human trafficking;
- Section 787.07, F.S., relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery;
- Section 794.08, F.S., relating to female genital mutilation;
- Section 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Section 796.035, F.S., relating to the selling or buying of minors into prostitution;
- Section 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, F.S. relating to deriving support from the proceeds of a prostitute;
- Section 796.07(4)(c), F.S., relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 825.1025(2)(b), F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.0133, F.S., relating to the protection of minors;
- Section 847.0135, F.S., relating to computer pornography;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor by electronic device or equipment; or
- Section 847.0145, F.S., relating to the selling or buying of minors.

Section 3 amends s. 480.041, F.S., to require applicants for licensure or renewal licensure as a massage therapist to submit to background screening. Massage therapists licensed before July 1, 2014, must submit to background screening by January 31, 2015. The board is required to deny an application for licensure under the same circumstances and for the same crimes enumerated in Section 2 of the bill.

Section 4 amends s. 480.043, F.S., to require a person who has an ownership interest in a massage establishment to submit to background screening. If a corporation submits proof, as

determined by DOH rule, of having more than $250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of the massage establishment must submit to background screening. The board is required to deny an application for new or renewal licensure if a person with an ownership interest in the massage establishment, or for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the massage establishment, has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following Florida laws or similar provision in another jurisdiction:

- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025, F.S., relating to luring or enticing a child;
- Section 787.06, F.S., relating to human trafficking;
- Section 787.07, F.S., relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery;
- Section 794.08, F.S., relating to female genital mutilation;
- Section 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Section 796.035, F.S., relating to the selling or buying of minors into prostitution;
- Section 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, F.S. relating to deriving support from the proceeds of a prostitute;
- Section 796.07(4)(c), F.S., relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 825.1025(2)(b) , F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.0133, F.S., relating to the protection of minors;
- Section 847.0135, F.S., relating to computer pornography;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor by electronic device or equipment; or
- Section 847.0145, F.S., relating to the selling or buying of minors;

A person with an ownership interest in, or for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of a massage establishment licensed before July 1, 2014, must submit to the background screening by January 1, 2015.

The bill exempts an entity wholly owned by one or more physicians licensed under ch. 458, F.S. (allopathic physicians), ch. 459, F.S. (osteopathic physicians), or ch. 460, F.S. (chiropractors), or by such physicians and the spouse, parent, child, or sibling of such physicians from the massage establishment licensure requirements. The term defines "entity wholly owned" as a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed physicians and health care practitioners in which the licensed physicians or such physicians and the spouse, parent, child, or sibling of such physicians are the business

owners in all aspects of the business entity, including, but not limited to, being reflected as the business owners on the title or lease of the physical facility, filing taxes as the business owners, being account holders on the entity's bank account, being listed as the principals on all incorporation documents required by this state, and having ultimate authority over all personnel and compensation decisions relating to the entity. This language parallels language used in ch. 627, F.S., relating to personal injury protection insurance requirements.

Section 5 amends s. 480.0465, F.S., to conform a cross-reference.

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 1068 requires certain individuals to undergo background screening. The combined cost of a state and national background screening, five-year state fingerprint retention, and FBI enrollment totals $77.50 per individual.

B. Private Sector Impact:

All licensed massage therapists and specified persons associated with currently licensed massage establishments will be required to submit to background screening by January 1, 2015. The DOH estimates these numbers at 40,392 and 23,486, respectively. The DOH estimates the annual number of new applicants for massage therapy licenses or massage establishment licenses who will be subject to the requirement at 4,281 and 1,615, respectively. The combined cost of a state and national background screen, five-year state fingerprint retention, and FBI enrollment totals $77.50. Total private sector impact, therefore, is estimated at $4, 950,545 in the first year and $456,940 in subsequent fiscal years.[20]

[20] Florida Department of Law Enforcement, *SB 1086 Bill Analysis* (March 6, 2014) (on file with the Senate Health Policy Committee).

Private physician offices or other physician-owned facilities that provide massage services, in addition to health care services, will no longer incur the cost of complying with the massage establishment licensure requirements.

C. Government Sector Impact:

The state's share of the fees collected (and described above) under the bill by the Florida Department of Law Enforcement (FDLE) is estimated at $3,066,144 in Fiscal Year 2014-2015 and $283,008 annually thereafter.[21] These fees are deposited into the FDLE's Operating Trust Fund.

The FDLE anticipates the additional workload to manage the fingerprint retention processing will require $59,747 of recurring funds and $3,773 of nonrecurring funds in Fiscal Year 2014-2015 from the Operating Trust Fund, which can be absorbed under current spending authority.

The DOH anticipates the background screening of current licensees will result in expenses associated with enforcement of $145,000 that can be absorbed under current spending authority.[22]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.0135, 456.074, 480.041, 480.043, and 480.0465.

IX. Additional Information:

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

CS by Health Policy on March 11, 2014:
The CS:

- Expands the duty of the DOH to suspend a license of a person who commits a violation of specified crimes to include the license of a massage establishment;
- Conforms the terminology that describes which representatives of a massage establishment must submit to background screening to make it consistent throughout the bill;

[21] *Id.*
[22] *Supra* note 18.

- Clarifies the obligation of the representative of a corporately-owned massage establishment to submit to background screening by Jan. 1, 2015;
- Specifies the authority of the board and the DOH, respectively, to deny a massage therapist's or massage establishment's application for license renewal based on the results of the background screen;
- Adds three offenses related to prostitution to the list of disqualifying offenses; and
- Exempts physician-owned entities from the massage establishment licensure requirements.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Latvala

588-02463-14 20141068c1

A bill to be entitled

An act relating to massage therapy; amending s. 456.0135, F.S.; requiring an applicant for licensure under ch. 480, F.S., to submit to certain fingerprinting requirements; requiring fingerprints to be enrolled in the national retained print arrest notification program and the Care Provider Background Screening Clearinghouse; amending s. 456.074, F.S.; requiring the Department of Health to issue an emergency order suspending the license of a massage therapist or massage establishment for the commission of certain offenses; amending s. 480.041, F.S.; requiring an applicant for a massage therapist license to submit to certain background screening requirements; requiring that a massage therapist who was issued a license before a specified date meet the background screening requirements by a specified date; requiring the Board of Massage Therapy to deny an application for a massage therapy license or renewal license for certain offenses; amending s. 480.043, F.S.; requiring a person with a specified interest in a massage establishment to submit to certain background screening requirements; authorizing the department to adopt a rule related to corporate assets; requiring the department to deny an application for a massage establishment license or renewal license under certain circumstances; requiring that the owner of a massage establishment that was issued a license before a specified date submit to the

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588-02463-14 20141068c1

background screening requirements by a specified date; exempting certain entities from massage establishment licensure requirements; amending s. 480.0465, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 456.0135, Florida Statutes, is amended to read:

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 480 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the fingerprints are enrolled in the national retained print arrest

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notification program.

(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3) and enrolled in the national retained print arrest notification program at the Federal Bureau of Investigation when the Department of Law Enforcement begins participation in the program. The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the applicant subject to the background screening.

(4) All fingerprints received under this section shall be entered into the Care Provider Background Screening Clearinghouse as provided in s. 435.12.

Section 2. Subsection (5) is added to section 456.074, Florida Statutes, to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(5) The department shall issue an emergency order suspending the license of a massage therapist or massage establishment as defined in chapter 480 upon receipt of information that such therapist or person with an ownership interest in the massage establishment, or for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the massage establishment has been convicted or found guilty of, or has entered a plea of guilty or nolo

contendere to, regardless of adjudication, a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of a prostitute.

(l) Section 796.07(4)(c), relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a

child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

Section 3. Present subsections (3) and (4) of section 480.041, Florida Statutes, are redesignated as subsections (4) and (5), respectively, and a new subsection (3) and subsections (6) and (7) are added to that section, to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(3) An applicant must submit to background screening under s. 456.0135.

(6) Massage therapists who were issued a license before July 1, 2014, must submit to the background screening requirements of s. 456.0135 by January 31, 2015.

(7) The board shall deny an application for a new or renewal license if an applicant has been convicted or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of a prostitute.

(l) Section 796.07(4)(c), relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of

minors.

Section 4. Present subsections (2) through (6) of section 480.043, Florida Statutes, are redesignated as subsections (3) through (7), respectively, present subsections (7) through (9) of that section are redesignated as subsections (9) through (11), respectively, and new subsections (2), (8), (12), and (13) are added to that section, to read:

480.043 Massage establishments; requisites; licensure; inspection.—

(2) A person who has an ownership interest in a massage establishment shall submit to the background screening requirements under s. 456.0135. However, if a corporation submits proof, as determined by department rule, of having more than $250,000 of business assets in this state, the department shall require the owner, officer, or individual directly involved in the management of the massage establishment to submit to the background screening requirements of s. 456.0135.

(8) The department shall deny an application for a new or renewal license if a person with an ownership interest in the massage establishment, or for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the massage establishment has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Section 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Section 796.035, relating to selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of a prostitute.

(l) Section 796.07(4)(c), relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or

equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

(12) A person with an ownership interest, or for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of, a massage establishment that was issued a license before July 1, 2014, shall submit to the background screening requirements of s. 456.0135 before January 31, 2015.

(13) An entity wholly owned by one or more physicians licensed under chapter 458, chapter 459, or chapter 460 or by such physicians and the spouse, parent, child, or sibling of such physicians is exempt from the requirements of this section. As used in this subsection, the term "entity wholly owned" means a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed physicians and health care practitioners in which the licensed physicians or such physicians and the spouse, parent, child, or sibling of such physicians are the business owners in all aspects of the business entity, including, but not limited to, being reflected as the business owners on the title or lease of the physical facility, filing taxes as the business owners, being account holders on the entity's bank account, being listed as the principals on all incorporation documents required by this state, and having ultimate authority over all personnel and compensation decisions relating to the entity.

Section 5. Section 480.0465, Florida Statutes, is amended to read:

480.0465 Advertisement.—Each massage therapist or massage

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

establishment licensed under the provisions of this act shall include the number of the license in any advertisement of massage services appearing in a ~~any~~ newspaper, airwave transmission, telephone directory, or other advertising medium. Pending licensure of a new massage establishment pursuant to the provisions of s. 480.043(7) ~~s. 480.043(6)~~, the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

Section 6. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA
20th District

March 11, 2014

The Honorable Joe Negron, Chair
Senate Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Negron:

I respectfully request that Senate Bill 1068/Licensed Massage Therapists be placed on the agenda of the Senate Committee on Appropriations at your earliest convenience. It was referred favorably by the Senate Committee on Health Policy on March 11, 2014.

This bill would require a background check and fingerprints of persons wishing to be licensed as massage therapists in Florida. It would allow an emergency suspension for therapists charged with certain offenses. The impetus for this bill was based on a Tampa Bay area licensed massage therapist who was charged with sexual battery.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: Cindy Kynoch, Staff Director; Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
❒ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic MASSAGE THERAPY Bill Number 1068 *(if applicable)*

Name Alex Spassoff Amendment Barcode *(if applicable)*

Job Title Legislative Chair, FL. STATE MASSAGE THERAPY ASSN.

Address 311 W. Henry Ave Phone 813-843-4904
Street

Tampa FL 33604 E-mail legislativechair@fsmta.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information

Representing FL. STATE MASSAGE THERAPY ASSN.

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1114
INTRODUCER:	Appropriations Committee; Governmental Oversight and Accountability Committee; and Community Affairs Committee
SUBJECT:	Retirement
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	White	Yeatman		**CA SPB 7046 as introduced**
1.	McVaney	McVaney	GO	**Fav/CS**
2.	McSwain	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1114 makes the following changes to the Florida Retirement System (FRS), **for members initially enrolled in the FRS on or after July 1, 2015**:

- Mandates that members of the Elected Officers' Class, other than those members of the Judicial Officers Subclass, may only join the Investment Plan;
- Changes the default for members who do not affirmatively choose a plan from the Pension Plan to the Investment Plan;
- Closes the Senior Management Service Optional Annuity Program to new members; and
- Changes the vesting period in the Pension Plan from 8 to 10 years; and
- Changes the out of service disability retirement vesting period from eight to 10 years.

The bill creates a limited exception to the prohibition on renewed membership in the Florida Retirement System. A retiree of the Investment Plan, the Senior Management Service Optional Annuity Program (SMSOAP), the State University System Optional Retirement Program (SUSORP) or the State Community College System Optional Retirement Program (SCCSORP) who retired before July 1, 2010, has earned less than 10 years of creditable service, and is employed in a regularly established position with a covered employer on or after January 1, 2015, will be a renewed member in the FRS as follows:

- Investment Plan (all classes) → Investment Plan (Regular Class)
- SMSOAP → Investment Plan (Regular Class)
- SUSORP → SUSORP

- SCCSORP → SCCSORP
- Pension Plan (all classes) → Ineligible

Renewed members will have to meet the vesting requirements of the plans in which they become renewed members. Creditable service does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014, nor may employer or employee contributions be paid into a renewed member's Investment Plan account for employment with a covered employer during this time period.

Based on an actuarial study completed April 22, 2013, the fiscal impact on the FRS is expected to be insignificant in Fiscal Year 2014-2015. The actuarial impacts for later periods will be determined in the subsequent annual valuations of the FRS.

II. Present Situation:

The Florida Retirement System (FRS)

The FRS is the fourth largest public retirement system in the United States. It is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S., and administered by the Department of Management Services (DMS).[1] The FRS was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the Pension Plan. In 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.[2]

The FRS consists of 1,008 total employers. It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities, and also includes the 185 cities and 259 special districts that have elected to join the system.[3] Members of the FRS are required to make employee contributions of three percent of their salary.[4] As of June 30, 2012, the FRS had 621,774 active members, 347,962 retired members and beneficiaries, and 38,724 active members of the Deferred Retirement Option Program (DROP).[5]

The membership of the FRS is divided into five membership classes:

- Regular Class[6] consists of 536,506 active members, plus 6,461 in renewed membership;
- Special Risk Class[7] includes 68,800 active members;

[1] Section 121.021(5), F.S.
[2] The Florida Retirement System Annual Report, July 1, 2012 – June 30, 2013, at 16, available at https://www.rol.frs.state.fl.us/forms/2012-13_Annual_Report.pdf (last visited April 5, 2014).
[3] *Id.*, at 17.
[4] Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011.
[5] Florida Retirement System 2012-2013 Annual Report, at 17.
[6] The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.
[7] The Special Risk Class is for members employed as: law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

- Special Risk Administrative Support Class[8] has 58 active members;
- Elected Officers' Class[9] has 2,094 active members, plus 152 in renewed membership; and
- Senior Management Service Class[10] has 7,450 members, plus 210 in renewed membership.[11]

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:
- The defined benefit plan, also known as the Pension Plan; and
- The defined contribution plan, also known as the Investment Plan.

According to information provided by the SBA, approximately 45,000 new hires are processed each year for a retirement plan choice.[12] Historically, almost 26 percent have actively elected the Investment Plan, roughly 19 percent have actively elected the Pension Plan and over 55 percent have defaulted into the Pension Plan.

	Active Election to Investment Plan	Active Election to Pension Plan	Default to Pension Plan
FY 2009-10	9,071 (23.42%)	8,158 (21.06%)	21,501 (55.52%)
FY 2010-11	9,960 (24.87%)	9,042 (22.58%)	21,049 (52.56%)
FY 2011-12	10,937 (28.79%)	6,976 (18.37%)	20,064 (52.83%)
FY 2012-13	11,895 (26.23%)	7,345 (16.20%)	26,105 (57.57%)
FY 2013-14*	8,771 (25.35%)	5,709 (16.50%)	20,114 (58.14%)
TOTAL	50,634 (25.74%)	37,230 (18.93%)	108,833 (55.33%)

*Note: The counts and percentages for this fiscal year represent only those elections and defaults that occurred between July 1, 2013, and March 28, 2014.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (Investment Plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the Investment Plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

[8] The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.
[9] The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.
[10] The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.
[11] All figures from Florida Retirement System 2012-2013 Annual Report, at 47.
[12] It is uncertain how many of these new hires stay for their full career.

A member vests immediately in all employee contributions paid to the Investment Plan.[13] With respect to the employer contributions, a member vests after completing one work year with an FRS employer.[14] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[15] The Investment Plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.[16] An FRS member who qualifies for disability while enrolled in the Investment Plan must apply for benefits as if the employee was a member of the Pension Plan. If approved for retirement disability benefits, the member is transferred to the Pension Plan.[17]

The State Board of Administration (SBA) is primarily responsible for administering the Investment Plan.[18] The trustees of the SBA are the Governor as chair, the Chief Financial Officer, and the Attorney General.[19] The SBA selects and contracts with a third-party administrator to provide administrative services.[20]

The contributions paid into the individual investment accounts and into the disability account on behalf of Investment Plan members are noted below. Note that the amount paid into the retirement account as a percentage of salary includes the employee contribution of three percent.

Membership Class	**Retirement Account**	**Disability Account**	**Total Rate**
Regular Class	6.30%	0.25%	6.55%
Special Risk Class	14.00%	1.33%	15.33%
Special Risk Administrative Support Class	7.95%	0.45%	8.40%
Elected Officer's Class			
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	9.38%	0.41%	9.79%
• Justices and Judges	13.23%	0.73%	13.95%
• County Officers	11.34%	0.41%	11.75%
Senior Management Service Class	7.67%	0.26%	7.93%

[13] Section 121.4501(6)(a), F.S.
[14] If a member terminates employment before vesting in the Investment Plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.
[15] Section 121.591, F.S.
[16] See s. 121.4501(16), F.S.
[17] Pension Plan disability retirement benefits, which apply for Investment Plan members who qualify for disability, compensate an inline-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.
[18] Section 121.4501(8), F.S.
[19] Section 4, Art. IV, Fla. Const.
[20] The third-party administrator may not be a provider or be affiliated with a provider. Section 121.4501(8)(a), F.S.

Pension Plan

The Pension Plan is administered by the secretary of the DMS through the Division of Retirement.[21] Investment management of plan assets is handled by the SBA. As of July 1, 2013, the actuarial funding level of the plan was at 85.9 percent.[22]

Any member initially enrolled in the Pension Plan before July 1, 2011, vests in the Pension Plan after completing six years of service with an FRS employer.[23] For members enrolled on or after July 1, 2011, the member vests in the Pension Plan after eight years of creditable service.[24] Benefits payable under the Pension Plan are calculated based on years of service multiplied by the annual accrual rate multiplied by the member's average final compensation.[25] For most members of the Pension Plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.[26] For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.[27] Members initially enrolled in the Pension Plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.[28]

Benefits payable to a Pension Plan retiree are calculated using formulas that include the average final compensation. "Average final compensation" means the average of the five or eight highest fiscal years of compensation for creditable service prior to retirement, termination, or death. If a member enrolled in the FRS prior to July 1, 2011, his or her average final compensation will be determined based on five years. If a member enrolled in the FRS on or after July 1, 2011, his or her average final compensation will be determined based on eight years. The average final compensation includes accumulated annual leave payments, not to exceed 500 hours, and all payments defined as compensation in s. 121.021(22). The average final compensation does not include compensation paid to professional persons for special or particular services; payments for accumulated sick leave made due to retirement or termination; payments for accumulated annual leave in excess of 500 hours; bonuses as defined in s. 121.021(47); third party payments made on or after July 1, 1990; or fringe benefits such as automobile or housing allowances.[29]

"Compensation" means the monthly salary paid to a member by his or her employer for work performed arising from that employment. Compensation includes overtime payments paid from a salary fund; accumulated annual leave payments; payments in addition to the employee's base rate of pay if specified conditions apply; amounts withheld for tax sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code.[30]

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[21] Section 121.025, F.S.
[22] Florida Retirement System Actuarial Valuation as of July 1, 2013, at I-6. .
[23] Section 121.021(45)(a), F.S.
[24] Section 121.021(45)(b), F.S.
[25] Section 121.091, F.S.
[26] Section 121.021(29)(a)1., F.S.
[27] Section 121.021(29)(b)1., F.S.
[28] Sections 121.021(29)(a)2. and (b)2., F.S.
[29] Section 121.021(24), F.S.
[30] Section 121.021(22), F.S.

Reemployment Restrictions

For the purposes of the Pension Plan, a "retiree" means a former member of the FRS or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member.[31] For the purposes of the Investment Plan, a "retiree" means a former member of the Investment Plan who has terminated employment and taken a distribution of vested employee or employer contributions, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided the Internal Revenue Code.[32]

After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting their FRS benefits.

However, there are certain termination requirements and reemployment limitations that affect retirement benefits **if a retiree is employed with an FRS-participating employer** during the first 12 calendar months after the effective retirement date without DROP participation or after the Deferred Retirement Optional Program (DROP) termination date. If a retiree returns to work during the **first six calendar months** of retirement or after their DROP termination date, then their retirement application is voided and all retirement benefits, including any funds accumulated during DROP participation, must be repaid to the FRS Trust Fund. This restriction applies even if the particular position held is not covered by the FRS. A retiree cannot become a newly hired employee until after meeting the definition of termination by remaining unemployed for six calendar months.

A retiree may not receive both a salary from an FRS employer and a retirement benefit in the same month during the **seventh through twelfth calendar months** of retirement or after the DROP termination date. There are no exceptions to this reemployment limitation during this period. This restriction applies even if the particular position held is not covered by the FRS. A retiree must inform the division if they work for an FRS employer during the reemployment limitation period.

Suspended retirement benefits for the months a reemployed retiree is employed by an FRS employer during the reemployment limitation period will never be received by the retiree. The reemployed retiree and their employing agency are jointly and severally liable for repaying any retirement benefits the employee receives while working during this period.

There are no limits on working for an FRS employer after a retiree has been retired for 12 calendar months.

[31] Section 121.021(60), F.S.
[32] Section 121.4501(2)(k), F.S.

If a retiree is re-employed with an FRS participating employer, they will be required to sign a statement that their reemployment does not violate these provisions.[33]

Before July 1, 2010, there were various exceptions to employment with FRS-covered employers during the reemployment limitation period. All reemployment limitation exceptions that were not specific to educational institutions were closed by operation of HB 479, which also extended from one month to 12 months the exclusionary period immediately after retirement in which a retiree may not be reemployed with any FRS employer.[34]

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (Pension Plan or Investment Plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members who retire again, including former DROP participants, are once more subject to reemployment limitations.

Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent children of a renewed member may qualify for survivor benefits.

Prior to July 1, 2010, retirees of a state-administered retirement system reemployed by an FRS-participating employer were eligible for renewed membership in the FRS. Currently, retirees initially re-employed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and will not earn creditable service toward a subsequent retirement benefit. This restriction from renewed membership includes retirees of the FRS Pension Plan, the FRS Investment Plan, the State University System Optional Retirement Program (SUSORP), the Senior Management Service Optional Annuity Program (SMSOAP), and the State Community College Optional Retirement Program (SCCSORP).[35]

Reemployed Retirees without Renewed Membership

Information provided by the DMS indicates that as of December of 2013, there were 5,703 employees who retired by June 30, 2010, and subsequently returned to FRS-covered employment, but are not permitted to be renewed members of the FRS. Of that number, 2,918 were retirees of the Pension Plan, and 2,616 were retirees of the Investment Plan. Anecdotal evidence suggests that some of these "retirees" were employees who took distributions from Investment Plan accounts prior to July 1, 2010, and rolled them into IRAs upon their termination from FRS-covered employment. The enactment on the bar to renewed membership means that anyone who took such a distribution is deemed retired, and cannot become a renewed member of the FRS.

[33] The information in this section of the bill analysis comes from the FRS Pension Plan member Handbook, 2013 edition, p. 56, located at: https://www.rol.frs.state.fl.us/forms/member_handbook.pdf. See also ss. 121.091(9), 121.122, and 1012.01(2), F.S.
[34] Chapter 2009-209, L.O.F.
[35] *Id.*, at 57. See also ss. 121.053, 121.091(9), 121.122, and 238.181, F.S.

Blended Employer Contribution Rates for the FRS for FY 2013-14

FRS employers are responsible for contributing a percentage of the member's monthly compensation based on membership class to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the Pension Plan or the Investment Plan.[36] In order to address unfunded actuarial liabilities (UAL) of the system, an employer contribution rate is set in statute. The rates are determined annually based on an actuarial study obtained by the DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

Current Blended Employer Contribution Rates for Each Class:[37]

Membership Class	Normal Cost Rate	UAL Rate	Total Rate
Regular Class	3.53%	2.19%	5.72%
Special Risk Class	11.00%	6.83%	17.83%
Special Risk Administrative Support Class	4.17%	30.56%	34.73%
Elected Officer's Class			
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.52%	24.85%	31.37%
• Justices and Judges	10.05%	17.00%	27.05%
• County Officers	8.44%	23.36%	31.80%
Senior Management Service Class	4.81%	12.27%	17.08%
Deferred Retirement Option Program (DROP)	4.63%	7.01%	11.64%

For all membership classes, except DROP, employees contribute three percent of their compensation towards retirement.[38]

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the Investment Plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas contributions under the Pension Plan are transferred into the FRS Trust Fund.[39]

2013 FRS Valuation

Annually, the Department of Management Services contracts with the state actuary to complete an actuarial valuation of the FRS Pension Plan. The table below summarizes the market assets, actuarial assets, actuarial liabilities, the unfunded actuarial liabilities, and the funded status of the Pension Plan.[40] While the market value of the plan assets have fluctuated significantly upward

[36] Section 121.70(1), F.S.
[37] Section 121.71(4)-(5), F.S.
[38] Section 121.71(3), F.S.
[39] *See* sections 121.4503 and 121.72(1), F.S.
[40] Florida Retirement System Actuarial Valuation as of July 1, 2011, at I-3; Florida Retirement System Actuarial Valuation as of July 1, 2012, at I-3; and Florida Retirement System Actuarial Valuation as of July 1, 2013, at I-6.

and downward during the period shown, the actuarial assets have gradually grown, mostly due to the smoothing methodologies applied for the Pension Plan.

Summary of Valuation Results

	Valuation ending June 30, 2011	Valuation ending June 30, 2012	Valuation ending June 30, 2013
Market Assets	**$129.1 B**	**$122.9 B**	**$133.0 B**
Actuarial Assets	**$126.1 B**	**$127.9 B**	**$131.7 B**
Actuarial Liabilities	**$144.1 B**	**$147.2 B**	**$153.3 B**
Unfunded Actuarial Liabilities	**($18.0 B)**	**($19.3 B)**	**($21.6 B)**
Funded Status	**87.9%**	**86.9%**	**85.9%**

State University System Optional Retirement Program

On July 1, 1984, the State University Optional Retirement Program (SUSORP) was established as an optional program under the FRS for eligible State University faculty and administrators. The program was later expanded in 1988 to include the State University System Executive Service and in 1999 to include all administrative and professional personnel exempt from career service. As of June 30, 2013, there were 17,780 participants in the SUSORP.

Eligible employees are compulsory participants in SUSORP during their first 90 days of employment. If an eligible member fails to enroll in SUSORP and execute an investment contract with a provider company during this period, the member is deemed to have elected to participate in the FRS. During the next 90 days, the member may choose to participate in the Investment Plan of the FRS. If the member fails to make an election within the first six months of employment, the member is defaulted into the Pension Plan of the FRS.

The SUSORP is a defined contribution plan qualified under the provisions of section 403(b) of the Internal Revenue Code that provides retirement and death benefits through contracts with designated investment providers[41]. The program was established to aid the university system in recruiting employees by offering more portability to employees who don't expect to remain in the State University System long enough to vest in the FRS Pension Plan (ten-year vesting when the SUSORP was created). It provides for full and immediate vesting of all contributions submitted to the participating companies on behalf of the participant upon signing an investment contract within 90 days of employment in an eligible position. Contributions, which are invested as directed by the participant, accumulate in individual participant accounts, together with investment earnings. At retirement, the accumulated benefits are payable to the participant or to his or her beneficiaries or estate.

The employer and employee contribute the percentage of the member's salary designated by law on the member's behalf. The member selects from among the investment products offered by the provider companies in which the employer contribution is invested; a total of 0.01 percent of the salary is retained in the SUSORP Trust Fund for administrative expenses. Effective July 1, 2012, the employer contribution rate is 5.14 percent. Also effective July 1, 2011, there is a mandatory employee contribution of three percent. The member may voluntarily contribute, by salary

[41] The five approved participating companies currently available under SUSORP are: ING, TIAA-CREF, Variable Annuity Life Insurance Company, Jefferson National Life Insurance Company, and MetLife Investors USA Insurance Company.

reduction, an amount not to exceed the percentage contributed by the employer to the member's account. The FRS has an unfunded actuarial liability so the employer also pays a 2.19 percent unfunded actuarial liability contribution to the FRS Trust Fund beginning July 1, 2013. The unfunded actuarial contribution rate is set in section 121.71(5), F.S.

State Community College System Optional Retirement Program

In 1995, the Florida Legislature enacted provisions[42] allowing faculty and certain administrators with a state community college *in the FRS Regular Class* to opt out of the FRS and enroll in an optional retirement program known as the State Community College System Optional Retirement Program (SCCORP). The board of trustees of the employing agency as authorized under section 1001.64, Florida Statutes, must implement this program either individually or in consortia with other community colleges. Effective July 1, 2012, the employer contribution rate is 5.15 percent. Also effective July 1, 2011, there is a mandatory employee contribution of three percent. The member is immediately vested upon signing an investment agreement with a provider company and may voluntarily contribute, by salary reduction, an amount not to exceed the percentage contributed by the employer to the member's account. The FRS has an unfunded actuarial liability so the employer also pays a 2.19 percent unfunded actuarial liability contribution to the FRS Trust Fund beginning July 1, 2013. The unfunded actuarial contribution rate is set in section 121.71(5), F.S.

In 2003, legislation[43] was enacted to give SCCORP participants an open-ended opportunity to transfer back to the FRS. If the employee elects to transfer to the Investment Plan, the employee's SCCORP account is retained and he/she starts anew under the Investment Plan. To transfer to the Pension Plan, the employee pays a specified amount[44] to receive service credit equal to his/her years of service under the SCCORP. No similar transfer opportunity is available for management-level (non-Regular Class) community college employees.

Senior Management Service Optional Annuity Program

In 1986, the Florida Legislature enacted provisions[45] creating the Senior Management Service Class under the FRS and also a non-integrated optional defined contribution plan under the FRS called the Senior Management Service Optional Annuity Program (SMSOAP). The SMSOAP allows certain state senior managers within 90-days of appointment to an eligible position to opt out of the FRS and enroll in the SMSOAP which provides immediate vesting. These certain state senior managers include members in the Senior Management Service with the State of Florida, senior-level management positions with the Florida Legislature, senior-level management positions with the State Board of Administration, senior managers in the Judicial Branch, county health department administrators and directors within the Department of Health and judges and deputy chiefs judges of compensation claims in the Division of Administrative Hearings, as well as Elected Officials who opt to participate in the Senior Management Service Class in lieu of the Elected Officers' Class of the FRS.

[42] See chapter 95-392, Laws of Florida.
[43] See section 121.051(2)(c)3., Florida Statutes, enacted by chapter 2003-260, Laws of Florida.
[44] The cost for the transfer is a sum representing the present value of the member's accumulated benefit obligation for the affected period of service.
[45] See chapter 86-149, Laws of Florida.

The SMSOAP was created to aid state government in recruiting senior managers by offering more portability of retirement benefits to those who do not expect to remain in public service long enough to vest in the FRS Pension Plan (seven-year vesting for the Senior Management Service Class at the time the class was created). As of June 30, 2013, there were 31 participants in the SMSOAP.

Under the SMSOAP, retirement and death benefits are provided through contracts with designated investment providers. The state contributes on behalf of the participant a percentage of the participant's salary as required by law. Effective July 1, 2012, the employer contribution rate is 6.27 percent. Also effective July 1, 2011, there is a mandatory employee contribution of three percent. The member may voluntarily contribute, by salary reduction, an amount not to exceed the percentage contributed by the employer to the member's account. The FRS has an unfunded actuarial liability so the employer also pays a 12.27 percent unfunded actuarial liability contribution to the FRS Trust Fund beginning July 1, 2013. The unfunded actuarial liability contribution rate is set in section 121.71(5), F.S.

The SMSOAP is also available to state elected officials who are members of the Elected Officers' Class and who choose membership in the Senior Management Service Class rather than the Elected Officers' Class. The Senior Management Service Class election must be made within six months of assuming office. Elected state officers who transfer to the Senior Management Service Class may, within 90 days of becoming a member of the class, elect membership in the SMSOAP.[46]

III. Effect of Proposed Changes:

Ten Year Vesting for New Members

Section 1 amends s. 121.021, F.S., to modify the definition of "vested" or "vesting" to require that members initially enrolled in the Florida Retirement System (FRS) on or after July 1, 2015, vest in the Pension Plan after 10 years of creditable service rather than 8 years of creditable service.

Investment Plan Compulsory for Certain Elected Officer's Class members

Section 2 amends s. 121.051, F.S., to provide that employees initially enrolled on or after July 1, 2015, in positions covered by the Elected Officers' Class, other than positions included in the Judicial Officers Subclass, are compulsory members of the Investment Plan, are not permitted to become members of the Pension Plan, and are not eligible to use the 2nd election opportunity specified in s. 121.4501(4), F.S. Investment plan membership continues if there is subsequent employment in a position covered by another membership class. This section also makes editorial changes and corrects cross-references.

[46] Assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant capital collateral regional counsels, and assistant attorneys general are not eligible to elect participation in the SMSOAP in lieu of the SMSC.

Section 3 amends s. 121.052, F.S., to make technical change in how the membership of the Elected Officers' Class is specified in statute. This change creates a sub-subparagraph enumerating the state level judicial officers included in the Elected Officers' Class.

Section 9 amends provisions in s. 121.4501(4), F.S., relating to the FRS Investment Plan, to provide that employees initially enrolled on or after July, 2015, in positions covered by the Elected Officers' Class, other than positions included in the Judicial Officers Subclass, are compulsory members of the Investment Plan.

The bill also amends the existing member plan choice education component, to provide that new Elected Officers' Class, other than positions included in the Judicial Officers Subclass, members need not be provided that education, since they will be mandatory members of the Investment Plan.

Prohibits New Elected Officers' Class Members from Joining the Senior Management Service Class or the Senior Management Service Optional Annuity Program

Section 3 amends s. 121.052, F.S., to prohibit any Elected Officers' Class members from joining the Senior Management Service Class after July 1, 2015.

Section 5 amends s. 121.055, F.S., to provide that on or after July 1, 2015, elected officers eligible for membership in the Elected Officer's Class may not be enrolled in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program (SMSOAP), which is closed to all new members. Current members of the optional annuity program may retain their membership in the program.

Limited Renewed Membership

Section 4 amends s. 121.053, F.S., to allow limited renewed membership for certain elected officers who retired from the Investment Plan prior to July 1, 2010.

Section 5 also amends subparagraphs (1)(f)3. and (6)(c)6. of s. 121.055, F.S., to allow limited renewed membership for former members of the Senior Management Optional Annuity Program.

Section 7 amends s. 121.122, F.S., to provide that a retiree of the:

- Investment Plan,
- State University System Optional Retirement Program (SUSORP),
- Senior Management Service Optional Annuity Program, or
- State Community College System Optional Retirement Program (SCCSORP),

who retired before July 1, 2010, has completed less than 10 years of creditable service, and is employed in a regularly established position with a covered employer on or after January 1, 2015, will be a renewed member of the Regular Class of the Investment Plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSOPRP or SCCSORP. The renewed member must satisfy the vesting requirements of the plan (one year for the Investment Plan). Members who retired and returned to renewed membership before July 1, 2010, may continue membership in the plan they choose.

Creditable service (including credit toward the retiree health insurance subsidy) does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014. Nor may employer or employee contributions be paid into a renewed member's Investment Plan account for employment with a covered employer during this time period.

Section 9 amends paragraphs (2)(e) and (4)(e) of s. 121.4501, F.S., to address participation of certain retired members of the Investment Plan, SUSORP, SCCSORP, and the SMSOAP who have renewed membership as Investment Plan members.

Default to Investment Plan

Section 8 amends s. 121.35, F.S., to provide that if a member that is eligible to participate in the SUSORP fails to execute a program contract after July 1, 2015, within 90 days after the date of eligibility, the member is deemed to have elected membership in the FRS Investment Plan retroactive to the date of eligibility.

Section 9 amends s. 121.4501, F.S., to provide that an employee eligible to participate in the Investment Plan is initially enrolled in the Pension Plan, and has eight months to make an irrevocable election to participate in either the Pension Plan or the Investment Plan. If the employee fails to make an election, the employee is deemed to have elected the Investment Plan.

Out of Service Disability Retirement Benefit Vesting Period Increased

Sections 6 and 10 amends ss. 121.091, F.S., and 121.591, F.S., respectively, to provide that a member of the Pension Plan initially enrolled on or after July 1, 2015, who becomes totally and permanently disabled after completing 10 years of creditable service is entitled to a monthly disability benefit.

Regardless of amount of service, a member who becomes totally and permanently disabled in the line of duty is entitled to a monthly disability benefit.

Cross References

Sections 11 through 12 amend ss. 238.072 and 413.051, F.S., respectively, to change cross references consistent with the changes in this bill.

Qualified Tax Status of the Florida Retirement System

Section 13 directs the State Board of Administration (SBA) and Department of Management Services (DMS) to request a determination letter from the United States Internal Revenue Service regarding the qualified tax status of the FRS based on the changes made to the FRS by this act. SBA and DMS also are directed to seek guidance from the Internal Revenue Service regarding the potential consequences resulting from the FRS offering differential pretax employee contributions to members participating in the same membership class but in different plans.

Important State Interest

Section 14 makes a finding that the bill fulfills an important state interest.

Effective Date

The effective date of the bill is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Because the Florida Retirement System (FRS) is a multi-employer Pension Plan, the effects of this bill extend to all member FRS government employers. To the extent this bill requires cities and counties to spend money or take action that requires the expenditure of money, the mandates provision of Art. VII, s. 18 of the State Constitution may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 13 of the bill), and one of the following relevant exceptions must be met:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

This bill contains a statement indicating that the bill fulfills an important state interest and the bill applies to similarly situated persons (all employers who participate in the FRS), so it appears that this exception would apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Actuarial Requirements

Article X, s. 14 of the State Constitution requires that benefit improvements under public Pension Plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

> SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension

> system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

Contractual Obligations

Article I, s. 10 of the Florida Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.[47] This "preservation of rights" provision[48] was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.[49] The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.[50]

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.[51] More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.[52]

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[47] Section 121.011(3)(d), F.S.
[48] The "preservation of rights" provision vests all rights and benefits already earned under the present retirement plan so the Legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So. 2d 1033, 1037 (Fla. 1981).
[49] *Id*. at 1035.
[50] *Id*. at 1036.
[51] *Id*. at 1037.
[52] *Rick Scott, et al. v. George Williams, et al*., 107 So. 3d 379 (Fla. 2013).

This bill does not change any benefits that a member earned prior to July 1, 2015.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/SB 1114 will pass along to all employer members of the FRS an adjustment to their statutory payroll costs in order to fund the proposed benefit changes. The amount of this change will not be known until the actuarial studies are completed.

B. Private Sector Impact:

None.

C. Government Sector Impact:

A number of the provisions of the bill will result in fiscal impacts on the FRS. This legislation impacts the FRS in the following ways:

- Requires new members of the FRS to make an active election to participate in the Pension Plan of the FRS; if no active election is made, the member is enrolled in the Investment Plan of the FRS.
- Requires members of the Elected Officers' Class, other than positions included in the Judicial Officers Subclass, initially enrolling on or after July 1, 2015, to participate in the Investment Plan of the FRS.
- Increases the service credit needed to vest in the Pension Plan of the FRS from 8 years to 10 years for all members initially enrolling in the Pension Plan on or after July 1, 2015.

Based on an actuarial study completed April 22, 2013, the fiscal impact on the FRS is expected to be insignificant in Fiscal Year 2014-2015. The actuarial impacts for later periods will be determined in the subsequent annual valuations of the FRS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.021, 121.051, 121.052, 121.053, 121.055, 121.091, 121.122, 121.35, 121.4501, 121.591, 238.072, and 413.051.

The bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The CS/CS differs from the CS in the following ways:

- Redefines compulsory members of the investment plan to exclude the Elected Officers of the judicial branch and the employees covered by the Senior Management Service Class. (Compulsory members will include elected state officers in the executive and legislative branches and county elected officers).
- Reestablishes the 3% employee contribution for investment plan members (the bill had reduced the employee contribution to 2% for all investment plan members beginning July 1, 2015).
- Directs the State Board of Administration (SBA) and Department of Management Services (DMS) to seek a determination letter from the IRS relating to the qualified tax status of the FRS.
- Directs the SBA and DMS to seek guidance from the IRS relating to the potential impact on the qualified tax status of the FRS if the pension plan and investment plan had differential employee contributions and the employees were permitted to choose which plan to participate.
- Makes numerous other technical and clarifying changes that are not intended to change the policies proposed in the underlying bill.

CS by Governmental Oversight and Accountability on April 10, 2014:
The CS makes the following changes to the Florida Retirement System (FRS), for members initially enrolled in the FRS on or after July 1, 2015:

- Mandates that Elected Officers' Class and Senior Management Service Class members may only join the Investment Plan;
- Changes the default for members who do not affirmatively choose a plan from the Pension Plan to the Investment Plan;
- Closes the Senior Management Service Optional Annuity Program to new members; and
- Changes the vesting period in the Pension Plan from 8 to 10 years;
- Changes the out of service disability retirement vesting period from 8 to 10 years.

The CS also lowers the employee's contribution rate from three percent to two percent for all members of the Investment Plan, beginning July 1, 2015. However, the overall amount transferred into the Investment Plan member's account remains the same – with an increase in the employer contribution being substituted for the decrease in employee contribution.

The CS also permits limited renewed membership for certain retirees of the Investment Plan and the optional retirement programs to participate as renewed members of the Investment Plan or the optional retirement programs.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 140 - 1791
and insert:
Section 2. Paragraph (c) of subsection (3) of section 121.052, Florida Statutes, is amended to read:
121.052 Membership class of elected officers.—
(3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective July 1, 1990, participation in the Elected Officers' Class shall be compulsory for elected officers listed in paragraphs (2)(a)-(d)

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and (f) assuming office on or after said date, unless the elected officer elects membership in another class or withdraws from the Florida Retirement System as provided in paragraphs (3)(a)-(d):

(c) Before July 1, 2015, an ~~any~~ elected officer may, within 6 months after assuming office, or within 6 months after May 30, 1997 ~~this act becomes a law~~ for serving elected officers, elect membership in the Senior Management Service Class as provided in s. 121.055 in lieu of membership in the Elected Officers' Class. ~~Any~~ Such election made by a county elected officer has ~~shall have~~ no effect upon the statutory limit on the number of nonelective full-time positions that may be designated by a local agency employer for inclusion in the Senior Management Service Class under s. 121.055(1)(b)1.

Section 3. Subsections (3) and (5) of section 121.053, Florida Statutes, are amended to read:

121.053 Participation in the Elected Officers' Class for retired members.—

(3) On or after July 1, 2010:

(a) A retiree of a state-administered retirement system who is initially reemployed in ~~elected or appointed for the first time to~~ an elective office in a regularly established position with a covered employer may not reenroll in the Florida Retirement System, except as provided in s. 121.122.

(b) An elected officer who is elected or appointed to an elective office and is participating in the Deferred Retirement Option Program is subject to termination as defined in s. 121.021 upon completion of his or her DROP participation period. An elected official may defer termination as provided in

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subsection (7).

(5) A ~~Any~~ renewed member, as described in s. 121.122(1), (3), (4), or (5) ~~subsection (1) or subsection (2)~~, who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

Section 4. Paragraph (f) of subsection (1) and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(f) Effective July 1, 1997, through June 30, 2015:

1. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraphs ~~subparagraph~~ 3. and

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4., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on ~~or after~~ July 1, 2010, through December 31, 2014, as an elected official eligible for the Elected Officers' Class may not be enrolled in renewed membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class.

4. Effective January 1, 2015, an eligible retiree of a state-administered retirement system who retired before July 1, 2010, and is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

5. On or after July 1, 2015, an elected officer eligible for membership in the Elected Officers' Class may not be enrolled in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program except as provided in subsection (6).

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(6)

(c) *Participation.*—

1. An eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participating in the Senior Management Service Class. Such election must be ~~made~~ in writing and filed with the department and the personnel officer of the employer on or before May 1, 1987. An eligible employee who is employed on or before February 1, 1987, and who fails to make an election to participate in the optional annuity program by May 1, 1987, shall be deemed to have elected membership in the Senior Management Service Class.

2. Except as provided in subparagraph 6., an employee who becomes eligible to participate in the optional annuity program by reason of initial employment commencing after February 1, 1987, may, within 90 days after the date of commencing employment, elect to participate in the optional annuity program. Such election must be ~~made~~ in writing and filed with the personnel officer of the employer. An eligible employee who does not within 90 days after commencing employment elect to participate in the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

3. A person who is appointed to a position in the Senior Management Service Class and who is a member of an existing retirement system or the Special Risk or Special Risk Administrative Support Classes of the Florida Retirement System may elect to remain in such system or class in lieu of participating in the Senior Management Service Class or optional annuity program. Such election must be ~~made~~ in writing and filed

with the department and the personnel officer of the employer within 90 days after such appointment. An eligible employee who fails to make an election to participate in the existing system, the Special Risk Class of the Florida Retirement System, the Special Risk Administrative Support Class of the Florida Retirement System, or the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable if the employee continues to be employed in an eligible position and continues to meet the eligibility requirements set forth in this paragraph.

5. Effective from July 1, 2002, through September 30, 2002, an active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to the Florida Retirement System Pension Plan.

a. The election must be ~~made~~ in writing and must be filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.

b. The employee shall receive service credit under the pension plan equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit is the amount representing the present value of that

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employee's accumulated benefit obligation for the affected period of service.

c. The employee must transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee must pay a sum representing the remainder of the amount due. The employee may not retain any employer contributions or earnings from the Senior Management Service Optional Annuity Program account.

6. A retiree of a state-administered retirement system who is initially reemployed on ~~or after~~ July 1, 2010, through December 31, 2014, may not renew membership in the Senior Management Service Optional Annuity Program. Effective January 1, 2015, a retiree of the Senior Management Service Optional Annuity Program who retired before July 1, 2010, and is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

7. Effective July 1, 2015, the Senior Management Service Optional Annuity Program is closed to new members. Members enrolled in the Senior Management Service Optional Annuity Program before July 1, 2015, may retain their membership in the annuity program.

Section 5. Paragraph (a) of subsection (4) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun

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participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(4) DISABILITY RETIREMENT BENEFIT.—

(a) *Disability retirement; entitlement and effective date.*—

1.a. A member who becomes totally and permanently disabled, as defined in paragraph (b), after completing 5 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit, ~~;~~ except that a ~~any~~ member with less than 5 years of creditable service on July 1, 1980, or a ~~any~~ person who becomes a member of the Florida Retirement System on or after such date must have completed 10 years of creditable service before becoming totally and permanently disabled in order to receive disability retirement benefits for a ~~any~~ disability that ~~which~~ occurs other than in the line of duty. However, if a member employed on July 1, 1980, who has less than 5 years of creditable service as of that date becomes totally and permanently disabled after completing 5 years of creditable service and is found not to have attained fully insured status for benefits under the federal Social Security Act, such member is entitled to a monthly disability

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benefit.

b. Effective July 1, 2001, a member of the pension plan initially enrolled before July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

c. Effective July 1, 2015, a member of the pension plan initially enrolled on or after July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

2. If the division ~~has~~ received ~~from the employer~~ the required documentation of the member's termination of employment from the employer, the effective retirement date for a member who applies and is approved for disability retirement shall be as established by rule of the division.

3. For a member who is receiving Workers' Compensation payments, the effective disability retirement date may not precede the date the member reaches Maximum Medical Improvement (MMI), unless the member terminates employment before reaching MMI.

Section 6. Subsection (2) of section 121.122, Florida Statutes, is amended, and subsections (3), (4), and (5) are added to that section, to read:

121.122 Renewed membership in system.—

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(2) Except as provided in subsections (3)-(5), a retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.

(3) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, had less than 10 years of creditable service upon retirement, and is employed in a regularly established position with a covered employer on or after January 1, 2015, shall be a renewed member of the Regular Class of the investment plan regardless of the position held, unless employed in a position eligible for participation in the State University System Optional Retirement Program or the State Community College System Optional Retirement Program as provided in subsections (4) and (5), respectively. The renewed member must satisfy the vesting requirements and other provisions of this chapter.

(a) Creditable service, including credit toward the retiree health insurance subsidy provided in s. 112.363, does not accrue for a retiree’s employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014.

(b) Employer and employee contributions, interest, earnings, or any other funds may not be paid into a renewed member’s investment plan account for any employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014, by the renewed member or the employer on behalf of the member.

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(c) To be eligible to receive a retirement benefit, the renewed member must satisfy the vesting requirements in s. 121.4501(6).

(d) The member is ineligible to receive disability benefits as provided in s. 121.091(4) or s. 121.591(2).

(e) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(f) The member must satisfy the requirements for termination from employment provided in s. 121.021(39).

(g) Upon the renewed membership or reemployment of a retiree, the employer and the retiree shall pay the applicable employer and employee contributions required under ss. 112.363, 121.71, 121.74, and 121.76. The contributions are payable only for employment and salary earned in a regularly established position with a covered employer on or after January 1, 2015. The employer and employee contributions shall be transferred to the investment plan and placed in a default fund as designated by the state board. The retiree may move the contributions once an account is activated in the investment plan.

(h) The member may not purchase any past service in the investment plan, including employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014.

(i) A renewed member who is a retiree of the investment plan and who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the subsidy. Such credit may be earned only for employment in a regularly established position with a covered employer on or after January 1, 2015. Any additional subsidy due

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because of additional credit may be received only at the time of paying the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed under s. 112.363.

(4) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, and who is employed in a regularly established position eligible for participation in the State University System Optional Retirement Program on or after January 1, 2015, shall become a renewed member of the optional retirement program. The renewed member must satisfy the vesting requirements and other provisions of this chapter. Once enrolled, a renewed member remains enrolled in the optional retirement program while employed in an eligible position for the optional retirement program. If employment in a different covered position results in the retiree's enrollment in the investment plan, the retiree is no longer eligible to participate in the optional retirement program unless employed in a mandatory position under s. 121.35.

(a) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(b) The member must satisfy the requirements for termination of employment provided in s. 121.021(39).

(c) Upon renewed membership or reemployment of a retiree, the employer and the retiree must pay the applicable employer and employee contributions required under s. 121.35.

(d) The member, or the employer on behalf of the member,

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may not purchase any prior service in the optional retirement program or employment from July 1, 2010, to December 31, 2014, if renewed membership is not available.

(5) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service System Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, and who is employed in a regularly established position eligible for participation in the State Community College System Optional Retirement Program as provided in s. 121.051(2)(c)4. on or after January 1, 2015, shall become a renewed member of the optional retirement program. The renewed member must satisfy the eligibility requirements of this chapter and s. 1012.875 for the optional retirement program. Once enrolled, a renewed member remains enrolled in the optional retirement program while employed in an eligible position for the optional retirement program. If employment in a different covered position results in the retiree's enrollment in the investment plan, the retiree is no longer eligible to participate in the optional retirement program.

(a) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(b) The member must satisfy the requirements for termination of employment provided in s. 121.021(39).

(c) Upon renewed membership or reemployment of a retiree, the employer and the retiree must pay the applicable employer and employee contributions required under ss. 121.051(2)(c) and 1012.875.

(d) The member, or the employer on behalf of the member,

may not purchase any past service in the optional retirement program or employment accrued from July 1, 2010, to December 31, 2014.

Section 7. Paragraph (c) of subsection (3) of section 121.35, Florida Statutes, is amended to read:

121.35 Optional retirement program for the State University System.—

(3) ELECTION OF OPTIONAL PROGRAM.—

(c) An ~~Any~~ employee who becomes eligible to participate in the optional retirement program on or after January 1, 1993, shall be a compulsory participant of the program unless such employee elects membership in the Florida Retirement System. Such election shall be ~~made~~ in writing and filed with the personnel officer of the employer. An ~~Any~~ eligible employee who fails to make such election within the prescribed time period shall be deemed to have elected to participate in the optional retirement program.

1. An ~~Any~~ employee whose optional retirement program eligibility results from initial employment shall be enrolled in the program at the commencement of employment. If, within 90 days after commencement of employment, the employee elects membership in the Florida Retirement System, such membership is ~~shall be~~ effective retroactive to the date of commencing ~~commencement of~~ employment as provided in s. 121.4501(4).

2. An ~~Any~~ employee whose optional retirement program eligibility results from a change in status due to the subsequent designation of the employee's position as one of those specified in paragraph (2)(a) or due to the employee's appointment, promotion, transfer, or reclassification to a

position specified in paragraph (2)(a) shall be enrolled in the optional retirement program upon such change in status and shall be notified by the employer of such action. If, within 90 days after the date of such notification, the employee elects to retain membership in the Florida Retirement System, such continuation of membership is ~~shall be~~ retroactive to the date of the change in status.

3. Notwithstanding ~~the provisions of~~ this paragraph, effective July 1, 1997, an ~~any~~ employee who is eligible to participate in the Optional Retirement Program and who fails to execute a contract with one of the approved companies and to notify the department in writing as provided in subsection (4) within 90 days after the date of eligibility shall be deemed to have elected membership in the Florida Retirement System, except as provided in s. 121.051(1)(a). This provision ~~shall~~ also applies ~~apply~~ to an ~~any~~ employee who terminates employment in an eligible position before executing the required investment ~~annuity~~ contract and notifying the department. Such membership is ~~shall be~~ retroactive to the date of eligibility, and all appropriate contributions shall be transferred to the Florida Retirement System Trust Fund and the Health Insurance Subsidy Trust Fund.

Section 8. Subsection (1), paragraphs (e) and (i) of subsection (2), paragraph (b) of subsection (3), subsection (4), paragraph (c) of subsection (5), subsection (8), and paragraphs (a), (b), (c), and (h) of subsection (10) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(1) The Trustees of the State Board of Administration shall

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establish a defined contribution program called the "Florida Retirement System Investment Plan" or "investment plan" for members of the Florida Retirement System under which retirement benefits are ~~will be~~ provided for eligible employees who elect to participate in the program, for employees who default into the program, and for compulsory members described in paragraph (4)(g). The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and related regulations. The employer and employee shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

(2) DEFINITIONS.—As used in this part, the term:

(e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; ~~or~~

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35; or

3. Is a retired member of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired

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before July 1, 2010 and is employed in a regularly established position on or after January 1, 2015, as provided in s. 121.122.

The term does not include any member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of a state-administered retirement system who retired ~~initially reemployed in a regularly established position~~ on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

(i) "Member" or "employee" means an eligible employee who enrolls, is defaulted into, or is a compulsory member of ~~in~~ the investment plan as provided in subsection (4), a terminated Deferred Retirement Option Program member as described in subsection (21), or a beneficiary or alternate payee of a member or employee.

(3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.—

(b) Notwithstanding paragraph (a), an eligible employee who elects to participate in or is defaulted into the investment plan and establishes one or more individual member accounts may elect to transfer to the investment plan a sum representing the present value of the employee's accumulated benefit obligation under the pension plan, except as provided in paragraph (4)(b). Upon transfer, all service credit earned under the pension plan is nullified for purposes of entitlement to a future benefit under the pension plan. A member may not transfer the accumulated benefit obligation balance from the pension plan after the time period for enrolling in the investment plan has expired.

1. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation under the pension plan, subject to recomputation under subparagraph 2. For state employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on June 30, 2002; for district school board employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on September 30, 2002; and for local government employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on December 31, 2002. The dates specified are the "estimate date" for these employees. The actuarial present value of the employee's accumulated benefit obligation shall be based on the following:

a. The discount rate and other relevant actuarial assumptions used to value the Florida Retirement System Trust Fund at the time the amount to be transferred is determined, consistent with the factors provided in sub-subparagraphs b. and c.

b. A benefit commencement age, based on the member's estimated creditable service as of the estimate date.

c. Except as provided under sub-subparagraph d., for a member initially enrolled:

(I) Before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 62; or

(B) The age the member would attain if the member completed

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30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) On or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 65; or

(B) The age the member would attain if the member completed 33 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

d. For members of the Special Risk Class and for members of the Special Risk Administrative Support Class entitled to retain the special risk normal retirement date:

(I) Initially enrolled before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 55; or

(B) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) Initially enrolled on or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 60; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

e. The calculation must disregard vesting requirements and early retirement reduction factors that would otherwise apply under the pension plan.

2. For each member who elects to transfer moneys from the pension plan to his or her account in the investment plan, the division shall recompute the amount transferred under subparagraph 1. within 60 days after the actual transfer of funds based upon the member's actual creditable service and actual final average compensation as of the initial date of participation in the investment plan. If the recomputed amount differs from the amount transferred by $10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the member's account the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon the effective annual interest equal to the assumed return on the actuarial investment which was used in the most recent actuarial valuation of the system, compounded annually.

b. Transfer, or cause to be transferred, from the member's account to the Florida Retirement System Trust Fund the excess, if any, of the previously transferred amount over the recomputed

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amount, together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon 6 percent effective annual interest, compounded annually, pro rata based on the member's allocation plan.

3. If contribution adjustments are made as a result of employer errors or corrections, including plan corrections, following recomputation of the amount transferred under subparagraph 1., the member is entitled to the additional contributions or is responsible for returning any excess contributions resulting from the correction. However, a ~~any~~ return of such erroneous excess pretax contribution by the plan must be made within the period allowed by the Internal Revenue Service. The present value of the member's accumulated benefit obligation may ~~shall~~ not be recalculated.

4. As directed by the member, the state board shall transfer or cause to be transferred the appropriate amounts to the designated accounts within 30 days after the effective date of the member's participation in the investment plan unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event that causes the suspension of trading on a ~~any~~ national securities exchange in the country where the securities were issued. In that event, the 30-day period may be extended by a resolution of the state board. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash, as determined by the state board. Such securities are valued as of the date of receipt in the member's account.

5. If the state board or the division receives notification from the United States Internal Revenue Service that this

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paragraph or any portion of this paragraph will cause the retirement system, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply. Upon such notice, the state board and the division shall notify the presiding officers of the Legislature.

(4) PARTICIPATION; ENROLLMENT.—

(a)1. Effective June 1, 2002, through February 28, 2003, a 90-day election period, preceded by a 90-day education period, was provided to each eligible employee participating in the Florida Retirement System which permitted each eligible employee to elect membership in the investment plan, and an employee who failed to elect the investment plan during the election period remained in the pension plan. An eligible employee who was employed in a regularly established position during the election period was granted the option to make one subsequent election, as provided in paragraph (f). With respect to an eligible employee who did not participate in the initial election period or who is initially ~~employee who is~~ employed in a regularly established position after the close of the initial election period but before July 1, 2015, ~~on June 1, 2002, by a state employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by August 31, 2002, or, in the case of an active employee who is on a leave of absence on April 1, 2002, by the last business day of the 5th month following the month the leave~~

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~~of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer commencing after April 1, 2002:~~

~~a. Any~~ such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be ~~made~~ in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (f) ~~(g)~~.

a.~~b.~~ If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The retirement

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contributions paid through the month of the employee plan change shall be transferred to the investment program, and, effective the first day of the next month, the employer and employee must pay the applicable contributions based on the employee membership class in the program.

b.~~c.~~ An employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.

2.~~3.~~ With respect to employees who become eligible to participate in the investment plan pursuant to s. 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to participate in the investment plan in lieu of retaining his or her membership in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program. The election must be ~~made~~ in writing or by electronic means and must be filed with the third-party administrator. This election is irrevocable, except as provided in paragraph (f) ~~(g)~~. Upon making such election, the employee shall be enrolled as a member in the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's participation in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program terminates. The employee's enrollment in the investment plan is effective on the first day of the month for which a full month's employer and employee contribution is made to the investment plan.

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~~4. For purposes of this paragraph, "state employer" means any agency, board, branch, commission, community college, department, institution, institution of higher education, or water management district of the state, which participates in the Florida Retirement System for the benefit of certain employees.~~

(b) With respect to employees who become eligible to participate in the investment plan, except as provided in paragraph (g), by reason of employment in a regularly established position commencing on or after July 1, 2015, such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the 8th month following the employee's month of hire, elect to participate in the pension plan or the investment plan. Eligible employees may make a plan election only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

1. The employee's election must be in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the pension plan or investment plan is irrevocable, except as provided in paragraph (f).

2. If the employee fails to make an election of the pension plan or investment plan within 8 months following the month of hire, the employee is deemed to have elected the investment plan and will be defaulted into the investment plan retroactively to the employee's date of employment. The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f).

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3. The amount of the employee and employer contributions paid before the default to the investment plan shall be transferred to the investment plan and placed in a default fund as designated by the State Board of Administration. The employee may move the contributions once an account is activated in the investment plan.

4. Effective the first day of the month after an eligible employee makes a plan election of the pension plan or investment plan, or after the month of default to the investment plan, the employee and employer shall pay the applicable contributions based on the employee membership class in the pension plan or investment plan.

~~(b)1. With respect to an eligible employee who is employed in a regularly established position on September 1, 2002, by a district school board employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30, or, in the case of an active employee who is on a leave of absence on July 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of~~

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~~the month for which a full month's employer contribution is made to the investment program.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a district school board employer commencing after July 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed~~

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~~to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "district school board employer" means any district school board that participates in the Florida Retirement System for the benefit of certain employees, or a charter school or charter technical career center that participates in the Florida Retirement System as provided in s. 121.051(2)(d).~~

~~(c)1. With respect to an eligible employee who is employed in a regularly established position on December 1, 2002, by a local employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by February 28, 2003, or, in the case of an active employee who is on a leave of absence on October 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a participant of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in~~

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~~the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a local employer commencing after October 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

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~~3. For purposes of this paragraph, "local employer" means any employer not included in paragraph (a) or paragraph (b).~~

(c) ~~(d)~~ Contributions available for self-direction by a member who has not selected one or more specific investment products shall be allocated as prescribed by the state board. The third-party administrator shall notify the member at least quarterly that the member should take an affirmative action to make an asset allocation among the investment products.

(d) ~~(e)~~ On or after July 1, 2011, a member of the pension plan who obtains a refund of employee contributions retains his or her prior plan choice upon return to employment in a regularly established position with a participating employer.

(e) ~~(f)~~ A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A member ~~retiree~~ who retires ~~is initially reemployed in a regularly established position~~ on or after July 1, 2010, is not eligible to be enrolled in renewed membership. A member who retired before July 1, 2010, and is employed on or after January 1, 2015, in a regularly established position shall be a renewed member as provided under s. 121.122. A retiree who returned to covered employment before July 1, 2010, shall continue membership in the plan as provided under s. 121.122.

(f) ~~(g)~~ After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to ~~choose to~~ move from the pension plan to the investment plan or from the

852 investment plan to the pension plan. Eligible employees may
853 elect to move between plans only if they are earning service
854 credit in an employer-employee relationship consistent with s.
855 121.021(17)(b), excluding leaves of absence without pay.
856 Effective July 1, 2005, such elections are effective on the
857 first day of the month following the receipt of the election by
858 the third-party administrator and are not subject to the
859 requirements regarding an employer-employee relationship or
860 receipt of contributions for the eligible employee in the
861 effective month, except when the election is received by the
862 third-party administrator. This paragraph is contingent upon
863 approval by the Internal Revenue Service. This paragraph is not
864 applicable to compulsory members of the investment plan
865 described in paragraph (g).
866 1. If the employee chooses to move to the investment plan,
867 ~~the provisions of~~ subsection (3) governs ~~govern~~ the transfer.
868 2. If the employee chooses to move to the pension plan, the
869 employee must transfer from his or her investment plan account,
870 and from other employee moneys as necessary, a sum representing
871 the present value of that employee's accumulated benefit
872 obligation immediately following the time of such movement,
873 determined assuming that attained service equals the sum of
874 service in the pension plan and service in the investment plan.
875 Benefit commencement occurs on the first date the employee is
876 eligible for unreduced benefits, using the discount rate and
877 other relevant actuarial assumptions that were used to value the
878 pension plan liabilities in the most recent actuarial valuation.
879 For an ~~any~~ employee who, at the time of the second election,
880 already maintains an accrued benefit amount in the pension plan,

the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional member ~~participant~~ payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

4. An employee's ability to transfer from the pension plan to the investment plan pursuant to paragraphs (a) and (b) ~~(a) - (d)~~, and the ability of a current employee to have an option to later transfer back into the pension plan under subparagraph 2., shall be deemed a significant system amendment. Pursuant to s. 121.031(4), any resulting unfunded liability arising from actual original transfers from the pension plan to the investment plan must be amortized within 30 plan years as a separate unfunded

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actuarial base independent of the reserve stabilization mechanism described ~~defined~~ in s. 121.031(3)(f). For the first 25 years, a direct amortization payment may not be calculated for this base. During this 25-year period, the separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. The actuarial funded status of the pension plan will not be affected by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following the initial 25-year period, any remaining balance of the original separate base shall be amortized over the remaining 5 years of the required 30-year amortization period.

5. If the employee chooses to transfer from the investment plan to the pension plan and retains an excess account balance in the investment plan after satisfying the buy-in requirements under this paragraph, the excess may not be distributed until the member retires from the pension plan. The excess account balance may be rolled over to the pension plan and used to purchase service credit or upgrade creditable service in the pension plan.

(g) Except for members of the Elected Officers Class or Senior Management Class eligible to withdraw from the Florida Retirement System under s. 121.052(3)(d) or s. 121.055(1)(b)2. or eligible for optional retirement programs under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35, an employee initially enrolled in the Florida Retirement System on or after July 1, 2015, and whose first employment in a regularly established position is covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of

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the investment plan. Investment plan membership continues for a compulsory member even if the employee is subsequently employed in a position covered by another membership class. Membership in the pension plan by a compulsory member is not permitted except as provided in s. 121.591(2).

1. Employees initially enrolled in the system before July 1, 2015, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in paragraph (f). Compulsory members are not eligible to use the election opportunity.

2. Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may withdraw from the system or participate in the investment plan as provided under those provisions. Employees eligible for optional retirement programs under s. 121.051(2)(c) or s. 121.35 may participate in the optional retirement program or the investment plan as provided in those provisions. Eligible employees required to participate in the optional retirement program pursuant to s. 121.051(1)(a) as provided under s. 121.35 must participate in the investment plan if employed in a position not eligible for the optional retirement program.

3. The amount of retirement contributions paid by the employee and employer, as required under s. 121.72, shall be placed in a default fund designated by the state board, until an account is activated in the investment plan, at which time the member may move the contributions from the default fund to other funds provided in the investment plan.

(5) CONTRIBUTIONS.—

(c) The state board, acting as plan fiduciary, shall ~~must~~

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ensure that all plan assets are held in a trust, pursuant to s. 401 of the Internal Revenue Code. The fiduciary shall ~~must~~ ensure that such contributions are allocated as follows:

1. The employer and employee contribution portion earmarked for member accounts shall be used to purchase interests in the appropriate investment vehicles as specified by the member, or in accordance with paragraph (4)(c) ~~(4)(d)~~.

2. The employer contribution portion earmarked for administrative and educational expenses shall be transferred to the Florida Retirement System Investment Plan Trust Fund.

3. The employer contribution portion earmarked for disability benefits shall be transferred to the Florida Retirement System Trust Fund.

(8) INVESTMENT PLAN ADMINISTRATION.—The investment plan shall be administered by the state board and affected employers. The state board may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. An oath, by affidavit or otherwise, is ~~may~~ not ~~be~~ required of a member at the time of enrollment. Except for compulsory members described in paragraph (4)(g), acknowledgment of an employee's election to participate in the program may ~~shall~~ be no greater than necessary to confirm the employee's election. The state board shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors. The department shall adopt rules

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necessary to administer the investment plan in coordination with the pension plan and the disability benefits available under the investment plan.

(a)1. The state board shall select and contract with a third-party administrator to provide administrative services if those services cannot be competitively and contractually provided by the division. With the approval of the state board, the third-party administrator may subcontract to provide components of the administrative services. As a cost of administration, the state board may compensate ~~any~~ such contractor for its services, in accordance with the terms of the contract, as is deemed necessary or proper by the board. The third-party administrator may not be an approved provider or be affiliated with an approved provider.

2. These administrative services may include, but are not limited to, enrollment of eligible employees, collection of employer and employee contributions, disbursement of contributions to approved providers in accordance with the allocation directions of members; services relating to consolidated billing; individual and collective recordkeeping and accounting; asset purchase, control, and safekeeping; and direct disbursement of funds to and from the third-party administrator, the division, the state board, employers, members, approved providers, and beneficiaries. This section does not prevent or prohibit a bundled provider from providing any administrative or customer service, including accounting and administration of individual member benefits and contributions; individual member recordkeeping; asset purchase, control, and safekeeping; direct execution of the member’s instructions as to

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asset and contribution allocation; calculation of daily net asset values; direct access to member account information; or periodic reporting to members, at least quarterly, on account balances and transactions, if these services are authorized by the state board as part of the contract.

(b)1. The state board shall select and contract with one or more organizations to provide educational services. With approval of the state board, the organizations may subcontract to provide components of the educational services. As a cost of administration, the state board may compensate any such contractor for its services in accordance with the terms of the contract, as is deemed necessary or proper by the board. The education organization may not be an approved provider or be affiliated with an approved provider.

2. Educational services shall be designed by the state board and department to assist employers, eligible employees, members, and beneficiaries in order to maintain compliance with United States Department of Labor regulations under s. 404(c) of the Employee Retirement Income Security Act of 1974 and to assist employees in their choice of pension plan or investment plan retirement alternatives. Educational services include, but are not limited to, disseminating educational materials; providing retirement planning education; explaining the pension plan and the investment plan; and offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, and asset allocation. An approved provider may also provide educational information, including retirement planning and investment allocation information concerning its products and services.

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(c)1. In evaluating and selecting a third-party administrator, the state board shall establish criteria for evaluating the relative capabilities and qualifications of each proposed administrator. In developing such criteria, the state board shall consider:

a. The administrator’s demonstrated experience in providing administrative services to public or private sector retirement systems.

b. The administrator’s demonstrated experience in providing daily valued recordkeeping to defined contribution programs.

c. The administrator’s ability and willingness to coordinate its activities with employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, monthly management reports, quarterly member reports, and ad hoc reports requested by the department or state board.

d. The cost-effectiveness and levels of the administrative services provided.

e. The administrator’s ability to interact with the members, the employers, the state board, the division, and the providers; the means by which members may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available investment vehicles, and transfer moneys between investment products; and any fees that apply to such activities.

f. Any other factor deemed necessary by the state board.

2. In evaluating and selecting an educational provider, the state board shall establish criteria under which it shall

consider the relative capabilities and qualifications of each proposed educational provider. In developing such criteria, the state board shall consider:

a. Demonstrated experience in providing educational services to public or private sector retirement systems.

b. Ability and willingness to coordinate its activities with the employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, reports on educational contacts.

c. The cost-effectiveness and levels of the educational services provided.

d. Ability to provide educational services via different media, including, but not limited to, the Internet, personal contact, seminars, brochures, and newsletters.

e. Any other factor deemed necessary by the state board.

3. The establishment of the criteria shall be solely within the discretion of the state board.

(d) The state board shall develop the form and content of any contracts to be offered under the investment plan. In developing the contracts, the board shall consider:

1. The nature and extent of the rights and benefits to be afforded in relation to the contributions required under the plan.

2. The suitability of the rights and benefits provided and the interests of employers in the recruitment and retention of eligible employees.

(e)1. The state board may contract for professional services, including legal, consulting, accounting, and actuarial

services, deemed necessary to implement and administer the investment plan. The state board may enter into a contract with one or more vendors to provide low-cost investment advice to members, supplemental to education provided by the third-party administrator. All fees under any such contract shall be paid by those members who choose to use the services of the vendor.

2. The department may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan in coordination with the pension plan. The department, in coordination with the state board, may enter into a contract with the third-party administrator in order to coordinate services common to the various programs within the Florida Retirement System.

(f) The third-party administrator may not receive direct or indirect compensation from an approved provider, except as specifically provided ~~for~~ in the contract with the state board.

(g) The state board shall receive and resolve member complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5 years for use in resolving ~~any~~ member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before

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the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member and with the member's full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

(10) EDUCATION COMPONENT.—

(a) The state board, in coordination with the department, shall provide ~~for~~ an education component for eligible employees ~~system members~~ in a manner consistent with ~~the provisions of~~ this subsection ~~section~~. ~~The education component must be available to eligible employees at least 90 days prior to the beginning date of the election period for the employees of the respective types of employers.~~

(b) Except for compulsory members described in paragraph (4)(g), the education component must provide system members with impartial and balanced information about plan choices. The education component must involve multimedia formats. Program comparisons must, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the member. The state board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the state board.

(c) Except for compulsory members described in paragraph (4)(g), the state board, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members with information necessary to make informed plan choice decisions. The transfer education

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component must include, but is not limited to, information on:

1. The amount of money available to a member to transfer to the defined contribution program.

2. The features of and differences between the pension plan and the defined contribution program, both generally and specifically, as those differences may affect the member.

3. The expected benefit available if the member were to retire under each of the retirement programs, based on appropriate alternative sets of assumptions.

4. The rate of return from investments in the defined contribution program and the period of time over which such rate of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the pension plan.

5. The historical rates of return for the investment alternatives available in the defined contribution programs.

6. The benefits and historical rates of return on investments available in a typical deferred compensation plan or a typical plan under s. 403(b) of the Internal Revenue Code for which the employee may be eligible.

7. The program choices available to employees of the State University System and the comparative benefits of each available program, if applicable.

8. Payout options available in each of the retirement programs.

~~(h) Pursuant to subsection (8), all Florida Retirement System employers have an obligation to regularly communicate the existence of the two Florida Retirement System plans and the plan choice in the natural course of administering their personnel functions, using the educational materials supplied by~~

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~~the state board and the Department of Management Services.~~

Section 9. Paragraph (b) of subsection (2) of section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account

containing employer and employee contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

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(2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under this subsection are payable in lieu of the benefits that would otherwise be payable under the provisions of subsection (1). Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

(b) *Disability retirement; entitlement.*—

1.a. A member of the investment plan initially enrolled before July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of length of service, is entitled to a monthly disability benefit.

b. A member of the investment plan initially enrolled on or after July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

2. In order for service to apply toward the ~~8~~ years of creditable service required for regular disability benefits, or toward the creditable service used in calculating a service-based benefit as provided under paragraph (g), the service must be creditable service as described below:

a. The member's period of service under the investment plan is ~~shall be~~ considered creditable service, except as provided in subparagraph d.

b. If the member has elected to retain credit for service

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under the pension plan as provided under s. 121.4501(3), all such service is ~~shall be~~ considered creditable service.

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred is ~~shall be~~ considered creditable service, except as provided in subparagraph d.

d. If a member has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

Section 10. Section 238.072, Florida Statutes, is amended to read:

238.072 Special service provisions for extension personnel.—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in this state who are joint representatives of the University of Florida and the United States Department of Agriculture, as provided in s. 121.051(8) ~~s. 121.051(7)~~, who are members of the Teachers' Retirement System, chapter 238, and who are prohibited from transferring to and participating in the Florida Retirement System, chapter 121, may retire with full benefits upon completion of 30 years of creditable service and shall be considered to have attained normal retirement age under this chapter, any law to the contrary notwithstanding. In order to comply with ~~the provisions of~~ s. 14, Art. X of the State

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Constitution, any liability accruing to the Florida Retirement System Trust Fund as a result of ~~the provisions of~~ this section shall be paid on an annual basis from the General Revenue Fund.

Section 11. Subsection (11) of section 413.051, Florida Statutes, is amended to read:

413.051 Eligible blind persons; operation of vending stands.—

(11) Effective July 1, 1996, blind licensees who remain members of the Florida Retirement System pursuant to s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~ shall pay any unappropriated retirement costs from their net profits or from program income. Within 30 days after the effective date of this act, each blind licensee who is eligible to maintain membership in the Florida Retirement System under s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~, but who elects to withdraw from the system as provided in s. 121.051(7)(b)3. ~~121.051(6)(b)3.~~, must, on or before July 31, 1996, notify the Division of Blind Services and the Department of Management Services in writing of his or her election to withdraw. Failure to timely notify the divisions shall be deemed a decision to remain a compulsory member of the Florida Retirement System. However, if, at any time after July 1, 1996, sufficient funds are not paid by a blind licensee to cover the required contribution to the Florida Retirement System, that blind licensee shall become ineligible to participate in the Florida Retirement System on the last day of the first month for which no contribution is made or the amount contributed is insufficient to cover the required contribution. For any blind licensee who becomes ineligible to participate in the Florida Retirement System as described in this subsection, ~~no~~ creditable

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service may not ~~shall~~ be earned under the Florida Retirement System for any period following the month that retirement contributions ceased to be reported. However, ~~any~~ such person may participate in the Florida Retirement System in the future if employed by a participating employer in a covered position.

Section 12. (1) As soon as practicable, the State Board of Administration and the Department of Management Services shall request a determination letter from the United States Internal Revenue Service as to whether any portion of this act will cause the Florida Retirement System or a portion thereof to be disqualified for tax purposes under the Internal Revenue Code. If the Internal Revenue Service refuses to act upon a request for a determination letter, a legal opinion from a qualified tax attorney or firm may be substituted for the determination letter. If the board or the department receives notification from the Internal Revenue Service that this act or any portion of this act will cause the Florida Retirement System, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, that portion that will cause the disqualification does not apply. Upon receipt of such notice, the state board and the department shall notify the President of the Senate and the Speaker of the House of Representatives.

(2) The State Board of Administration and the Department of Management Services shall also seek guidance from the United States Internal Revenue Service regarding potential consequences to the qualified status of the Florida Retirement System if the pension plan and the investment plan were to offer different pretax employee contributions rates to members participating in the same membership class. Upon receipt of such guidance, the

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state board and the department shall notify the President of the Senate and the Speaker of the House of Representatives.

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

And the title is amended as follows:

Delete lines 7 - 96

and insert:

of creditable service; amending s. 121.052, F.S.; prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class after a specified date; amending s. 121.053, F.S.; authorizing renewed membership in the retirement system for retirees who are reemployed in a position eligible for the Elected Officers' Class under certain circumstances; amending s. 121.055, F.S.; limiting the options of elected officers employed after a certain date to enroll in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program; closing the Senior Management Optional Annuity Program to new members after a specified date; amending s. 121.091, F.S.; providing that certain members are entitled to a monthly disability benefit; revising provisions to conform to changes made by the act; amending s. 121.122, F.S.; requiring that certain retirees who are employed on or after a specified date be renewed members in the investment plan; providing exceptions; providing that creditable service does not accrue for a reemployed retiree during a specified period; prohibiting certain funds from being paid into

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a renewed member's investment plan account for a specified period of employment; requiring the renewed member to satisfy vesting requirements; prohibiting a renewed member from receiving disability benefits; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions to the member's investment plan account; providing for the administration of the employer and employee contributions; prohibiting the purchase of past service in the investment plan during certain dates; authorizing a renewed member to receive additional credit toward the health insurance subsidy under certain circumstances; providing that a retiree employed on or after a specified date in a regularly established position eligible for the State University System Optional Retirement Program is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program during certain dates; providing that a retiree employed on or after a specified date in a regularly established position eligible for the State Community College System Optional Retirement Program is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program for certain dates; amending s. 121.35, F.S.; providing that certain

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participants in the optional retirement program for the State University System have a choice between the optional retirement program and the Florida Retirement System Investment Plan; amending s. 121.4501, F.S.; requiring certain employees initially enrolled in the Florida Retirement System on or after a specified date to be compulsory members of the investment plan; revising the definition of the terms "eligible employee" and "member" or "employee"; revising a provision relating to acknowledgment of an employee's election to participate in the investment plan; placing certain employees in the pension plan from their respective dates of hire until they are automatically enrolled in the investment plan or timely elect enrollment in the pension plan; authorizing certain employees to elect to participate in the pension plan, rather than the default investment plan, within a specified time; specifying that a retiree who has returned to covered employment before a specified date may continue membership in his or her selected retirement plan; conforming a provision to changes made by the act; providing for the transfer of certain contributions; revising the education component; deleting the obligation of system employers to communicate the existence of both retirement plans; conforming provisions and cross-references to changes made by the act; amending s. 121.591, F.S.; revising provisions relating to disability retirement benefits; amending ss. 238.072

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and 413.051, F.S.; conforming cross-references; requiring the State Board of Administration and Department of Management Services to request a determination letter from the Internal Revenue Service as to whether any provision under the act will cause the Florida Retirement System to be disqualified for tax purposes and, if so, to notify the Legislature; requiring the board and department to also seek guidance regarding the consequences of differing tax contributions; providing that the act

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 140 - 1791

and insert:

Section 2. Present subsections (3) through (9) of section 121.051, Florida Statutes, are renumbered as subsections (4) through (10), respectively, and a new subsection (3) is added to that section, to read:

121.051 Participation in the system.—

(3) COMPULSORY INVESTMENT PLAN MEMBERSHIP.—Except for

members of the Elected Officers' Class eligible to withdraw from the Florida Retirement System under s. 121.052(3)(d) or eligible for optional retirement programs under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35, or described in s. 121.051(2)(a)2. or s. 121.051(2)(b), an employee initially enrolled in the Florida Retirement System on or after July 1, 2015, and whose first employment in a regularly established position is covered by the Elected Officers' Class are compulsory members of the investment plan. Investment plan membership continues for a compulsory member even if the employee is subsequently employed in a position covered by another membership class. Membership in the pension plan is not permitted except as provided in s. 121.591(2).

(a) Employees initially enrolled in the Florida Retirement System before July 1, 2015, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in s. 121.4501(4)(f). Compulsory members are not eligible to use the election opportunity.

(b) Employees eligible to withdraw from the system under s. 121.052(3)(d) may withdraw from the system or participate in the investment plan as provided under those provisions. Employees eligible for optional retirement programs under paragraph (2)(c) or s. 121.35 may participate in the optional retirement program or the investment plan as provided in those provisions. Eligible employees required to participate pursuant to paragraph (1)(a) in the optional retirement program as provided under s. 121.35 must participate in the investment plan if employed in a position not eligible for the optional retirement program.

Section 3. Paragraph (a) of subsection (2) and paragraph

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(c) of subsection (3) of section 121.052, Florida Statutes, are amended to read:

121.052 Membership class of elected officers.—

(2) MEMBERSHIP.—The following holders of elective office, hereinafter referred to as "elected officers," whether assuming elective office by election, reelection, or appointment, are members of the Elected Officers' Class, except as provided in subsection (3):

(a)1. A ~~Any~~ Governor, Lieutenant Governor, Cabinet officer, legislator~~, Supreme Court justice, district court of appeal judge, circuit judge,~~ or state attorney assuming office on or after July 1, 1972.

2. A Supreme Court justice, district court of appeal judge, or circuit judge assuming office on or after July 1, 1972.

(3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective July 1, 1990, participation in the Elected Officers' Class shall be compulsory for elected officers listed in paragraphs (2)(a)-(d) and (f) assuming office on or after said date, unless the elected officer elects membership in another class or withdraws from the Florida Retirement System as provided in paragraphs (3)(a)-(d):

(c) Before July 1, 2015, an ~~any~~ elected officer may, within 6 months after assuming office, or within 6 months after May 30, 1997 ~~this act becomes a law~~ for serving elected officers, elect membership in the Senior Management Service Class as provided in s. 121.055 in lieu of membership in the Elected Officers' Class. ~~Any~~ Such election made by a county elected officer has ~~shall have~~ no effect upon the statutory limit on the number of nonelective full-time positions that may be designated by a

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local agency employer for inclusion in the Senior Management Service Class under s. 121.055(1)(b)1.

Section 4. Subsections (3) and (5) of section 121.053, Florida Statutes, are amended to read:

121.053 Participation in the Elected Officers' Class for retired members.—

(3) On or after July 1, 2010:

(a) A retiree of a state-administered retirement system who is initially reemployed in ~~elected or appointed for the first time to~~ an elective office in a regularly established position with a covered employer may not reenroll in the Florida Retirement System, except as provided in s. 121.122.

(b) An elected officer who is elected or appointed to an elective office and is participating in the Deferred Retirement Option Program is subject to termination as defined in s. 121.021 upon completion of his or her DROP participation period. An elected official may defer termination as provided in subsection (7).

(5) A ~~Any~~ renewed member, as described in s. 121.122(1), (3), (4), or (5) ~~subsection (1) or subsection (2)~~, who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

Section 5. Paragraph (f) of subsection (1) and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, are

amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(f) Effective July 1, 1997, through June 30, 2015:

1. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on ~~or after~~ July 1, 2010, through December 31, 2014, as an elected

official eligible for the Elected Officers' Class may not be enrolled in renewed membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class.

4. Effective January 1, 2015, an eligible retiree of a state-administered retirement system who retired before July 1, 2010, and is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

5. On or after July 1, 2015, an elected officer eligible for membership in the Elected Officers' Class may not be enrolled in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program except as provided in subsection (6).

(6)

(c) *Participation.*—

1. An eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participating in the Senior Management Service Class. Such election must be ~~made~~ in writing and filed with the department and the personnel officer of the employer on or before May 1, 1987. An eligible employee who is employed on or before February 1, 1987, and who fails to make an election to participate in the optional annuity program by May 1, 1987, shall be deemed to have elected membership in the Senior Management Service Class.

2. Except as provided in subparagraph 6., an employee who becomes eligible to participate in the optional annuity program by reason of initial employment commencing after February 1, 1987, may, within 90 days after the date of commencing employment, elect to participate in the optional annuity program. Such election must be ~~made~~ in writing and filed with the personnel officer of the employer. An eligible employee who does not within 90 days after commencing employment elect to participate in the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

3. A person who is appointed to a position in the Senior Management Service Class and who is a member of an existing retirement system or the Special Risk or Special Risk Administrative Support Classes of the Florida Retirement System may elect to remain in such system or class in lieu of participating in the Senior Management Service Class or optional annuity program. Such election must be ~~made~~ in writing and filed with the department and the personnel officer of the employer within 90 days after such appointment. An eligible employee who fails to make an election to participate in the existing system, the Special Risk Class of the Florida Retirement System, the Special Risk Administrative Support Class of the Florida Retirement System, or the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable if the employee continues to be employed in an eligible position and continues to meet the eligibility

requirements set forth in this paragraph.

5. Effective from July 1, 2002, through September 30, 2002, an active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to the Florida Retirement System Pension Plan.

a. The election must be ~~made~~ in writing and must be filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.

b. The employee shall receive service credit under the pension plan equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit is the amount representing the present value of that employee's accumulated benefit obligation for the affected period of service.

c. The employee must transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee must pay a sum representing the remainder of the amount due. The employee may not retain any employer contributions or earnings from the Senior Management Service Optional Annuity Program account.

6. A retiree of a state-administered retirement system who is initially reemployed on ~~or after~~ July 1, 2010, through

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December 31, 2014, may not renew membership in the Senior Management Service Optional Annuity Program. Effective January 1, 2015, an eligible retiree of a state-administered retirement system who retired before July 1, 2010, and is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

7. Effective July 1, 2015, the Senior Management Service Optional Annuity Program is closed to new members. Members enrolled in the Senior Management Service Optional Annuity Program before July 1, 2015, may retain their membership in the annuity program.

Section 6. Paragraph (a) of subsection (4) of section 121.091, Florida Statutes, is amended to read:

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

(4) DISABILITY RETIREMENT BENEFIT.—

(a) *Disability retirement; entitlement and effective date.*—

1.a. A member who becomes totally and permanently disabled,

as defined in paragraph (b), after completing 5 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit, ~~;~~ except that a ~~any~~ member with less than 5 years of creditable service on July 1, 1980, or a ~~any~~ person who becomes a member of the Florida Retirement System on or after such date must have completed 10 years of creditable service before becoming totally and permanently disabled in order to receive disability retirement benefits for a ~~any~~ disability that ~~which~~ occurs other than in the line of duty. However, if a member employed on July 1, 1980, who has less than 5 years of creditable service as of that date becomes totally and permanently disabled after completing 5 years of creditable service and is found not to have attained fully insured status for benefits under the federal Social Security Act, such member is entitled to a monthly disability benefit.

b. Effective July 1, 2001, a member of the pension plan initially enrolled before July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

c. Effective July 1, 2015, a member of the pension plan initially enrolled on or after July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty

regardless of service, is entitled to a monthly disability benefit.

2. If the division ~~has~~ received ~~from the employer~~ the required documentation of the member's termination of employment from the employer, the effective retirement date for a member who applies and is approved for disability retirement shall be as established by rule of the division.

3. For a member who is receiving Workers' Compensation payments, the effective disability retirement date may not precede the date the member reaches Maximum Medical Improvement (MMI), unless the member terminates employment before reaching MMI.

Section 7. Subsection (2) of section 121.122, Florida Statutes, is amended, and subsections (3), (4), and (5) are added to that section, to read:

121.122 Renewed membership in system.—

(2) Except as provided in subsections (3)-(5), a retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.

(3) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, had less than 10 years of creditable service upon retirement, and is employed in a regularly established position with a covered employer on or after January 1, 2015, shall be a renewed member of the Regular Class of the investment plan regardless of the position held, unless employed in a position

eligible for participation in the State University System Optional Retirement Program or the State Community College System Optional Retirement Program as provided in subsections (4) and (5), respectively. The renewed member must satisfy the vesting requirements and other provisions of this chapter.

(a) Creditable service, including credit toward the retiree health insurance subsidy provided in s. 112.363, does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014.

(b) Employer and employee contributions, interest, earnings, or any other funds may not be paid into a renewed member's investment plan account for any employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014, by the renewed member or the employer on behalf of the member.

(c) To be eligible to receive a retirement benefit, the renewed member must satisfy the vesting requirements in s. 121.4501(6).

(d) The member is ineligible to receive disability benefits as provided in s. 121.091(4) or s. 121.591(2).

(e) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(f) The member must satisfy the requirements for termination from employment provided in s. 121.021(39).

(g) Upon the renewed membership or reemployment of a retiree, the employer and the retiree shall pay the applicable employer and employee contributions required under ss. 112.363, 121.71, 121.74, and 121.76. The contributions are payable only

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for employment and salary earned in a regularly established position with a covered employer on or after January 1, 2015. The employer and employee contributions shall be transferred to the investment plan and placed in a default fund as designated by the state board. The retiree may move the contributions once an account is activated in the investment plan.

(h) The member may not purchase any past service in the investment plan, including employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014.

(i) A renewed member who is a retiree of the investment plan and who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the subsidy. Such credit may be earned only for employment in a regularly established position with a covered employer on or after January 1, 2015. Any additional subsidy due because of additional credit may be received only at the time of paying the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed under s. 112.363.

(4) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, and who is employed in a regularly established position eligible for participation in the State University System Optional Retirement Program on or after January 1, 2015, shall become a renewed member of the optional retirement program. The

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renewed member must satisfy the vesting requirements and other provisions of this chapter. Once enrolled, a renewed member remains enrolled in the optional retirement program while employed in an eligible position for the optional retirement program. If employment in a different covered position results in the retiree's enrollment in the investment plan, the retiree is no longer eligible to participate in the optional retirement program unless employed in a mandatory position under s. 121.35.

(a) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(b) The member must satisfy the requirements for termination of employment provided in s. 121.021(39).

(c) Upon renewed membership or reemployment of a retiree, the employer and the retiree must pay the applicable employer and employee contributions required under s. 121.35.

(d) The member, or the employer on behalf of the member, may not purchase any prior service in the optional retirement program or employment from July 1, 2010, to December 31, 2014.

(5) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service System Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, and who is employed in a regularly established position eligible for participation in the State Community College System Optional Retirement Program as provided in s. 121.051(2)(c)4. on or after January 1, 2015, shall become a renewed member of the optional retirement program. The renewed member must satisfy the eligibility requirements of this chapter and s. 1012.875 for the optional retirement program. Once

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enrolled, a renewed member remains enrolled in the optional retirement program while employed in an eligible position for the optional retirement program. If employment in a different covered position results in the retiree's enrollment in the investment plan, the retiree is no longer eligible to participate in the optional retirement program.

(a) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(b) The member must satisfy the requirements for termination of employment provided in s. 121.021(39).

(c) Upon renewed membership or reemployment of a retiree, the employer and the retiree must pay the applicable employer and employee contributions required under ss. 121.051(2)(c) and 1012.875.

(d) The member, or the employer on behalf of the member, may not purchase any past service in the optional retirement program or employment accrued from July 1, 2010, to December 31, 2014.

Section 8. Paragraph (c) of subsection (3) of section 121.35, Florida Statutes, is amended to read:

121.35 Optional retirement program for the State University System.—

(3) ELECTION OF OPTIONAL PROGRAM.—

(c) An ~~Any~~ employee who becomes eligible to participate in the optional retirement program on or after January 1, 1993, shall be a compulsory participant of the program unless such employee elects membership in the Florida Retirement System. Such election shall be ~~made~~ in writing and filed with the personnel officer of the employer. An ~~Any~~ eligible employee who

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fails to make such election within the prescribed time period shall be deemed to have elected to participate in the optional retirement program.

1. An ~~Any~~ employee whose optional retirement program eligibility results from initial employment shall be enrolled in the program at the commencement of employment. If, within 90 days after commencement of employment, the employee elects membership in the Florida Retirement System, such membership is ~~shall be~~ effective retroactive to the date of commencing ~~commencement of~~ employment as provided in s. 121.4501(4).

2. An ~~Any~~ employee whose optional retirement program eligibility results from a change in status due to the subsequent designation of the employee's position as one of those specified in paragraph (2)(a) or due to the employee's appointment, promotion, transfer, or reclassification to a position specified in paragraph (2)(a) shall be enrolled in the optional retirement program upon such change in status and shall be notified by the employer of such action. If, within 90 days after the date of such notification, the employee elects to retain membership in the Florida Retirement System, such continuation of membership is ~~shall be~~ retroactive to the date of the change in status.

3. Notwithstanding ~~the provisions of~~ this paragraph, effective July 1, 1997, an ~~any~~ employee who is eligible to participate in the Optional Retirement Program and who fails to execute a contract with one of the approved companies and to notify the department in writing as provided in subsection (4) within 90 days after the date of eligibility shall be deemed to have elected membership in the Florida Retirement System, except

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as provided in s. 121.051(1)(a). This provision ~~shall~~ also applies ~~apply~~ to an ~~any~~ employee who terminates employment in an eligible position before executing the required investment ~~annuity~~ contract and notifying the department. Such membership is ~~shall be~~ retroactive to the date of eligibility, and all appropriate contributions shall be transferred to the Florida Retirement System Trust Fund and the Health Insurance Subsidy Trust Fund.

Section 9. Subsection (1), paragraphs (e) and (i) of subsection (2), paragraph (b) of subsection (3), subsection (4), paragraph (c) of subsection (5), subsection (8), and paragraphs (a), (b), (c), and (h) of subsection (10) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(1) The Trustees of the State Board of Administration shall establish a defined contribution program called the "Florida Retirement System Investment Plan" or "investment plan" for members of the Florida Retirement System under which retirement benefits are ~~will be~~ provided for eligible employees who elect to participate in the program, for employees who default into the program, and for compulsory members described in paragraph (4)(g). The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and related regulations. The employer and employee shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

(2) DEFINITIONS.—As used in this part, the term:

(e) "Eligible employee" means an officer or employee, as

defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; ~~or~~

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35; or

3. Is a retired member of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010 and is employed in a regularly established position on or after January 1, 2015, as provided in s. 121.122.

The term does not include any member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of a state-administered retirement system who retired ~~initially reemployed in a regularly established position~~ on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

(i) "Member" or "employee" means an eligible employee who enrolls, is defaulted into, or is a compulsory member of ~~in~~ the investment plan as provided in subsection (4), a terminated Deferred Retirement Option Program member as described in

subsection (21), or a beneficiary or alternate payee of a member or employee.

(3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.—

(b) Notwithstanding paragraph (a), an eligible employee who elects to participate in or is defaulted into the investment plan and establishes one or more individual member accounts may elect to transfer to the investment plan a sum representing the present value of the employee's accumulated benefit obligation under the pension plan, except as provided in paragraph (4)(b). Upon transfer, all service credit earned under the pension plan is nullified for purposes of entitlement to a future benefit under the pension plan. A member may not transfer the accumulated benefit obligation balance from the pension plan after the time period for enrolling in the investment plan has expired.

1. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation under the pension plan, subject to recomputation under subparagraph 2. For state employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on June 30, 2002; for district school board employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on September 30, 2002; and for local government employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on December 31, 2002. The dates specified are the "estimate date" for these employees. The actuarial present value of the employee's accumulated

benefit obligation shall be based on the following:

a. The discount rate and other relevant actuarial assumptions used to value the Florida Retirement System Trust Fund at the time the amount to be transferred is determined, consistent with the factors provided in sub-subparagraphs b. and c.

b. A benefit commencement age, based on the member's estimated creditable service as of the estimate date.

c. Except as provided under sub-subparagraph d., for a member initially enrolled:

(I) Before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 62; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) On or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 65; or

(B) The age the member would attain if the member completed 33 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

d. For members of the Special Risk Class and for members of

the Special Risk Administrative Support Class entitled to retain the special risk normal retirement date:

(I) Initially enrolled before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 55; or

(B) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) Initially enrolled on or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 60; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

e. The calculation must disregard vesting requirements and early retirement reduction factors that would otherwise apply under the pension plan.

2. For each member who elects to transfer moneys from the pension plan to his or her account in the investment plan, the division shall recompute the amount transferred under subparagraph 1. within 60 days after the actual transfer of funds based upon the member's actual creditable service and

actual final average compensation as of the initial date of participation in the investment plan. If the recomputed amount differs from the amount transferred by $10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the member’s account the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon the effective annual interest equal to the assumed return on the actuarial investment which was used in the most recent actuarial valuation of the system, compounded annually.

b. Transfer, or cause to be transferred, from the member’s account to the Florida Retirement System Trust Fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon 6 percent effective annual interest, compounded annually, pro rata based on the member’s allocation plan.

3. If contribution adjustments are made as a result of employer errors or corrections, including plan corrections, following recomputation of the amount transferred under subparagraph 1., the member is entitled to the additional contributions or is responsible for returning any excess contributions resulting from the correction. However, a ~~any~~ return of such erroneous excess pretax contribution by the plan must be made within the period allowed by the Internal Revenue Service. The present value of the member’s accumulated benefit obligation may ~~shall~~ not be recalculated.

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4. As directed by the member, the state board shall transfer or cause to be transferred the appropriate amounts to the designated accounts within 30 days after the effective date of the member's participation in the investment plan unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event that causes the suspension of trading on a ~~any~~ national securities exchange in the country where the securities were issued. In that event, the 30-day period may be extended by a resolution of the state board. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash, as determined by the state board. Such securities are valued as of the date of receipt in the member's account.

5. If the state board or the division receives notification from the United States Internal Revenue Service that this paragraph or any portion of this paragraph will cause the retirement system, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply. Upon such notice, the state board and the division shall notify the presiding officers of the Legislature.

(4) PARTICIPATION; ENROLLMENT.—

(a)1. Effective June 1, 2002, through February 28, 2003, a 90-day election period, preceded by a 90-day education period, was provided to each eligible employee participating in the Florida Retirement System which permitted each eligible employee to elect membership in the investment plan, and an employee who failed to elect the investment plan during the election period remained in the pension plan. An eligible employee who was

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employed in a regularly established position during the election period was granted the option to make one subsequent election, as provided in paragraph (f). With respect to an eligible employee who did not participate in the initial election period or who is initially ~~employee who is~~ employed in a regularly established position after the close of the initial election period but before July 1, 2015, ~~on June 1, 2002, by a state employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by August 31, 2002, or, in the case of an active employee who is on a leave of absence on April 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

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~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer commencing after April 1, 2002:~~

~~a. Any~~ such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be ~~made~~ in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (f) ~~(g)~~.

a.~~b.~~ If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The retirement contributions paid through the month of the employee plan change shall be transferred to the investment program, and, effective the first day of the next month, the employer and employee must pay the applicable contributions based on the employee membership class in the program.

b.~~c.~~ An employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.

2.~~3.~~ With respect to employees who become eligible to participate in the investment plan pursuant to s. 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to participate in the investment plan in lieu of retaining his or

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her membership in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program. The election must be ~~made~~ in writing or by electronic means and must be filed with the third-party administrator. This election is irrevocable, except as provided in paragraph (f) ~~(g)~~. Upon making such election, the employee shall be enrolled as a member in the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's participation in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program terminates. The employee's enrollment in the investment plan is effective on the first day of the month for which a full month's employer and employee contribution is made to the investment plan.

~~4. For purposes of this paragraph, "state employer" means any agency, board, branch, commission, community college, department, institution, institution of higher education, or water management district of the state, which participates in the Florida Retirement System for the benefit of certain employees.~~

(b) With respect to employees who become eligible to participate in the investment plan, except as provided in paragraph (g), by reason of employment in a regularly established position commencing on or after July 1, 2015, such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the 8th month following the employee's month of hire, elect to participate in the pension plan or the investment plan. Eligible

employees may make a plan election only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

1. The employee's election must be in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the pension plan or investment plan is irrevocable, except as provided in paragraph (f).

2. If the employee fails to make an election of the pension plan or investment plan within 8 months following the month of hire, the employee is deemed to have elected the investment plan and will be defaulted into the investment plan retroactively to the employee's date of employment. The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f).

3. The amount of the employee and employer contributions paid before the default to the investment plan shall be transferred to the investment plan and placed in a default fund as designated by the State Board of Administration. The employee may move the contributions once an account is activated in the investment plan.

4. Effective the first day of the month after an eligible employee makes a plan election of the pension plan or investment plan, or after the month of default to the investment plan, the employee and employer shall pay the applicable contributions based on the employee membership class in the pension plan or investment plan.

~~(b)1. With respect to an eligible employee who is employed in a regularly established position on September 1, 2002, by a~~

~~district school board employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30, or, in the case of an active employee who is on a leave of absence on July 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment program.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a district school board employer commencing after July 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's~~

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~~month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "district school board employer" means any district school board that participates in the Florida Retirement System for the benefit of certain employees, or a charter school or charter technical career center that participates in the Florida Retirement System as provided in s. 121.051(2)(d).~~

~~(c)1. With respect to an eligible employee who is employed in a regularly established position on December 1, 2002, by a local employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in~~

~~the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by February 28, 2003, or, in the case of an active employee who is on a leave of absence on October 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a participant of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a local employer commencing after October 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The~~

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~~election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "local employer" means any employer not included in paragraph (a) or paragraph (b).~~

(c) ~~(d)~~ Contributions available for self-direction by a member who has not selected one or more specific investment products shall be allocated as prescribed by the state board. The third-party administrator shall notify the member at least quarterly that the member should take an affirmative action to make an asset allocation among the investment products.

(d) ~~(e)~~ On or after July 1, 2011, a member of the pension plan who obtains a refund of employee contributions retains his or her prior plan choice upon return to employment in a regularly established position with a participating employer.

(e) ~~(f)~~ A member of the investment plan who takes a distribution of any contributions from his or her investment

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plan account is considered a retiree. A member ~~retiree~~ who retires ~~is initially reemployed in a regularly established position~~ on or after July 1, 2010, is not eligible to be enrolled in renewed membership. A member who retired before July 1, 2010, and is employed on or after January 1, 2015, in a regularly established position shall be a renewed member as provided under s. 121.122. A retiree who returned to covered employment before July 1, 2010, shall continue membership in the plan as provided under s. 121.122.

(f) ~~(g)~~ After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to ~~choose to~~ move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service. This paragraph is not applicable to compulsory members of the investment plan described in paragraph (g).

1. If the employee chooses to move to the investment plan, ~~the provisions of~~ subsection (3) governs ~~govern~~ the transfer.

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. For an ~~any~~ employee who, at the time of the second election, already maintains an accrued benefit amount in the pension plan, the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer

from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional member ~~participant~~ payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

4. An employee's ability to transfer from the pension plan to the investment plan pursuant to paragraphs (a) and (b) ~~(a)-(d)~~, and the ability of a current employee to have an option to later transfer back into the pension plan under subparagraph 2., shall be deemed a significant system amendment. Pursuant to s. 121.031(4), any resulting unfunded liability arising from actual original transfers from the pension plan to the investment plan must be amortized within 30 plan years as a separate unfunded actuarial base independent of the reserve stabilization mechanism described ~~defined~~ in s. 121.031(3)(f). For the first 25 years, a direct amortization payment may not be calculated for this base. During this 25-year period, the separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. The actuarial funded status of the pension plan will not be affected by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following the initial 25-year period, any remaining balance of the original separate base shall be amortized over the remaining 5 years of the required 30-year amortization period.

5. If the employee chooses to transfer from the investment plan to the pension plan and retains an excess account balance

in the investment plan after satisfying the buy-in requirements under this paragraph, the excess may not be distributed until the member retires from the pension plan. The excess account balance may be rolled over to the pension plan and used to purchase service credit or upgrade creditable service in the pension plan.

(g) Except for members of the Elected Officers Class eligible to withdraw from the Florida Retirement System under s. 121.052(3)(d) or eligible for optional retirement programs under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35, or described in s. 121.052(2)(a)2. or (2)(b), an employee initially enrolled in the Florida Retirement System on or after July 1, 2015, and whose first employment in a regularly established position is covered by the Elected Officers' Class are compulsory members of the investment plan. Investment plan membership continues for a compulsory member even if the employee is subsequently employed in a position covered by another membership class. Membership in the pension plan by a compulsory member is not permitted except as provided in s. 121.591(2).

1. Employees initially enrolled in the system before July 1, 2015, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in paragraph (f). Compulsory members are not eligible to use the election opportunity.

2. Employees eligible to withdraw from the system under s. 121.052(3)(d) may withdraw from the system or participate in the investment plan as provided under those provisions. Employees eligible for optional retirement programs under s. 121.051(2)(c) or s. 121.35 may participate in the optional retirement program

or the investment plan as provided in those provisions. Eligible employees required to participate in the optional retirement program pursuant to s. 121.051(1)(a) as provided under s. 121.35 must participate in the investment plan if employed in a position not eligible for the optional retirement program.

3. The amount of retirement contributions paid by the employee and employer, as required under s. 121.72, shall be placed in a default fund designated by the state board, until an account is activated in the investment plan, at which time the member may move the contributions from the default fund to other funds provided in the investment plan.

(5) CONTRIBUTIONS.—

(c) The state board, acting as plan fiduciary, shall ~~must~~ ensure that all plan assets are held in a trust, pursuant to s. 401 of the Internal Revenue Code. The fiduciary shall ~~must~~ ensure that such contributions are allocated as follows:

1. The employer and employee contribution portion earmarked for member accounts shall be used to purchase interests in the appropriate investment vehicles as specified by the member, or in accordance with paragraph (4)(c) ~~(4)(d)~~.

2. The employer contribution portion earmarked for administrative and educational expenses shall be transferred to the Florida Retirement System Investment Plan Trust Fund.

3. The employer contribution portion earmarked for disability benefits shall be transferred to the Florida Retirement System Trust Fund.

(8) INVESTMENT PLAN ADMINISTRATION.—The investment plan shall be administered by the state board and affected employers. The state board may require oaths, by affidavit or otherwise,

and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. An oath, by affidavit or otherwise, is ~~may~~ not ~~be~~ required of a member at the time of enrollment. Except for compulsory members described in paragraph (4)(g), acknowledgment of an employee's election to participate in the program may ~~shall~~ be no greater than necessary to confirm the employee's election. The state board shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors. The department shall adopt rules necessary to administer the investment plan in coordination with the pension plan and the disability benefits available under the investment plan.

(a)1. The state board shall select and contract with a third-party administrator to provide administrative services if those services cannot be competitively and contractually provided by the division. With the approval of the state board, the third-party administrator may subcontract to provide components of the administrative services. As a cost of administration, the state board may compensate ~~any~~ such contractor for its services, in accordance with the terms of the contract, as is deemed necessary or proper by the board. The third-party administrator may not be an approved provider or be affiliated with an approved provider.

2. These administrative services may include, but are not limited to, enrollment of eligible employees, collection of

employer and employee contributions, disbursement of contributions to approved providers in accordance with the allocation directions of members; services relating to consolidated billing; individual and collective recordkeeping and accounting; asset purchase, control, and safekeeping; and direct disbursement of funds to and from the third-party administrator, the division, the state board, employers, members, approved providers, and beneficiaries. This section does not prevent or prohibit a bundled provider from providing any administrative or customer service, including accounting and administration of individual member benefits and contributions; individual member recordkeeping; asset purchase, control, and safekeeping; direct execution of the member's instructions as to asset and contribution allocation; calculation of daily net asset values; direct access to member account information; or periodic reporting to members, at least quarterly, on account balances and transactions, if these services are authorized by the state board as part of the contract.

(b)1. The state board shall select and contract with one or more organizations to provide educational services. With approval of the state board, the organizations may subcontract to provide components of the educational services. As a cost of administration, the state board may compensate any such contractor for its services in accordance with the terms of the contract, as is deemed necessary or proper by the board. The education organization may not be an approved provider or be affiliated with an approved provider.

2. Educational services shall be designed by the state board and department to assist employers, eligible employees,

members, and beneficiaries in order to maintain compliance with United States Department of Labor regulations under s. 404(c) of the Employee Retirement Income Security Act of 1974 and to assist employees in their choice of pension plan or investment plan retirement alternatives. Educational services include, but are not limited to, disseminating educational materials; providing retirement planning education; explaining the pension plan and the investment plan; and offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, and asset allocation. An approved provider may also provide educational information, including retirement planning and investment allocation information concerning its products and services.

(c)1. In evaluating and selecting a third-party administrator, the state board shall establish criteria for evaluating the relative capabilities and qualifications of each proposed administrator. In developing such criteria, the state board shall consider:

a. The administrator’s demonstrated experience in providing administrative services to public or private sector retirement systems.

b. The administrator’s demonstrated experience in providing daily valued recordkeeping to defined contribution programs.

c. The administrator’s ability and willingness to coordinate its activities with employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, monthly management reports, quarterly member reports, and ad hoc reports requested by the department or state

board.

d. The cost-effectiveness and levels of the administrative services provided.

e. The administrator's ability to interact with the members, the employers, the state board, the division, and the providers; the means by which members may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available investment vehicles, and transfer moneys between investment products; and any fees that apply to such activities.

f. Any other factor deemed necessary by the state board.

2. In evaluating and selecting an educational provider, the state board shall establish criteria under which it shall consider the relative capabilities and qualifications of each proposed educational provider. In developing such criteria, the state board shall consider:

a. Demonstrated experience in providing educational services to public or private sector retirement systems.

b. Ability and willingness to coordinate its activities with the employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, reports on educational contacts.

c. The cost-effectiveness and levels of the educational services provided.

d. Ability to provide educational services via different media, including, but not limited to, the Internet, personal contact, seminars, brochures, and newsletters.

e. Any other factor deemed necessary by the state board.

3. The establishment of the criteria shall be solely within the discretion of the state board.

(d) The state board shall develop the form and content of any contracts to be offered under the investment plan. In developing the contracts, the board shall consider:

1. The nature and extent of the rights and benefits to be afforded in relation to the contributions required under the plan.

2. The suitability of the rights and benefits provided and the interests of employers in the recruitment and retention of eligible employees.

(e)1. The state board may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan. The state board may enter into a contract with one or more vendors to provide low-cost investment advice to members, supplemental to education provided by the third-party administrator. All fees under any such contract shall be paid by those members who choose to use the services of the vendor.

2. The department may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan in coordination with the pension plan. The department, in coordination with the state board, may enter into a contract with the third-party administrator in order to coordinate services common to the various programs within the Florida Retirement System.

(f) The third-party administrator may not receive direct or indirect compensation from an approved provider, except as

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specifically provided ~~for~~ in the contract with the state board.

(g) The state board shall receive and resolve member complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5 years for use in resolving ~~any~~ member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member and with the member's full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

(10) EDUCATION COMPONENT.—

(a) The state board, in coordination with the department, shall provide ~~for~~ an education component for eligible employees ~~system members~~ in a manner consistent with ~~the provisions of~~ this subsection ~~section~~. ~~The education component must be available to eligible employees at least 90 days prior to the beginning date of the election period for the employees of the respective types of employers.~~

(b) Except for compulsory members described in paragraph (4)(g), the education component must provide system members with

impartial and balanced information about plan choices. The education component must involve multimedia formats. Program comparisons must, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the member. The state board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the state board.

(c) Except for compulsory members described in paragraph (4)(g), the state board, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members with information necessary to make informed plan choice decisions. The transfer education component must include, but is not limited to, information on:

1. The amount of money available to a member to transfer to the defined contribution program.

2. The features of and differences between the pension plan and the defined contribution program, both generally and specifically, as those differences may affect the member.

3. The expected benefit available if the member were to retire under each of the retirement programs, based on appropriate alternative sets of assumptions.

4. The rate of return from investments in the defined contribution program and the period of time over which such rate of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the pension plan.

5. The historical rates of return for the investment alternatives available in the defined contribution programs.

6. The benefits and historical rates of return on

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investments available in a typical deferred compensation plan or a typical plan under s. 403(b) of the Internal Revenue Code for which the employee may be eligible.

7. The program choices available to employees of the State University System and the comparative benefits of each available program, if applicable.

8. Payout options available in each of the retirement programs.

~~(h) Pursuant to subsection (8), all Florida Retirement System employers have an obligation to regularly communicate the existence of the two Florida Retirement System plans and the plan choice in the natural course of administering their personnel functions, using the educational materials supplied by the state board and the Department of Management Services.~~

Section 10. Paragraph (b) of subsection (2) of section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee’s principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue

Code. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer and employee contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day

of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

(2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under this subsection are payable in lieu of the benefits that would otherwise be payable under the provisions of subsection (1). Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

(b) *Disability retirement; entitlement.*—

1.a. A member of the investment plan initially enrolled before July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of length of service, is entitled to a monthly disability benefit.

b. A member of the investment plan initially enrolled on or after July 1, 2015, who becomes totally and permanently

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disabled, as defined in paragraph (d), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

2. In order for service to apply toward the ~~8~~ years of creditable service required for regular disability benefits, or toward the creditable service used in calculating a service-based benefit as provided under paragraph (g), the service must be creditable service as described below:

a. The member's period of service under the investment plan is ~~shall be~~ considered creditable service, except as provided in subparagraph d.

b. If the member has elected to retain credit for service under the pension plan as provided under s. 121.4501(3), all such service is ~~shall be~~ considered creditable service.

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred is ~~shall be~~ considered creditable service, except as provided in subparagraph d.

d. If a member has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

Section 11. Section 238.072, Florida Statutes, is amended to read:

238.072 Special service provisions for extension

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personnel.—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in this state who are joint representatives of the University of Florida and the United States Department of Agriculture, as provided in s. 121.051(8) ~~s. 121.051(7)~~, who are members of the Teachers' Retirement System, chapter 238, and who are prohibited from transferring to and participating in the Florida Retirement System, chapter 121, may retire with full benefits upon completion of 30 years of creditable service and shall be considered to have attained normal retirement age under this chapter, any law to the contrary notwithstanding. In order to comply with ~~the provisions of~~ s. 14, Art. X of the State Constitution, any liability accruing to the Florida Retirement System Trust Fund as a result of ~~the provisions of~~ this section shall be paid on an annual basis from the General Revenue Fund.

Section 12. Subsection (11) of section 413.051, Florida Statutes, is amended to read:

413.051 Eligible blind persons; operation of vending stands.—

(11) Effective July 1, 1996, blind licensees who remain members of the Florida Retirement System pursuant to s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~ shall pay any unappropriated retirement costs from their net profits or from program income. Within 30 days after the effective date of this act, each blind licensee who is eligible to maintain membership in the Florida Retirement System under s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~, but who elects to withdraw from the system as provided in s. 121.051(7)(b)3. ~~121.051(6)(b)3.~~, must, on or before July 31,

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1996, notify the Division of Blind Services and the Department of Management Services in writing of his or her election to withdraw. Failure to timely notify the divisions shall be deemed a decision to remain a compulsory member of the Florida Retirement System. However, if, at any time after July 1, 1996, sufficient funds are not paid by a blind licensee to cover the required contribution to the Florida Retirement System, that blind licensee shall become ineligible to participate in the Florida Retirement System on the last day of the first month for which no contribution is made or the amount contributed is insufficient to cover the required contribution. For any blind licensee who becomes ineligible to participate in the Florida Retirement System as described in this subsection, ~~no~~ creditable service may not ~~shall~~ be earned under the Florida Retirement System for any period following the month that retirement contributions ceased to be reported. However, ~~any~~ such person may participate in the Florida Retirement System in the future if employed by a participating employer in a covered position.

Section 13. (1) As soon as practicable, the State Board of Administration and the Department of Management Services shall request a determination letter from the United States Internal Revenue Service as to whether any portion of this act will cause the Florida Retirement System or a portion thereof to be disqualified for tax purposes under the Internal Revenue Code. If the Internal Revenue Service refuses to act upon a request for a determination letter, a legal opinion from a qualified tax attorney or firm may be substituted for the determination letter. If the board or the department receives notification from the Internal Revenue Service that this act or any portion

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of this act will cause the Florida Retirement System, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, that portion that will cause the disqualification does not apply. Upon receipt of such notice, the state board and the department shall notify the President of the Senate and the Speaker of the House of Representatives.

(2) The State Board of Administration and the Department of Management Services shall also seek guidance from the United States Internal Revenue Service regarding potential consequences to the qualified status of the Florida Retirement System if the pension plan and the investment plan were to offer different pretax employee contributions rates to members participating in the same membership class. Upon receipt of such guidance, the state board and the department shall notify the President of the Senate and the Speaker of the House of Representatives.

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

And the title is amended as follows:

Delete lines 8 - 96

and insert:

providing for compulsory membership in the Florida Retirement System Investment Plan for certain members of the Elected Officers' Class initially enrolled after a certain date; amending s. 121.052, F.S.; differentiating between cabinet members and judicial members of the Elected Officers Class; prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class after a specified date; amending s. 121.053, F.S.; authorizing renewed

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membership in the retirement system for retirees who are reemployed in a position eligible for the Elected Officers' Class under certain circumstances; amending s. 121.055, F.S.; limiting the options of elected officers employed after a certain date to enroll in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program; closing the Senior Management Optional Annuity Program to new members after a specified date; amending s. 121.091, F.S.; providing that certain members are entitled to a monthly disability benefit; revising provisions to conform to changes made by the act; amending s. 121.122, F.S.; requiring that certain retirees who are employed on or after a specified date be renewed members in the investment plan; providing exceptions; providing that creditable service does not accrue for a reemployed retiree during a specified period; prohibiting certain funds from being paid into a renewed member's investment plan account for a specified period of employment; requiring the renewed member to satisfy vesting requirements; prohibiting a renewed member from receiving disability benefits; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions to the member's investment plan account; providing for the administration of the employer and employee contributions; prohibiting the purchase of past service in the investment plan during certain dates; authorizing a renewed member to receive

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additional credit toward the health insurance subsidy under certain circumstances; providing that a retiree employed on or after a specified date in a regularly established position eligible for the State University System Optional Retirement Program is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program during certain dates; providing that a retiree employed on or after a specified date in a regularly established position eligible for the State Community College System Optional Retirement Program is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program for certain dates; amending s. 121.35, F.S.; providing that certain participants in the optional retirement program for the State University System have a choice between the optional retirement program and the Florida Retirement System Investment Plan; amending s. 121.4501, F.S.; requiring certain employees initially enrolled in the Florida Retirement System on or after a specified date to be compulsory members of the investment plan; revising the definition of the terms “eligible employee” and “member” or “employee”; revising a provision relating to acknowledgment of an employee’s election to participate in the investment plan;

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placing certain employees in the pension plan from their respective dates of hire until they are automatically enrolled in the investment plan or timely elect enrollment in the pension plan; authorizing certain employees to elect to participate in the pension plan, rather than the default investment plan, within a specified time; specifying that a retiree who has returned to covered employment before a specified date may continue membership in his or her selected retirement plan; conforming a provision to changes made by the act; providing for the transfer of certain contributions; revising the education component; deleting the obligation of system employers to communicate the existence of both retirement plans; conforming provisions and cross-references to changes made by the act; amending s. 121.591, F.S.; revising provisions relating to disability retirement benefits; amending ss. 238.072 and 413.051, F.S.; conforming cross-references; requiring the State Board of Administration and Department of Management Services to request a determination letter from the Internal Revenue Service as to whether any provision under the act will cause the Florida Retirement System to be disqualified for tax purposes and, if so, to notify the Legislature; requiring the board and department to also seek guidance regarding the consequences of differing tax contributions; providing that the act

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment to Amendment (343792)

Delete lines 14 - 15
and insert:
121.051(2)(c), or s. 121.35, or described in s. 121.052(2)(a)2. or s. 121.052(2)(b), an employee initially enrolled in the

By the Committees on Governmental Oversight and Accountability; and Community Affairs

585-04191-14 20141114c1

A bill to be entitled

An act relating to retirement; amending s. 121.021, F.S.; revising the definition of "vested" or "vesting" to provide that a member initially enrolled in the Florida Retirement System after a certain date is vested in the pension plan after completing 10 years of creditable service; amending s. 121.051, F.S.; conforming cross-references; providing for compulsory membership in the Florida Retirement System Investment Plan for certain employees in the Elected Officers' Class or the Senior Management Service Class initially enrolled after a specified date; amending s. 121.052, F.S.; prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class after a specified date; amending s. 121.053, F.S.; authorizing renewed membership in the retirement system for retirees who are reemployed in a position eligible for the Elected Officers' Class under certain circumstances; amending s. 121.055, F.S., relating to the Senior Management Service Class; limiting the options of elected officers employed after a certain date to enroll in the class or in the Senior Management Service Optional Annuity Program; closing the Senior Management Optional Annuity Program to new members after a specified date; amending s. 121.091, F.S.; providing that certain members are entitled to a monthly disability benefit; revising provisions to conform to changes made by the act; amending s. 121.122, F.S.; requiring that certain retirees who are

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

585-04191-14 20141114c1

employed on or after a specified date be renewed members in the investment plan; providing exceptions; providing that creditable service does not accrue for a reemployed retiree during a specified period; prohibiting certain funds from being paid into a renewed member's investment plan account for a specified period of employment; requiring the renewed member to satisfy vesting requirements; prohibiting a renewed member from receiving disability benefits; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions to the member's investment plan account; providing for the administration of the employer and employee contributions; prohibiting the purchase of past service in the investment plan during certain dates; authorizing a renewed member to receive additional credit toward the health insurance subsidy under certain circumstances; providing that a retiree employed on or after a specified date in a regularly established position eligible for the State University System Optional Retirement Program is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program during certain dates; providing that a retiree employed on or after a specified date in a regularly established position eligible for the State Community College System Optional Retirement Program is a renewed member of

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

that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program for certain dates; amending s. 121.35, F.S.; providing that certain participants in the optional retirement program for the State University System have a choice between the optional retirement program and the Florida Retirement System Investment Plan; conforming cross-references; amending s. 121.4501, F.S.; requiring certain employees initially enrolled in the Florida Retirement System on or after a specified date to be compulsory members of the investment plan; revising the definition of "eligible employee" and "member" or "employee"; revising a provision relating to acknowledgement of an employee's election to participate in the investment plan; placing certain employees in the pension plan from his or her date of hire until they are automatically enrolled in the investment plan or timely elect enrollment in the pension plan; authorizing certain employees to elect to participate in the pension plan, rather than the default investment plan, within a specified time; specifying that a retiree who has returned to covered employment before a specified date may continue membership in his or her selected retirement plan; conforming a provision to changes made by the act; providing for the transfer of certain contributions; revising the education component; deleting the

obligation of system employers to communicate the existence of both retirement plans; conforming provisions and cross-references to changes made by the act; amending s. 121.591, F.S.; revising provisions relating to disability retirement benefits; amending s. 121.71, F.S.; decreasing the employee retirement contribution rates for investment plan members; amending ss. 238.072, 413.051, and 1012.875, F.S.; conforming cross-references; providing that the act fulfills an important state interest; providing an effective date.

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

Section 1. Subsection (45) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(45) "Vested" or "vesting" means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee's class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to disability benefits are set forth under s. 121.091(4).

(a) Effective July 1, 2001, through June 30, 2011, a 6-year vesting requirement shall be implemented for the Florida

Retirement System Pension Plan:

1. Any member employed in a regularly established position on July 1, 2001, who completes or has completed a total of 6 years of creditable service is considered vested.

2. Any member initially enrolled in the Florida Retirement System before July 1, 2001, but not employed in a regularly established position on July 1, 2001, shall be deemed vested upon completion of 6 years of creditable service if such member is employed in a covered position for at least 1 work year after July 1, 2001. However, a member is not required to complete more years of creditable service than would have been required for that member to vest under retirement laws in effect before July 1, 2001.

3. Any member initially enrolled in the Florida Retirement System on July 1, 2001, through June 30, 2011, shall be deemed vested upon completion of 6 years of creditable service.

(b) Any member initially enrolled in the Florida Retirement System on ~~or after~~ July 1, 2011, through June 30, 2015, shall be vested in the pension plan upon completion of 8 years of creditable service.

(c) Any member initially enrolled in the Florida Retirement System on or after July 1, 2015, shall be vested in the pension plan upon completion of 10 years of creditable service.

Section 2. Paragraph (c) of subsection (2) of section 121.051, Florida Statutes, is amended, present subsections (3) through (9) of that section are renumbered as subsections (4) through (10), respectively, and a new subsection (3) is added to that section, to read:

121.051 Participation in the system.—

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(2) OPTIONAL PARTICIPATION.—

(c) Employees of public community colleges or charter technical career centers sponsored by public community colleges, designated in s. 1000.21(3), who are members of the Regular Class of the Florida Retirement System and who comply with the criteria set forth in this paragraph and s. 1012.875 may, in lieu of participating in the Florida Retirement System, elect to withdraw from the system altogether and participate in the State Community College System Optional Retirement Program provided by the employing agency under s. 1012.875.

1.a. Through June 30, 2001, the cost to the employer for benefits under the optional retirement program is equal to ~~equals~~ the normal cost portion of the employer retirement contribution which would be required if the employee were a member of the pension plan's Regular Class, plus the portion of the contribution rate required by s. 112.363(8) which would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund.

b. Effective July 1, 2001, through June 30, 2011, each employer shall contribute on behalf of each member of the optional program an amount equal to 10.43 percent of the employee's gross monthly compensation. The employer shall deduct an amount for the administration of the program.

c. Effective July 1, 2011, through June 30, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3)(a). The employer shall contribute on behalf of each program member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the employee's required contribution

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based on the employee's gross monthly compensation.

d. Effective July 1, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3)(a). The employer shall contribute on behalf of each program member an amount equal to the difference between 8.15 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

e. The employer shall contribute an additional amount to the Florida Retirement System Trust Fund equal to the unfunded actuarial accrued liability portion of the Regular Class contribution rate.

2. The decision to participate in the optional retirement program is irrevocable as long as the employee holds a position eligible for participation, except as provided in subparagraph 3. Any service creditable under the Florida Retirement System is retained after the member withdraws from the system; however, additional service credit in the system may not be earned while the employee is a member of the optional retirement program.

3. An employee who has elected to participate in the optional retirement program shall have one opportunity, at the employee's discretion, to transfer from the optional retirement program to the pension plan of the Florida Retirement System or to the investment plan established under part II of this chapter, subject to the terms of the applicable optional retirement program contracts.

a. If the employee chooses to move to the investment plan, any contributions, interest, and earnings creditable to the employee under the optional retirement program are retained by

the employee in the optional retirement program, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee chooses to move to the pension plan of the Florida Retirement System, the employee shall receive service credit equal to his or her years of service under the optional retirement program.

(I) The cost for such credit is the amount representing the present value of the employee's accumulated benefit obligation for the affected period of service. The cost shall be calculated as if the benefit commencement occurs on the first date the employee becomes eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the years under the optional retirement program. The present value of any service already maintained must be applied as a credit to total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

(II) The employee must transfer from his or her optional retirement program account and from other employee moneys as necessary, a sum representing the present value of the employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the optional retirement program.

4. Participation in the optional retirement program is

limited to employees who satisfy the following eligibility criteria:

a. The employee is otherwise eligible for membership or renewed membership in the Regular Class of the Florida Retirement System, as provided in s. 121.021(11) and (12) or s. 121.122.

b. The employee is employed in a full-time position classified in the Accounting Manual for Florida's College System ~~Public Community Colleges~~ as:

(I) Instructional; or

(II) Executive Management, Instructional Management, or Institutional Management and the community college determines that recruiting to fill a vacancy in the position is to be conducted in the national or regional market, and the duties and responsibilities of the position include the formulation, interpretation, or implementation of policies, or the performance of functions that are unique or specialized within higher education and that frequently support the mission of the community college.

c. The employee is employed in a position not included in the Senior Management Service Class of the Florida Retirement System as described in s. 121.055.

5. Members of the program are subject to the same reemployment limitations, renewed membership provisions, and forfeiture provisions applicable to regular members of the Florida Retirement System under ss. 121.091(9), 121.122, and 121.091(5), respectively. A member who receives a program distribution funded by employer and required employee contributions is deemed to be retired from a state-administered

retirement system if the member is subsequently employed with an employer that participates in the Florida Retirement System.

6. Eligible community college employees are compulsory members of the Florida Retirement System until, pursuant to s. 1012.875, a written election to withdraw from the system and participate in the optional retirement program is filed with the program administrator and received by the division.

a. A community college employee whose program eligibility results from initial employment shall be enrolled in the optional retirement program retroactive to the first day of eligible employment. The employer and employee retirement contributions paid through the month of the employee plan change shall be transferred to the community college to the employee's optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions based upon subparagraph 1.

b. A community college employee whose program eligibility is due to the subsequent designation of the employee's position as one of those specified in subparagraph 4., or due to the employee's appointment, promotion, transfer, or reclassification to a position specified in subparagraph 4., must be enrolled in the program on the first day of the first full calendar month that such change in status becomes effective. The employer and employee retirement contributions paid from the effective date through the month of the employee plan change must be transferred to the community college to the employee's optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions based upon subparagraph 1.

7. Effective July 1, 2003, through December 31, 2008, a ~~any~~ member of the optional retirement program who has service credit in the pension plan of the Florida Retirement System for the period between his or her first eligibility to transfer from the pension plan to the optional retirement program and the actual date of transfer may, during employment, transfer to the optional retirement program a sum representing the present value of the accumulated benefit obligation under the defined benefit retirement program for the period of service credit. Upon transfer, all service credit previously earned under the pension plan during this period is nullified for purposes of entitlement to a future benefit under the pension plan.

(3) COMPULSORY INVESTMENT PLAN MEMBERSHIP.—

(a) Employees initially enrolled on or after July 1, 2015, in positions covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of the investment plan, except those eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those eligible for optional retirement programs under paragraph (1)(a), paragraph (2)(c), or s. 121.35. Investment plan membership continues if there is subsequent employment in a position covered by another membership class. Membership in the pension plan is not permitted except as provided in s. 121.591(2). Employees initially enrolled in the Florida Retirement System before July 1, 2015, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in s. 121.4501(4)(f); employees initially enrolled on or after July 1, 2015, are not eligible to use the election opportunity.

(b) Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may withdraw from the system or participate in the investment plan as provided under those provisions. Employees eligible for optional retirement programs under paragraph (2)(c) or s. 121.35 may participate in the optional retirement program or the investment plan as provided in those provisions. Eligible employees required to participate pursuant to paragraph (1)(a) in the optional retirement program as provided under s. 121.35 must participate in the investment plan if employed in a position not eligible for the optional retirement program.

Section 3. Paragraph (c) of subsection (3) of section 121.052, Florida Statutes, is amended to read:

121.052 Membership class of elected officers.—

(3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective July 1, 1990, participation in the Elected Officers' Class shall be compulsory for elected officers listed in paragraphs (2)(a)-(d) and (f) assuming office on or after said date, unless the elected officer elects membership in another class or withdraws from the Florida Retirement System as provided in paragraphs (3)(a)-(d):

(c) Before July 1, 2015, an ~~any~~ elected officer may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers, elect membership in the Senior Management Service Class as provided in s. 121.055 in lieu of membership in the Elected Officers' Class. ~~Any~~ Such election made by a county elected officer has ~~shall have~~ no effect upon the statutory limit on the number of nonelective full-time positions that may be designated by a local agency

employer for inclusion in the Senior Management Service Class under s. 121.055(1)(b)1.

Section 4. Subsections (3) and (5) of section 121.053, Florida Statutes, are amended to read:

121.053 Participation in the Elected Officers' Class for retired members.—

(3) On or after July 1, 2010:

(a) A retiree of a state-administered retirement system who is initially reemployed in ~~elected or appointed for the first time to~~ an elective office in a regularly established position with a covered employer may not reenroll in the Florida Retirement System, except as provided in s. 121.122.

(b) An elected officer who is elected or appointed to an elective office and is participating in the Deferred Retirement Option Program is subject to termination as defined in s. 121.021 upon completion of his or her DROP participation period. An elected official may defer termination as provided in subsection (7).

(5) A ~~Any~~ renewed member, as described in s. 121.122(1), (3), (4), or (5) ~~subsection (1) or subsection (2)~~, who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

Section 5. Paragraph (f) of subsection (1) and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, are

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amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(f) Effective July 1, 1997, through June 30, 2015:

1. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on ~~or after~~ July 1, 2010, through December 31, 2014, as an elected

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official eligible for the Elected Officers' Class may not be enrolled in renewed membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class. Effective January 1, 2015, a retiree of the Senior Management Service Optional Annuity Program who retired before July 1, 2010, and is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

4. On or after July 1, 2015, an elected officer eligible for membership in the Elected Officers' Class may not be enrolled in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6).

(6)

(c) *Participation.*—

1. An eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participating in the Senior Management Service Class. Such election must be ~~made~~ in writing and filed with the department and the personnel officer of the employer on or before May 1, 1987. An eligible employee who is employed on or before February 1, 1987, and who fails to make an election to participate in the optional annuity program by May 1, 1987, shall be deemed to have elected membership in the Senior Management Service Class.

2. Except as provided in subparagraph 6., an employee who

becomes eligible to participate in the optional annuity program by reason of initial employment commencing after February 1, 1987, may, within 90 days after the date of commencing employment, elect to participate in the optional annuity program. Such election must be ~~made~~ in writing and filed with the personnel officer of the employer. An eligible employee who does not within 90 days after commencing employment elect to participate in the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

3. A person who is appointed to a position in the Senior Management Service Class and who is a member of an existing retirement system or the Special Risk or Special Risk Administrative Support Classes of the Florida Retirement System may elect to remain in such system or class in lieu of participating in the Senior Management Service Class or optional annuity program. Such election must be ~~made~~ in writing and filed with the department and the personnel officer of the employer within 90 days after such appointment. An eligible employee who fails to make an election to participate in the existing system, the Special Risk Class of the Florida Retirement System, the Special Risk Administrative Support Class of the Florida Retirement System, or the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable if the employee continues to be employed in an eligible position and continues to meet the eligibility requirements set forth in this paragraph.

5. Effective from July 1, 2002, through September 30, 2002, an active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to the Florida Retirement System Pension Plan.

a. The election must be ~~made~~ in writing and must be filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.

b. The employee shall receive service credit under the pension plan equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit is the amount representing the present value of that employee's accumulated benefit obligation for the affected period of service.

c. The employee must transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee must pay a sum representing the remainder of the amount due. The employee may not retain any employer contributions or earnings from the Senior Management Service Optional Annuity Program account.

6. A retiree of a state-administered retirement system who is initially reemployed on ~~or after~~ July 1, 2010, through December 31, 2014, may not renew membership in the Senior

Management Service Optional Annuity Program. Effective January 1, 2015, a retiree of the Senior Management Service Optional Annuity Program who retired before July 1, 2010, and is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

7. Effective July 1, 2015, the Senior Management Service Optional Annuity Program is closed to new members. Members enrolled in the Senior Management Service Optional Annuity Program before July 1, 2015, may retain their membership in the annuity program.

Section 6. Paragraph (a) of subsection (4) of section 121.091, Florida Statutes, is amended to read:

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

(4) DISABILITY RETIREMENT BENEFIT.—

(a) *Disability retirement; entitlement and effective date.*—

1.a. A member who becomes totally and permanently disabled,

as defined in paragraph (b), after completing 5 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit, ~~,~~ except that any member with less than 5 years of creditable service on July 1, 1980, or any person who becomes a member of the Florida Retirement System on or after such date must have completed 10 years of creditable service before becoming totally and permanently disabled in order to receive disability retirement benefits for a ~~any~~ disability that ~~which~~ occurs other than in the line of duty. However, if a member employed on July 1, 1980, who has less than 5 years of creditable service as of that date becomes totally and permanently disabled after completing 5 years of creditable service and is found not to have attained fully insured status for benefits under the federal Social Security Act, such member is entitled to a monthly disability benefit.

b. Effective July 1, 2001, a member of the pension plan initially enrolled before July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

c. Effective July 1, 2015, a member of the pension plan initially enrolled on or after July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty

regardless of service, is entitled to a monthly disability benefit.

2. If the division ~~has~~ received ~~from the employer~~ the required documentation of the member's termination of employment from the employer, the effective retirement date for a member who applies and is approved for disability retirement shall be as established by rule of the division.

3. For a member who is receiving Workers' Compensation payments, the effective disability retirement date may not precede the date the member reaches Maximum Medical Improvement (MMI), unless the member terminates employment before reaching MMI.

Section 7. Subsection (2) of section 121.122, Florida Statutes, is amended, and subsections (3), (4), and (5) are added to that section, to read:

121.122 Renewed membership in system.—

(2) Except as provided in subsections (3)-(5), a retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.

(3) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, but did not complete 10 years of creditable service and is employed in a regularly established position with a covered employer on or after January 1, 2015, shall be a renewed member of the Regular Class of the investment plan regardless of the position held, unless employed in a position eligible for

participation in the State University System Optional Retirement Program or the State Community College System Optional Retirement Program as provided in subsections (4) and (5), respectively. The renewed member must satisfy the vesting requirements and other provisions of this chapter.

(a) Creditable service, including credit toward the retiree health insurance subsidy provided in s. 112.363, does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014.

(b) Employer and employee contributions, interest, earnings, or any other funds may not be paid into a renewed member's investment plan account for any employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014, by the renewed member or the employer on behalf of the member.

(c) To be eligible to receive a retirement benefit, the renewed member must satisfy the vesting requirements in s. 121.4501(6).

(d) The member is ineligible to receive disability benefits as provided in s. 121.091(4) or s. 121.591(2).

(e) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(f) The member must satisfy the requirements for termination from employment provided in s. 121.021(39).

(g) Upon the renewed membership or reemployment of a retiree, the employer and the retiree shall pay the applicable employer and employee contributions required under ss. 112.363, 121.71, 121.74, and 121.76. The contributions are payable only

for employment and salary earned in a regularly established position with a covered employer on or after January 1, 2015. The employer and employee contributions shall be transferred to the investment plan and placed in a default fund as designated by the state board. The retiree may move the contributions once an account is activated in the investment plan.

(h) The member may not purchase any past service in the investment plan, including employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014.

(i) A renewed member who is a retiree of the investment plan and who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the subsidy. Such credit may be earned only for employment in a regularly established position with a covered employer on or after January 1, 2015. Any additional subsidy due because of additional credit may be received only at the time of paying the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed under s. 112.363.

(4) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, and is employed in a regularly established position eligible for participation in the State University System Optional Retirement Program on or after January 1, 2015, shall become a renewed member of the optional retirement program. The

renewed member must satisfy the vesting requirements and other provisions of this chapter. Once enrolled, a renewed member remains enrolled in the optional retirement program while employed in an eligible position for the optional retirement program. If employment in a different covered position results in the retiree's enrollment in the investment plan, the retiree is no longer eligible to participate in the optional retirement program unless employed in a mandatory position under s. 121.35.

(a) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(b) The member must satisfy the requirements for termination of employment provided in s. 121.021(39).

(c) Upon renewed membership or reemployment of a retiree, the employer and the retiree shall pay the applicable employer and employee contributions required under s. 121.35.

(d) The member, or the employer on behalf of the member, may not purchase any prior service in the optional retirement program or employment from July 1, 2010, to December 31, 2014, when renewed membership is not available.

(5) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service System Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010, and is employed in a regularly established position eligible for participation in the State Community College System Optional Retirement Program as provided in s. 121.051(2)(c)4. on or after January 1, 2015, shall become a renewed member of the optional retirement program. The renewed member must satisfy the eligibility requirements of this chapter

and s. 1012.875 for the optional retirement program. Once enrolled, a renewed member remains enrolled in the optional retirement program while employed in an eligible position for the optional retirement program. If employment in a different covered position results in the retiree's enrollment in the investment plan, the retiree is no longer eligible to participate in the optional retirement program.

(a) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(b) The member must satisfy the requirements for termination of employment provided in s. 121.021(39).

(c) Upon renewed membership or reemployment of a retiree, the employer and the retiree shall pay the applicable employer and employee contributions required under ss. 121.051(2)(c) and 1012.875.

(d) The member, or the employer on behalf of the member, may not purchase any past service in the optional retirement program or employment accrued from July 1, 2010, to December 31, 2014.

Section 8. Paragraph (c) of subsection (3) and paragraph (a) of subsection (4) of section 121.35, Florida Statutes, are amended to read:

121.35 Optional retirement program for the State University System.—

(3) ELECTION OF OPTIONAL PROGRAM.—

(c) Any employee who becomes eligible to participate in the optional retirement program on or after January 1, 1993, shall be a compulsory participant of the program unless such employee elects membership in the Florida Retirement System. Such

election shall be made in writing and filed with the personnel officer of the employer. Any eligible employee who fails to make such election within the prescribed time period shall be deemed to have elected to participate in the optional retirement program.

1. Any employee whose optional retirement program eligibility results from initial employment shall be enrolled in the program at the commencement of employment. If, within 90 days after commencement of employment, the employee elects membership in the Florida Retirement System, such membership shall be effective retroactive to the date of commencement of employment as provided in s. 121.4501(4).

2. Any employee whose optional retirement program eligibility results from a change in status due to the subsequent designation of the employee's position as one of those specified in paragraph (2)(a) or due to the employee's appointment, promotion, transfer, or reclassification to a position specified in paragraph (2)(a) shall be enrolled in the optional retirement program upon such change in status and shall be notified by the employer of such action. If, within 90 days after the date of such notification, the employee elects to retain membership in the Florida Retirement System, such continuation of membership shall be retroactive to the date of the change in status.

3. Notwithstanding the provisions of this paragraph, effective July 1, 1997, an ~~any~~ employee who is eligible to participate in the Optional Retirement Program and who fails to execute a contract with one of the approved companies and to notify the department in writing as provided in subsection (4)

within 90 days after the date of eligibility shall be deemed to have elected membership in the Florida Retirement System, except as provided in s. 121.051(1)(a). This provision ~~shall~~ also applies ~~apply~~ to an ~~any~~ employee who terminates employment in an eligible position before executing the required investment ~~annuity~~ contract and notifying the department. Such membership is ~~shall be~~ retroactive to the date of eligibility, and all appropriate contributions shall be transferred to the Florida Retirement System Trust Fund and the Health Insurance Subsidy Trust Fund.

(4) CONTRIBUTIONS.—

(a)1. Through June 30, 2001, each employer shall contribute on behalf of each member of the optional retirement program an amount equal to the normal cost portion of the employer retirement contribution which would be required if the employee were a regular member of the Florida Retirement System Pension Plan, plus the portion of the contribution rate required in s. 112.363(8) which ~~that~~ would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund.

2. Effective July 1, 2001, through June 30, 2011, each employer shall contribute on behalf of each member of the optional retirement program an amount equal to 10.43 percent of the employee's gross monthly compensation.

3. Effective July 1, 2011, through June 30, 2012, each member of the optional retirement program shall contribute an amount equal to the employee contribution required in s. 121.71(3)(a). The employer shall contribute on behalf of each such member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the

amount equal to the employee's required contribution based on the employee's gross monthly compensation.

4. Effective July 1, 2012, each member of the optional retirement program shall contribute an amount equal to the employee contribution required in s. 121.71(3)(a). The employer shall contribute on behalf of each such member an amount equal to the difference between 8.15 percent of the employee's gross monthly compensation and the amount equal to the employee's required contribution based on the employee's gross monthly compensation.

5. The payment of the contributions, including contributions by the employee, shall be made by the employer to the department, which shall forward the contributions to the designated company or companies contracting for payment of benefits for members of the program. However, such contributions paid on behalf of an employee described in paragraph (3)(c) may not be forwarded to a company and do not begin to accrue interest until the employee has executed a contract and notified the department. The department shall deduct an amount from the contributions to provide for the administration of this program.

Section 9. Subsection (1), paragraphs (e) and (i) of subsection (2), paragraph (b) of subsection (3), subsection (4), paragraph (c) of subsection (5), subsection (8), and paragraphs (a), (b), (c), and (h) of subsection (10) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(1) The Trustees of the State Board of Administration shall establish a defined contribution program called the "Florida Retirement System Investment Plan" or "investment plan" for

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members of the Florida Retirement System under which retirement benefits will be provided for eligible employees who elect to participate in the program and for employees initially enrolled on or after July 1, 2015, in positions covered by the Elected Officers' Class or the Senior Management Service Class and who are compulsory members of the investment plan unless otherwise eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or to participate in an optional retirement program under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35. Investment plan membership continues if there is subsequent employment in a position covered by another membership class. The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and related regulations. The employer and employee shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

(2) DEFINITIONS.—As used in this part, the term:

(e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; ~~or~~

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s. 121.051(2)(c), or the State University System Optional

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Retirement Program established under s. 121.35; or

3. Is a retired member of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010 and is employed in a regularly established position on or after January 1, 2015, as provided in s. 121.122.

The term does not include any member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of a state-administered retirement system who retired ~~initially reemployed in a regularly established position~~ on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

(i) "Member" or "employee" means an eligible employee who enrolls in or is defaulted into the investment plan as provided in subsection (4), a terminated Deferred Retirement Option Program member as described in subsection (21), or a beneficiary or alternate payee of a member or employee.

(3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.—

(b) Notwithstanding paragraph (a), an eligible employee who elects to participate in or is defaulted into the investment plan and establishes one or more individual member accounts may elect to transfer to the investment plan a sum representing the present value of the employee's accumulated benefit obligation under the pension plan, except as provided in paragraph (4)(b). Upon transfer, all service credit earned under the pension plan is nullified for purposes of entitlement to a future benefit

under the pension plan. A member may not transfer the accumulated benefit obligation balance from the pension plan after the time period for enrolling in the investment plan has expired.

1. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation under the pension plan, subject to recomputation under subparagraph 2. For state employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on June 30, 2002; for district school board employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on September 30, 2002; and for local government employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on December 31, 2002. The dates specified are the "estimate date" for these employees. The actuarial present value of the employee's accumulated benefit obligation shall be based on the following:

a. The discount rate and other relevant actuarial assumptions used to value the Florida Retirement System Trust Fund at the time the amount to be transferred is determined, consistent with the factors provided in sub-subparagraphs b. and c.

b. A benefit commencement age, based on the member's estimated creditable service as of the estimate date.

c. Except as provided under sub-subparagraph d., for a member initially enrolled:

(I) Before July 1, 2011, the benefit commencement age is

the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 62; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) On or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 65; or

(B) The age the member would attain if the member completed 33 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

d. For members of the Special Risk Class and for members of the Special Risk Administrative Support Class entitled to retain the special risk normal retirement date:

(I) Initially enrolled before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 55; or

(B) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) Initially enrolled on or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 60; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

e. The calculation must disregard vesting requirements and early retirement reduction factors that would otherwise apply under the pension plan.

2. For each member who elects to transfer moneys from the pension plan to his or her account in the investment plan, the division shall recompute the amount transferred under subparagraph 1. within 60 days after the actual transfer of funds based upon the member's actual creditable service and actual final average compensation as of the initial date of participation in the investment plan. If the recomputed amount differs from the amount transferred by $10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the member's account the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon the effective annual interest equal to the assumed return on the actuarial investment which was used in the most recent actuarial

valuation of the system, compounded annually.

b. Transfer, or cause to be transferred, from the member's account to the Florida Retirement System Trust Fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon 6 percent effective annual interest, compounded annually, pro rata based on the member's allocation plan.

3. If contribution adjustments are made as a result of employer errors or corrections, including plan corrections, following recomputation of the amount transferred under subparagraph 1., the member is entitled to the additional contributions or is responsible for returning any excess contributions resulting from the correction. However, a ~~any~~ return of such erroneous excess pretax contribution by the plan must be made within the period allowed by the Internal Revenue Service. The present value of the member's accumulated benefit obligation may ~~shall~~ not be recalculated.

4. As directed by the member, the state board shall transfer or cause to be transferred the appropriate amounts to the designated accounts within 30 days after the effective date of the member's participation in the investment plan unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event that causes the suspension of trading on a ~~any~~ national securities exchange in the country where the securities were issued. In that event, the 30-day period may be extended by a resolution of the state board. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash, as determined by

the state board. Such securities are valued as of the date of receipt in the member's account.

5. If the state board or the division receives notification from the United States Internal Revenue Service that this paragraph or any portion of this paragraph will cause the retirement system, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply. Upon such notice, the state board and the division shall notify the presiding officers of the Legislature.

(4) PARTICIPATION; ENROLLMENT.—

(a)1. Effective June 1, 2002, through February 28, 2003, a 90-day election period, preceded by a 90-day education period, was provided to each eligible employee participating in the Florida Retirement System which permitted each eligible employee to elect membership in the investment plan, and an employee who failed to elect the investment plan during the election period remained in the pension plan. An eligible employee who was employed in a regularly established position during the election period was granted the option to make one subsequent election, as provided in paragraph (f). With respect to an eligible employee who did not participate in the initial election period or who is initially ~~employee who is~~ employed in a regularly established position after the close of the initial election period but before July 1, 2015, ~~on June 1, 2002, by a state employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by~~

~~electronic means and must be filed with the third-party administrator by August 31, 2002, or, in the case of an active employee who is on a leave of absence on April 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer commencing after April 1, 2002:~~

~~a. Any~~ such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be ~~made~~ in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable,

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except as provided in paragraph (f) ~~(g)~~.

a.~~b.~~ If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The retirement contributions paid through the month of the employee plan change shall be transferred to the investment program, and, effective the first day of the next month, the employer and employee must pay the applicable contributions based on the employee membership class in the program.

b.~~c.~~ An employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.

2.~~3.~~ With respect to employees who become eligible to participate in the investment plan pursuant to s. 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to participate in the investment plan in lieu of retaining his or her membership in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program. The election must be ~~made~~ in writing or by electronic means and must be filed with the third-party administrator. This election is irrevocable, except as provided in paragraph (f) ~~(g)~~. Upon making such election, the employee shall be enrolled as a member in the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's participation in the State Community College System Optional Retirement Program or the State University System Optional

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Retirement Program terminates. The employee's enrollment in the investment plan is effective on the first day of the month for which a full month's employer and employee contribution is made to the investment plan.

~~4. For purposes of this paragraph, "state employer" means any agency, board, branch, commission, community college, department, institution, institution of higher education, or water management district of the state, which participates in the Florida Retirement System for the benefit of certain employees.~~

(b) With respect to employees who become eligible to participate in the investment plan, except as provided in paragraph (g), by reason of employment in a regularly established position commencing on or after July 1, 2015, such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the 8th month following the employee's month of hire, elect to participate in the pension plan or the investment plan. Eligible employees may make a plan election only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

1. The employee's election must be in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the pension plan or investment plan is irrevocable, except as provided in paragraph (f).

2. If the employee fails to make an election of the pension plan or investment plan within 8 months following the month of hire, the employee is deemed to have elected the investment plan

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and will be defaulted into the investment plan retroactively to the employee's date of employment. The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f).

3. The amount of the employee and employer contributions paid before the default to the investment plan shall be transferred to the investment plan and placed in a default fund as designated by the State Board of Administration. The employee may move the contributions once an account is activated in the investment plan.

4. Effective the first day of the month after an eligible employee makes a plan election of the pension plan or investment plan, or after the month of default to the investment plan, the employee and employer shall pay the applicable contributions based on the employee membership class in the pension plan or investment plan.

~~(b)1. With respect to an eligible employee who is employed in a regularly established position on September 1, 2002, by a district school board employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30, or, in the case of an active employee who is on a leave of absence on July 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan,~~

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~~the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment program.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a district school board employer commencing after July 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall~~

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~~pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "district school board employer" means any district school board that participates in the Florida Retirement System for the benefit of certain employees, or a charter school or charter technical career center that participates in the Florida Retirement System as provided in s. 121.051(2)(d).~~

~~(c)1. With respect to an eligible employee who is employed in a regularly established position on December 1, 2002, by a local employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by February 28, 2003, or, in the case of an active employee who is on a leave of absence on October 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a participant of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's~~

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~~enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a local employer commencing after October 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in~~

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~~the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "local employer" means any employer not included in paragraph (a) or paragraph (b).~~

(c) ~~(d)~~ Contributions available for self-direction by a member who has not selected one or more specific investment products shall be allocated as prescribed by the state board. The third-party administrator shall notify the member at least quarterly that the member should take an affirmative action to make an asset allocation among the investment products.

(d) ~~(e)~~ On or after July 1, 2011, a member of the pension plan who obtains a refund of employee contributions retains his or her prior plan choice upon return to employment in a regularly established position with a participating employer.

(e) ~~(f)~~ A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A member ~~retiree~~ who retires ~~is initially reemployed in a regularly established position~~ on or after July 1, 2010, is not eligible to be enrolled in renewed membership. A member who retired before July 1, 2010, and is employed on or after January 1, 2015, in a regularly established position shall be a renewed member as provided in s. 121.122, except that a retiree who has returned to covered employment before July 1, 2010, may continue membership in the plan he or she chooses.

(f) ~~(g)~~ After the period during which an eligible employee had the choice to elect the pension plan or the investment plan,

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or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to ~~choose to~~ move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service. This paragraph is not applicable to compulsory investment plan members under paragraph (g).

1. If the employee chooses to move to the investment plan, ~~the provisions of~~ subsection (3) governs ~~govern~~ the transfer.

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and

other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. For an ~~any~~ employee who, at the time of the second election, already maintains an accrued benefit amount in the pension plan, the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional member ~~participant~~ payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

4. An employee's ability to transfer from the pension plan to the investment plan pursuant to paragraphs (a) and (b) ~~(a)-(d)~~, and the ability of a current employee to have an option to later transfer back into the pension plan under subparagraph 2.,

shall be deemed a significant system amendment. Pursuant to s. 121.031(4), any resulting unfunded liability arising from actual original transfers from the pension plan to the investment plan must be amortized within 30 plan years as a separate unfunded actuarial base independent of the reserve stabilization mechanism described ~~defined~~ in s. 121.031(3)(f). For the first 25 years, a direct amortization payment may not be calculated for this base. During this 25-year period, the separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. The actuarial funded status of the pension plan will not be affected by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following the initial 25-year period, any remaining balance of the original separate base shall be amortized over the remaining 5 years of the required 30-year amortization period.

5. If the employee chooses to transfer from the investment plan to the pension plan and retains an excess account balance in the investment plan after satisfying the buy-in requirements under this paragraph, the excess may not be distributed until the member retires from the pension plan. The excess account balance may be rolled over to the pension plan and used to purchase service credit or upgrade creditable service in the pension plan.

(g) All employees initially enrolled on or after July 1, 2015, in positions covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of the investment plan, except those eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those

eligible for optional retirement programs under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35. Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may withdraw from the system or participate in the investment plan as provided in those sections. Employees eligible for optional retirement programs under s. 121.051(2)(c) or s. 121.35, except as provided in s. 121.051(1)(a), may participate in the optional retirement program or the investment plan as provided in those sections. Investment plan membership continues if there is subsequent employment in a position covered by another membership class.

1. Membership in the pension plan is not permitted except as provided in s. 121.591(2). Employees initially enrolled in the Florida Retirement System before July 1, 2015, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in paragraph (f).

2. Employees initially enrolled on or after July 1, 2015, may not use the election opportunity specified in paragraph (f).

3. The amount of retirement contributions paid by the employee and employer, as required under s. 121.72, shall be placed in a default fund as designated by the state board, until an account is activated in the investment plan, at which time the member may move the contributions from the default fund to other funds provided in the investment plan.

(5) CONTRIBUTIONS.—

(c) The state board, acting as plan fiduciary, shall ~~must~~ ensure that all plan assets are held in a trust, pursuant to s. 401 of the Internal Revenue Code. The fiduciary shall ~~must~~

ensure that such contributions are allocated as follows:

1. The employer and employee contribution portion earmarked for member accounts shall be used to purchase interests in the appropriate investment vehicles as specified by the member, or in accordance with paragraph (4)(c) ~~(4)(d)~~.

2. The employer contribution portion earmarked for administrative and educational expenses shall be transferred to the Florida Retirement System Investment Plan Trust Fund.

3. The employer contribution portion earmarked for disability benefits shall be transferred to the Florida Retirement System Trust Fund.

(8) INVESTMENT PLAN ADMINISTRATION.—The investment plan shall be administered by the state board and affected employers. The state board may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. An oath, by affidavit or otherwise, is ~~may~~ not ~~be~~ required of a member at the time of enrollment. Acknowledgment of an employee's election to participate in the program may ~~shall~~ be no greater than necessary to confirm the employee's election except for members initially enrolled on or after July 1, 2015, as provided in paragraph (4)(g). The state board shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors. The department shall adopt rules necessary to administer the investment plan in coordination with the pension plan and the

disability benefits available under the investment plan.

(a)1. The state board shall select and contract with a third-party administrator to provide administrative services if those services cannot be competitively and contractually provided by the division. With the approval of the state board, the third-party administrator may subcontract to provide components of the administrative services. As a cost of administration, the state board may compensate ~~any~~ such contractor for its services, in accordance with the terms of the contract, as is deemed necessary or proper by the board. The third-party administrator may not be an approved provider or be affiliated with an approved provider.

2. These administrative services may include, but are not limited to, enrollment of eligible employees, collection of employer and employee contributions, disbursement of contributions to approved providers in accordance with the allocation directions of members; services relating to consolidated billing; individual and collective recordkeeping and accounting; asset purchase, control, and safekeeping; and direct disbursement of funds to and from the third-party administrator, the division, the state board, employers, members, approved providers, and beneficiaries. This section does not prevent or prohibit a bundled provider from providing any administrative or customer service, including accounting and administration of individual member benefits and contributions; individual member recordkeeping; asset purchase, control, and safekeeping; direct execution of the member's instructions as to asset and contribution allocation; calculation of daily net asset values; direct access to member account information; or

periodic reporting to members, at least quarterly, on account balances and transactions, if these services are authorized by the state board as part of the contract.

(b)1. The state board shall select and contract with one or more organizations to provide educational services. With approval of the state board, the organizations may subcontract to provide components of the educational services. As a cost of administration, the state board may compensate any such contractor for its services in accordance with the terms of the contract, as is deemed necessary or proper by the board. The education organization may not be an approved provider or be affiliated with an approved provider.

2. Educational services shall be designed by the state board and department to assist employers, eligible employees, members, and beneficiaries in order to maintain compliance with United States Department of Labor regulations under s. 404(c) of the Employee Retirement Income Security Act of 1974 and to assist employees in their choice of pension plan or investment plan retirement alternatives. Educational services include, but are not limited to, disseminating educational materials; providing retirement planning education; explaining the pension plan and the investment plan; and offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, and asset allocation. An approved provider may also provide educational information, including retirement planning and investment allocation information concerning its products and services.

(c)1. In evaluating and selecting a third-party administrator, the state board shall establish criteria for

evaluating the relative capabilities and qualifications of each proposed administrator. In developing such criteria, the state board shall consider:

a. The administrator's demonstrated experience in providing administrative services to public or private sector retirement systems.

b. The administrator's demonstrated experience in providing daily valued recordkeeping to defined contribution programs.

c. The administrator's ability and willingness to coordinate its activities with employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, monthly management reports, quarterly member reports, and ad hoc reports requested by the department or state board.

d. The cost-effectiveness and levels of the administrative services provided.

e. The administrator's ability to interact with the members, the employers, the state board, the division, and the providers; the means by which members may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available investment vehicles, and transfer moneys between investment products; and any fees that apply to such activities.

f. Any other factor deemed necessary by the state board.

2. In evaluating and selecting an educational provider, the state board shall establish criteria under which it shall consider the relative capabilities and qualifications of each proposed educational provider. In developing such criteria, the

state board shall consider:

a. Demonstrated experience in providing educational services to public or private sector retirement systems.

b. Ability and willingness to coordinate its activities with the employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, reports on educational contacts.

c. The cost-effectiveness and levels of the educational services provided.

d. Ability to provide educational services via different media, including, but not limited to, the Internet, personal contact, seminars, brochures, and newsletters.

e. Any other factor deemed necessary by the state board.

3. The establishment of the criteria shall be solely within the discretion of the state board.

(d) The state board shall develop the form and content of any contracts to be offered under the investment plan. In developing the contracts, the board shall consider:

1. The nature and extent of the rights and benefits to be afforded in relation to the contributions required under the plan.

2. The suitability of the rights and benefits provided and the interests of employers in the recruitment and retention of eligible employees.

(e)1. The state board may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan. The state board may enter into a contract with

one or more vendors to provide low-cost investment advice to members, supplemental to education provided by the third-party administrator. All fees under any such contract shall be paid by those members who choose to use the services of the vendor.

2. The department may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan in coordination with the pension plan. The department, in coordination with the state board, may enter into a contract with the third-party administrator in order to coordinate services common to the various programs within the Florida Retirement System.

(f) The third-party administrator may not receive direct or indirect compensation from an approved provider, except as specifically provided ~~for~~ in the contract with the state board.

(g) The state board shall receive and resolve member complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5 years for use in resolving ~~any~~ member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is

submitted was taken at the request of the member and with the member's full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

(10) EDUCATION COMPONENT.—

(a) The state board, in coordination with the department, shall provide ~~for~~ an education component for eligible employees ~~system members~~ in a manner consistent with ~~the provisions of~~ this subsection ~~section~~. ~~The education component must be available to eligible employees at least 90 days prior to the beginning date of the election period for the employees of the respective types of employers.~~

(b) Except for members initially enrolled on or after July 1, 2015, as provided in paragraph (4)(g), the education component must provide system members with impartial and balanced information about plan choices. The education component must involve multimedia formats. Program comparisons must, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the member. The state board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the state board.

(c) Except for members initially enrolled on or after July 1, 2015, as provided in paragraph (4)(g), the state board, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members with information necessary to make informed plan choice decisions. The transfer education component must include, but is

not limited to, information on:

1. The amount of money available to a member to transfer to the defined contribution program.

2. The features of and differences between the pension plan and the defined contribution program, both generally and specifically, as those differences may affect the member.

3. The expected benefit available if the member were to retire under each of the retirement programs, based on appropriate alternative sets of assumptions.

4. The rate of return from investments in the defined contribution program and the period of time over which such rate of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the pension plan.

5. The historical rates of return for the investment alternatives available in the defined contribution programs.

6. The benefits and historical rates of return on investments available in a typical deferred compensation plan or a typical plan under s. 403(b) of the Internal Revenue Code for which the employee may be eligible.

7. The program choices available to employees of the State University System and the comparative benefits of each available program, if applicable.

8. Payout options available in each of the retirement programs.

~~(h) Pursuant to subsection (8), all Florida Retirement System employers have an obligation to regularly communicate the existence of the two Florida Retirement System plans and the plan choice in the natural course of administering their personnel functions, using the educational materials supplied by~~

~~the state board and the Department of Management Services.~~

Section 10. Paragraph (b) of subsection (2) of section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account

containing employer and employee contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

(2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under this subsection are payable in lieu of the benefits that would otherwise be payable under the provisions of subsection (1). Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

(b) *Disability retirement; entitlement.*—

1.a. A member of the investment plan initially enrolled before July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of length of service, is entitled to a monthly disability benefit.

b. A member of the investment plan initially enrolled on or after July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

2. In order for service to apply toward the ~~8~~ years of creditable service required for regular disability benefits, or toward the creditable service used in calculating a service-based benefit as provided under paragraph (g), the service must be creditable service as described below:

a. The member's period of service under the investment plan shall be considered creditable service, except as provided in subparagraph d.

b. If the member has elected to retain credit for service

under the pension plan as provided under s. 121.4501(3), all such service is ~~shall be~~ considered creditable service.

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred is ~~shall be~~ considered creditable service, except as provided in subparagraph d.

d. If a member has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

Section 11. Subsection (3) of section 121.71, Florida Statutes, is amended to read:

121.71 Uniform rates; process; calculations; levy.—

(3)(a) Required employee retirement contribution rates for each membership class and subclass of the Florida Retirement System for the pension plan ~~both retirement plans~~ are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2011

Regular Class	3.00%
Special Risk Class	3.00%
Special Risk Administrative Support Class	3.00%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	3.00%
Elected Officers' Class— Justices, Judges	3.00%
Elected Officers' Class— County Elected Officers	3.00%
Senior Management Service Class	3.00%
DROP	0.00%

(b) Required employee retirement contribution rates for each membership class and subclass of the Florida Retirement System for the investment plan are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2011	Percentage of Gross Compensation, Effective July 1, 2015
Regular Class	3.00%	2.00%
Special Risk Class	3.00%	2.00%
Special Risk Administrative Support Class	3.00%	2.00%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers,	3.00%	2.00%

State Attorneys, Public Defenders		
Elected Officers' Class— Justices, Judges	3.00%	2.00%
Elected Officers' Class— County Elected Officers	3.00%	2.00%
Senior Management Service Class	3.00%	2.00%

Section 12. Section 238.072, Florida Statutes, is amended to read:

238.072 Special service provisions for extension personnel.—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in this state who are joint representatives of the University of Florida and the United States Department of Agriculture, as provided in s. 121.051(8) ~~121.051(7)~~, who are members of the Teachers' Retirement System, chapter 238, and who are prohibited from transferring to and participating in the Florida Retirement System, chapter 121, may retire with full benefits upon completion of 30 years of creditable service and shall be

considered to have attained normal retirement age under this chapter, any law to the contrary notwithstanding. In order to comply with ~~the provisions of~~ s. 14, Art. X of the State Constitution, any liability accruing to the Florida Retirement System Trust Fund as a result of ~~the provisions of~~ this section shall be paid on an annual basis from the General Revenue Fund.

Section 13. Subsection (11) of section 413.051, Florida Statutes, is amended to read:

413.051 Eligible blind persons; operation of vending stands.—

(11) Effective July 1, 1996, blind licensees who remain members of the Florida Retirement System pursuant to s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~ shall pay any unappropriated retirement costs from their net profits or from program income. Within 30 days after the effective date of this act, each blind licensee who is eligible to maintain membership in the Florida Retirement System under s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~, but who elects to withdraw from the system as provided in s. 121.051(7)(b)3. ~~121.051(6)(b)3.~~, must, on or before July 31, 1996, notify the Division of Blind Services and the Department of Management Services in writing of his or her election to withdraw. Failure to timely notify the divisions shall be deemed a decision to remain a compulsory member of the Florida Retirement System. However, if, at any time after July 1, 1996, sufficient funds are not paid by a blind licensee to cover the required contribution to the Florida Retirement System, that blind licensee shall become ineligible to participate in the Florida Retirement System on the last day of the first month for which no contribution is made or the amount contributed is

insufficient to cover the required contribution. For any blind licensee who becomes ineligible to participate in the Florida Retirement System as described in this subsection, ~~no~~ creditable service may not ~~shall~~ be earned under the Florida Retirement System for any period following the month that retirement contributions ceased to be reported. However, ~~any~~ such person may participate in the Florida Retirement System in the future if employed by a participating employer in a covered position.

Section 14. Paragraph (a) of subsection (4) of section 1012.875, Florida Statutes, is amended to read:

1012.875 State Community College System Optional Retirement Program.—Each Florida College System institution may implement an optional retirement program, if such program is established therefor pursuant to s. 1001.64(20), under which annuity or other contracts providing retirement and death benefits may be purchased by, and on behalf of, eligible employees who participate in the program, in accordance with s. 403(b) of the Internal Revenue Code. Except as otherwise provided herein, this retirement program, which shall be known as the State Community College System Optional Retirement Program, may be implemented and administered only by an individual Florida College System institution or by a consortium of Florida College System institutions.

(4)(a)1. Through June 30, 2011, each college must contribute on behalf of each program member an amount equal to 10.43 percent of the employee's gross monthly compensation.

2. Effective July 1, 2011, through June 30, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3)(a). The employer shall

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

contribute on behalf of each program member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

3. Effective July 1, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3)(a). The employer shall contribute on behalf of each program member an amount equal to the difference between 8.15 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

4. The college shall deduct an amount approved by the district board of trustees of the college to provide for the administration of the optional retirement program. Payment of this contribution must be made directly by the college or through the program administrator to the designated company contracting for payment of benefits to the program member.

Section 15. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 16. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/11
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name Jeff Levinson

Amendment Barcode *(if applicable)*

Job Title Teacher

Address 104 Natures Way *Street*

Royal Palm Beach *City* Florida *State* 33411 *Zip*

Phone 561 248 5416

E-mail JeffLev@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic SB 1114 - (FRS) Bill Number SB-1114 *(if applicable)*

Name Donald R. Persson Amendment Barcode _____ *(if applicable)*

Job Title Teacher / Coach

Address 12980 Orange Grove Blvd. Phone (561) 719-6838
Street

West Palm Beach, FL 33411 E-mail donaldpersson@gmail.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Myself

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-2014
Meeting Date

Topic FRS

Bill Number 1114 *(if applicable)*

Name LES CANTRELL

Amendment Barcode *(if applicable)*

Job Title STATE COORDINATOR LOCAL 2011

Address 200 RIVERBEND RD.
Street
ORMOND BEACH FL 32174
City *State* *Zip*

Phone 813-335-3838

E-mail LCANTRELL2011@AOL.COM

Speaking: ☐ For ☑ Against ☐ Information

Representing FLORIDA CORRECTIONAL OFFICERS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

22 APRIL 2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic FRS Bill Number SB 1114 - FRS *(if applicable)*

Name JESSIE CROSKEY Amendment Barcode *(if applicable)*

Job Title CITY OF CLEARWATER; CWA 3179

Address 2065 N. HIGHLAND AVENUE Phone (727) 565-9248

Street

CLEARWATER, FLORIDA 33755 E-mail

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing MYSELF

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS

Bill Number SB 1114 - FRS
(if applicable)

Name Steve Wisniewski

Amendment Barcode
(if applicable)

Job Title Digital Technician

Address 3897 Shadowood Way
Street

Phone 321-289-9888

Gotha FL 34734
City *State* *Zip*

E-mail

Speaking: ☐ For ☑ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

22 APRIL 2014
Meeting Date

Topic FRS. Bill Number SB1114 - FRS *(if applicable)*

Name ALICE-MARIE TUCKER Amendment Barcode *(if applicable)*

Job Title WALT DISNEY WORLD

Address 6075 WATERLOO AVE Phone 321-508-1976
Street

PORT ST JOHN, FL 32927 E-mail
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name Kimberly Henriquez

Amendment Barcode *(if applicable)*

Job Title Hillsb. County School Teacher

Address 1701 Pinehurst Rd. #17B
Street

Phone (813)431-9937

Dunedin, FL 34698
City *State* *Zip*

E-mail kimberlyhenriquez@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name Jean Clements

Amendment Barcode _____ *(if applicable)*

Job Title teacher

Address 3134 W. Coachman Av
Street
Tampa FL 33611
City *State* *Zip*

Phone (813) 600-9759

E-mail jan.clements@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04.22.14
Meeting Date

Topic Retirement / FRS

Bill Number 1114 *(if applicable)*

Name JoAnne Alvarez

Amendment Barcode _____ *(if applicable)*

Job Title Communications Operator / 911

Address 16659 SW 6 Street
Street
Pembroke Pines FL 33027
City *State* *Zip*

Phone 954 629.9970

E-mail lcgjake@bellsouth.net

Speaking: ☐ For ☒ Against ☐ Information

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name JANE ROACH

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 12401 NE 139th Pl.
Street

Phone 352-236-2036

Ft McCoy FL 32134
City *State* *Zip*

E-mail Groach3@tr.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic RETIREMENT

Bill Number SB 1114 *(if applicable)*

Name DAVID HOLMES

Amendment Barcode *(if applicable)*

Job Title TEACHER

Address 444 PAULA DR. N. #346 *Street*

Phone 813 391-9965

DUNEDIN *City* FL *State* 34698 *Zip*

E-mail habennich@yahoo

Speaking: ☐ For ☑ Against ☐ Information

Representing UNITED SCHOOL EMPLOYEES OF PASCO

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 22, 2014
Meeting Date

Topic Pension Reform

Bill Number SB 1114 *(if applicable)*

Name Stan Cohen

Amendment Barcode *(if applicable)*

Job Title Retired Teacher

Address 14021 Park Blvd North
Street

Seminole Flor. Fla 33776
City *State* *Zip*

Phone 727-392-8776

E-mail

Speaking: ☐ For ☒ Against ☐ Information

Representing Retired Teachers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic Retirement

Bill Number SB 1114 *(if applicable)*

Name Ellis Canty Sr

Amendment Barcode *(if applicable)*

Job Title Business Agent

Address 816 N.W. 2nd AVE
Street
Miami Fla. 33136
City *State* *Zip*

Phone 305-325-2573

E-mail ECANTY@FLALOCAL1416.com

Speaking: ☐ For ☒ Against ☐ Information

Representing ~~[redacted]~~ My Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name Jim Tolley

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 345 West Madison St
Street

Phone _____

Tallahassee FL 32301
City *State* *Zip*

E-mail _____

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Prof Firefighters

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic ERS

Bill Number SB 1114 *(if applicable)*

Name LINDA EDSON

Amendment Barcode _____ *(if applicable)*

Job Title Legislative Co-Chair

Address 1841 Myrick Rd
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850-385-3196

E-mail edsonl@nettally.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Retired Educators Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS Retirement / Pension Plan

Bill Number SB 1114 *(if applicable)*

Name Alan. Stroud

Amendment Barcode *(if applicable)*

Job Title Retired

Address 3669 Dwight Davis Dr

Phone (850) 615-7404

Street Tallahassee FL 32312

E-mail alanrstroud@me.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing all retirees + Defined Benefit members

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic PENSION REFORM

Bill Number SB 1114 *(if applicable)*

Name JOHN PARKER

Amendment Barcode _____ *(if applicable)*

Job Title PRESIDENT, FLORIDA BUILDING TRADER

Address 803 E. MONROE ST
Street
TALLAHASSEE
City *State* *Zip*

Phone 904-613-1623

E-mail floridabuildingtrades@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Retirement

Bill Number 1114 *(if applicable)*

Name Leticia Adams

Amendment Barcode _____ *(if applicable)*

Job Title Senior Policy Director

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

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

Representing Florida Chamber of Commerce

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

April 22, 2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

Topic _____ Bill Number 1114 - FRS *(if applicable)*

Name Dennis A. Bonilla Amendment Barcode _____ *(if applicable)*

Job Title Retired Letter Carrier

Address 3621 Bareback Trail Phone 386-843-8693
Street

Ormond Bch. Fl. 32174 E-mail dbonilla25@cfl.rr.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Myself

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic _____ Bill Number SB 1114 - FRS *(if applicable)*

Name CURTIS BISSING Amendment Barcode _____ *(if applicable)*

Job Title ELECTRICIAN

Address 13668 PHOENIX DR. Phone _____
Street

ORLANDO FL 32828 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing MYSELF

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number SB 1114 FLS *(if applicable)*

Name William McWeely Amendment Barcode _____ *(if applicable)*

Job Title ELECTRICIAN

Address 920 LAKE HARNEY Woods BLVD Phone _____
Street

MIMS FL 32754 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing MYSELF

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number 1114 FRS *(if applicable)*

Name Wendy Paser Amendment Barcode _____ *(if applicable)*

Job Title UniServ Director

Address 3013 Sarah Dr Phone 727 797 3621
Street

Clearwater FL 33755 E-mail wpaser@msn.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Myself

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Florida Retirement System Bill Number SB 1114 *(if applicable)*

Name Jeremiah Tattersall Amendment Barcode *(if applicable)*

Job Title Field Staff, North Central FL CLC

Address 206 NE 2nd Ave. Phone 352-222-1991

Street

Gainesville FL 32601 E-mail JTattersall@FLAFLCIO.org

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing ~~Industrial, Technical, Professional, Employees Union Local 4573~~ Myself

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14
Meeting Date

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

Topic Florida Retirement System

Bill Number SB 1114 *(if applicable)*

Name Aaron Carmella

Amendment Barcode *(if applicable)*

Job Title Field Staff, West Florida CLC

Address 625 Grove St. N. *Street*

St. Petersburg FL 33701 *City State Zip*

Phone 850-228-9831

E-mail acarmella@FLAFLCIO.org

Speaking: ☐ For ☒ Against ☐ Information

Representing ~~International~~, ~~Technical~~, ~~Professional~~, ~~Employees~~ ~~Union~~ ~~Local~~ ~~4673~~ Myself

Appearing at request of Chair: ☐ Yes ☒ ~~No~~

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22
Meeting Date

Topic FRS — Bill Number SB 1114 *(if applicable)*

Name Beverly Ledbetter — Amendment Barcode _____ *(if applicable)*

Job Title educator

Address 12233 Victor Ln — Phone 813 294 9863
Street

Dade City FL 33525 — E-mail ledbetterhouse38@hotmail.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing USEP-R

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name CARL WALDRON

Amendment Barcode _____ *(if applicable)*

Job Title USEP - RETIRED TEACHER

Address 33221 DARBY TRAIL
Street

Phone 352-678-2056

DADE CITY, FL 33525
City *State* *Zip*

E-mail WALDRON.CARL@GMAIL.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing PUBLIC EDUCATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS

Bill Number SJR 1114 *(if applicable)*

Name Steve Hall

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2619 Corrine Dr.
Street
Orlando FL 32803
City *State* *Zip*

Phone 407.896.9941

E-mail SHnote@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 22, 2014
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name Felicia Bruce

Amendment Barcode _____ *(if applicable)*

Job Title Retiree

Address 106 MARINER BAY BLVD *Street*
Fort Pierce *City* *State* *Zip*

Phone 772 409 4560

E-mail Spmomtch1@aol.com

Speaking: ☐ For ☒ Against ☐ Information

Representing TRIF 43 (Teachers Ret'd. in FL), FLARA, self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name Robert Kriete

Amendment Barcode _____ *(if applicable)*

Job Title teacher

Address 6708 Providence Road *Street*
Riverview FL 33578 *City State Zip*

Phone 813 787-8351

E-mail Rob.Kriete@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic PENSION REFORM Bill Number SB 1114 FRS *(if applicable)*

Name ALBERT E. CARROLL Amendment Barcode _____ *(if applicable)*

Job Title CONGRESSIONAL DISTRICT LIAISON

Address 5369 PARK BLVD Phone 727-742-1640
Street

PINELLAS PARK FL 33781 E-mail FLMAILMAN3@AOL.COM
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing FLORIDA STATE ASSOCIATION OF LETTER CARRIERS

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic PENSION REFORM

Bill Number SB 1114 *(if applicable)*

Name O.D. ELLIOTT

Amendment Barcode _____ *(if applicable)*

Job Title STATE LEGISLATIVE LIASSON, FSALC

Address 101 - 78th AVE NE
Street
ST. PETE., FL. 33702
City *State* *Zip*

Phone 727-608-6027

E-mail odebr1477@aol.com

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA STATE ASSOCIATION OF LETTER CARRIERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/2014
Meeting Date

Topic Pension Reform

Bill Number SB 1114 *(if applicable)*

Name Frank A Marcinko

Amendment Barcode *(if applicable)*

Job Title Letter Carrier U.S.P.S.

Address 1470 Cross Cr
Street

Phone 386-846-1625

Port Orange FL 32129
City *State* *Zip*

E-mail Poolfun10@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida State Association of Letter Carriers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic PENSION REFORM — Bill Number SB 1114 *(if applicable)*

Name MATTY ROSE — Amendment Barcode _____ *(if applicable)*

Job Title RETIREE

Address 129 ASHBY COVE LANE *Street* — Phone 386 785-7414

NEW SMYRNA BEACH *City* FL *State* 32168 *Zip* — E-mail UNIONMROSE@AOL.COM

Speaking: ☐ For ☑ Against ☐ Information

Representing FLORIDA STATE ASSOCIATION OF LETTER CARRIERS

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Florida Retirement System

Bill Number SB 1114 *(if applicable)*

Name Mike Riley

Amendment Barcode *(if applicable)*

Job Title Retired Correctional Officer Captain

Address 105 Appaloosa Ln
Street

Phone 813-956-3875

Ormond Beach FL 32174
City *State* *Zip*

E-mail mriley2011@outlook.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Wed. Apr. 23
Meeting Date

Topic FRS

Bill Number SB 1114 FRS *(if applicable)*

Name Norm Sherck

Amendment Barcode *(if applicable)*

Job Title Retiree

Address 3539 Tomlinson St.
Street
Bonita Springs Flr. 34134
City *State* *Zip*

Phone (239) 390-0673

E-mail nssherek@earthlink.net

Speaking: ☐ For ☑ Against ☐ Information

Representing Working Family Lobby Corp

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.22.14
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name Ken Williams

Amendment Barcode *(if applicable)*

Job Title

Address 7411 meadow Dr
Street
Tampa FL 33634
City *State* *Zip*

Phone 813-493-7685

E-mail

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-22-2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

Topic FRS Bill Number SB 1114 *(if applicable)*

Name LARRY DUPREE Amendment Barcode *(if applicable)*

Job Title

Address 8301 N. RIVER HIGHLANDS PL Phone 813-984-8828
Street

TAMPA FL 33617 E-mail
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing SEIF

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS. Bill Number 1114 *(if applicable)*

Name GAIL MARIE PERRY Amendment Barcode *(if applicable)*

Job Title CHAIR, COUNCIL of FLORIDA

Address PO BOX 1766 Phone 954 850-4055
Street

POMPANO BCH, FLA 33061 E-mail workingforlife@hotmail.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing COMMUNICATIONS WORKERS of AMERICA

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20
Meeting Date

Topic EDS

Bill Number 1114 *(if applicable)*

Name Rick Templin

Amendment Barcode *(if applicable)*

Job Title Legislative & Political Director

Address 135 S. Monroe *Street*

Phone 850-224-6826

Tallahassee *City* FL *State* 32301 *Zip*

E-mail

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/14
Meeting Date

Topic FES

Bill Number 1114 *(if applicable)*

Name Lynda Russell

Amendment Barcode *(if applicable)*

Job Title

Address 213 S. Adams St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-556-2072

E-mail

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Education Assn

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic FRS

Bill Number SB 1114 *(if applicable)*

Name Lon Bilbao

Amendment Barcode _____ *(if applicable)*

Job Title Political Director

Address 18441 NW 2 Ave *Street*

Phone 919-923-7288

Miami FL 33136
City *State* *Zip*

E-mail lon@seiu1991.org

Speaking: ☐ For ☑ Against ☐ Information

Representing SEIU Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic FRS

Bill Number 1114 *(if applicable)*

Name MIKE FEWLESS

Amendment Barcode *(if applicable)*

Job Title CAPTAIN

Address 2500 W. COLONIAL DRIVE
Street

Phone 407-858-3889

ORLANDO FL 32804
City *State* *Zip*

E-mail

Speaking: ☐ For ☒ Against ☐ Information

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic Pension Reform Bill Number SB 1114 *(if applicable)*

Name Abigail MacIver Amendment Barcode *(if applicable)*

Job Title Policy Director, Americans for Prosperity

Address PO Box 185 Phone 402-754-6400
Street

Tallahassee FL 32302 E-mail amaciver@afphq.org
City *State* *Zip*

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

Representing Americans for Prosperity

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14
Meeting Date

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

Topic Retirement

Bill Number SB 1114 *(if applicable)*

Name Melanie Andrade

Amendment Barcode _____ *(if applicable)*

Job Title Student

Address 2306 Talley Lane
Street
Tallahassee FL 32304
City *State* *Zip*

Phone _____

E-mail melwrestles@gmail.com

Speaking: ☐ For ☑ ~~Against~~ ☐ Information

Representing Myself

Appearing at request of Chair: ☐ Yes ☑ ~~No~~

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-2014
Meeting Date

Topic Florida Retirement System

Bill Number SB 1114 *(if applicable)*

Name Katherine J. Hiley

Amendment Barcode _____ *(if applicable)*

Job Title Clerk

Address 657 Sweetbriar Drive
Street

Phone (813) 748-5467

Oldsmar Florida 34677
City *State* *Zip*

E-mail kathyhiley@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-2014
Meeting Date

Topic FLORIDA RETIREMENT System

Bill Number SB 1114 *(if applicable)*

Name Delores Kelly

Amendment Barcode *(if applicable)*

Job Title RETIRED

Address P.O. Box 1677
Street

Phone 352 603-1149

Bushnell FL 33513
City *State* *Zip*

E-mail

Speaking: ☐ For ☑ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Pensions

Bill Number 1114 *(if applicable)*

Name Lisa Henning

Amendment Barcode *(if applicable)*

Job Title Director

Address 242 Office Plaza Dr *Street*

Phone 656-9881

Tallahassee FL 32301 *City* *State* *Zip*

E-mail fopLegislative@fop.net

Speaking: ☐ For ☑ ~~Against~~ ☐ Information

Representing Fraternal Order Of Police

Appearing at request of Chair: ☐ Yes ☑ ~~No~~

Lobbyist registered with Legislature: ☐ Yes ☑ ~~No~~

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/14
Meeting Date

Topic _____ Bill Number 111Y *(if applicable)*

Name ROBERT JENKINS Amendment Barcode _____ *(if applicable)*

Job Title NATIONAL TRUSTEE FL

Address 999 11TH ST Phone 954-257-5229
Street

MIAMI BEACH FL 33139 E-mail RJAIL@AOL.COM
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing _____

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/14
Meeting Date

Topic FRS

Bill Number SB 1114
(if applicable)

Name Ron Poppell

Amendment Barcode
(if applicable)

Job Title Sr DC Programs Officer

Address 1801 Hermitage Blvd
Street

Phone 413-1497

Tallahassee FL 32308
City *State* *Zip*

E-mail

Speaking: ☐ For ☐ Against ☒ Information

Representing State Board of Administration

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1122 (578150)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Bean and others
SUBJECT:	Emergency Allergy Treatment
DATE:	April 21, 2014 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1122 renames the Insect Sting Emergency Treatment Act to the Emergency Allergy Treatment Act and expands the scope to include all emergency allergy reactions.

The educational training for certification of those who may administer epinephrine must be conducted by a nationally recognized organization or an individual or entity approved by the Department of Health (DOH), rather than a physician. Eligible persons include, but are not limited to, camp counselors, scout leaders, school teachers, forest rangers, tour guides, and chaperones who successfully complete the training program.

The bill replaces references to outdated epinephrine delivery devices and specifies the use and prescription of epinephrine auto-injectors.

The bill provides immunity from civil liability to certain persons who possess, administer, or store an epinephrine auto-injector in compliance with the Emergency Allergy Treatment Act under specified parameters.

The bill has an insignificant fiscal impact.

II. Present Situation:

Anaphylaxis is a severe, whole-body allergic reaction to a chemical that has become an allergen.[1] The human body releases chemicals during anaphylaxis that can cause shock, resulting in a sudden drop in blood pressure and the release of histamines, which may restrict breathing.[2] Symptoms of anaphylaxis include rapid, weak pulse; skin rash; nausea; and vomiting.[3] Common causes include certain medications, some foods, insect bites or stings, and exposure to latex.[4] Food allergies alone affect approximately 3.8 percent of all United States children, and the prevalence of such allergies has increased by 18 percent from 1997 to 2007.[5] Food allergies are also the most common cause of anaphylaxis cases in hospital emergency rooms.[6]

Anaphylaxis is an emergency situation that requires immediate medical attention. If anaphylaxis is not treated, it will lead to unconsciousness and possible death. Symptoms can vary but can include hives, itching, flushing, swelling of the lips, tongue, and roof of the mouth, tightness of the throat and chest, dizziness, and headaches.

Initial treatment of anaphylaxis includes the administration of epinephrine, also known as adrenaline. Epinephrine is classified as a sympathomimetic drug, meaning its effects mimic those of the stimulated sympathetic nervous system, which stimulates the heart and narrows the blood vessels. It is available through a prescription from a physician.

Many individuals with severe allergies that have resulted in, or can result in, anaphylaxis carry a pre-filled, auto-injector that contains one dose of epinephrine such as an EpiPen or Twinject.[7] Epinephrine acts quickly by stimulating the heart to improve breathing, relaxing muscles in the airways, and tightening blood vessels to reduce swelling of the face, lips, and throat. The effects of epinephrine are rapid, but not long-lasting.[8] When injected, epinephrine eases the symptoms until professional medical treatment is obtained.

In 2012, the Legislature authorized pharmacists to administer – in the event of an allergic reaction – epinephrine using an auto-injection delivery system within the framework of an established protocol with a physician. This provision was included in legislation that expanded pharmacists' existing authority to administer certain vaccinations under a protocol with a supervising physician.[9] The legislation further required any participating pharmacist to complete

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[1] U.S. National Library of Medicine, National Institute of Health, *Anaphylaxis*, *http://www.nlm.nih.gov/medlineplus/ency/article/000844.htm* (last visited Mar. 6, 2014).
[2] Mayo Foundation for Medical Education and Research, *First Aid: Anaphylaxis*, *http://www.mayoclinic.org/first-aid/first-aid-anaphylaxis/basics/art-20056608* (last visited Mar. 6, 2014).
[3] *Id.*
[4] Mayo Clinic, *Anaphylaxis - Definition*, *http://www.mayoclinic.org/diseases-conditions/anaphylaxis/basics/definition/con-20014324* (last visited: Mar. 6, 2014).
[5] McWilliams, Laurie, et al, *Future Therapies for Food Allergy*, landesbioscience.com, Human Vaccines and Immunotherapeutics, (October 2012), available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3660769/pdf/hvi-8-1479.pdf (last visited Mar. 6, 2014).
[6] *Id.*
[7] U.S. National Library of Medicine, National Institute of Health, *Epinephrine Injection*, http://www.nlm.nih.gov/medlineplus/druginfo/meds/a603002.html (last visited: Mar. 6, 2014).
[8] *Id.*
[9] Chapter Law 2012-60, s. 1, Laws of Florida.

a three-hour continuing education course as part of his or her re-licensure or recertification on the safe and effective administration of vaccines and epinephrine.[10]

For public and private schools, the 2013 Legislature authorized the purchase and maintenance of a supply of epinephrine auto-injectors in a secure, locked location on school premises for use if a student has an anaphylactic reaction.[11] Any participating school district or private school is required to adopt a protocol developed by a licensed physician for administration of the epinephrine by school personnel. The epinephrine auto-injectors may be administered by school personnel or self-administered by the student.

The state Board of Education's rule for the use of epinephrine auto-injectors is based solely on self-administration.[12] The rule provides that the auto-injector is a prescription medication in a specific dose-for-weight device that is packaged for self-delivery in the event of a life threatening allergic reaction. Written authorization is required from the physician and parent for the student to carry an epinephrine auto-injector and to self-administer epinephrine. The rule requires a school nurse to develop an annual child-specific action plan for an anticipated health emergency in the school setting.[13]

In November 2013, Congress passed and the President Barack Obama signed the School Access to Emergency Epinephrine Act.[14] The federal legislation provides a financial incentive for schools to maintain a supply of the medication and permit trained personnel to administer it. Participating schools will be given additional preference for receiving federal asthma-treatment grants. The federal act also requires that a state attorney general certify that the state's liability protections are adequate for school personnel. Currently, five states require or will require schools to stock epinephrine in the next school year.[15]

The marketer and distributer of the EpiPen, Mylan Specialty, offers four free auto-injectors to qualifying public and private kindergarten, elementary, middle, and high schools in the United States with a valid prescription.[16]

III. Effect of Proposed Changes:

Section 1 amends s. 381.88, F.S. This section, and newly created s. 381.885, F.S., may be cited as the Emergency Allergy Treatment Act. Section 381.88, F.S., was previously the Insect Sting Emergency Treatment Act. Definitions for the re-titled act are created for:

- Administrator
- Authorized entity

[10] Chapter Law 2012-60, s. 3, Laws of Florida.
[11] Chapter Law 2013-63, ss. 1 and 3, Laws of Florida.
[12] Rule 6A-6.0251, F.A.C.; Effective March 24, 2008.
[13] *Id.* The annual plan is developed in cooperation with the student, parent, healthcare provider, and school personnel for the student with life threatening allergies and must specify that the emergency number 911 will be called immediately for an anaphylaxis event. It must also describe a plan of action if the student is unable to perform self-administration of the epinephrine auto-injector.
[14] Pub. Law 113-48, H.R. 2094, 113th Cong. (Nov. 13, 2013)
[15] The five states that require epinephrine are Maryland, Michigan, Nebraska, Nevada and Virginia. Another 26 states permit schools to stock epinephrine but do not mandate stocking.
[16] *See* EpiPen4Schools Program, http://epipen4schools.com/ (last visited Mar. 6, 2014).

- Authorized health care practitioner
- Department
- Epinephrine auto-injector
- Self-administration

Under this section, references to "insect stings" are revised to "allergic" reactions to reflect the broader scope of the bill. References to the prescription or administration of epinephrine are clarified to specifically identify the epinephrine auto-injector.

Under the bill, the educational training program required for a layperson to obtain a certificate to obtain, produce, or administer epinephrine must be conducted by a nationally recognized organization with experience in training laypersons in emergency health treatment or an entity approved by the DOH, rather than a physician licensed in this state.

The list of eligible persons to whom a certificate of training under this section may be awarded is clarified to include, but not be limited to, a camp counselor, a scout leader, school teacher, forest ranger, tour guide, or chaperone who successfully completes the training program. The current list is an exclusive list of eligible entities.

Under the bill, a certificate holder is authorized to:
- Receive a prescription for epinephrine auto-injectors from either an authorized health care practitioner or the DOH;
- Possess the prescribed epinephrine auto-injector; and
- Administer the prescribed epinephrine auto-injector to a person experiencing a severe allergic reaction when a physician is not immediately available.

Section 2 creates s. 381.885, F.S., to permit an authorized health care practitioner to prescribe epinephrine auto-injectors to an authorized entity and authorizes pharmacists to dispense the prescription in the name of the authorized entity. The authorized entity is permitted to acquire and maintain a supply of epinephrine auto-injectors in accordance with the auto-injectors' instructions and any additional requirements established by the DOH. The authorized entity is also permitted to designate employees or agents who hold a certificate that is issued under s. 381.88, F.S., to be responsible for the storage, maintenance, and oversight of the epinephrine auto-injector supply.

The bill provides authorization for individuals who hold a certificate from the training program to use the epinephrine auto-injectors to:
- Provide to a person who the certified individual believes, in good faith, is experiencing a severe allergic reaction for that person's immediate self-administration; or
- Administer the epinephrine auto-injector to a person who the certified individual believes, in good faith, is experiencing a severe allergic reaction.

Use of the epinephrine auto-injector by the certified individual under either scenario may occur under the bill regardless of whether the affected person has a prescription or has been previously diagnosed with an allergy.

An authorized entity that acquires a stock supply of epinephrine auto-injectors via prescription from an authorized health care practitioner may also make the auto-injectors available to non-certified individuals. These non-certified individuals may administer the auto-injector in the following circumstances:

- Non-certified individual believes, in good faith, that a person is experiencing severe allergic reaction;
- The auto-injector is stored in a locked, secure container; and
- The auto-injectors can only be accessed upon remote authorization by an authorized health care provider after consultation with the authorized health care practitioner by audio, televideo, or other electronic communication. The bill provides that this consultation is not the practice of telemedicine or a violation of professional practice standards.

The administration of epinephrine auto-injectors under this section is specifically identified as not the practice of medicine.

The bill provides immunity from civil liability to any person, as defined in s. 1.01,[17] who possesses, administers, or stores an epinephrine auto-injectors under the bill, including:

- An authorized health care practitioner;
- A dispensing health care practitioner or pharmacist;
- Any person certified under the Emergency Allergy Treatment Act;
- Any non-certified individual who receives an epinephrine auto-injectors from an authorized entity for purposes of administering it to another person suffering from a severe allergic reaction; and
- A trainer who conducts an educational training program for recognizing the symptoms of a severe allergic reaction and administering an epinephrine auto-injectors.

The immunity granted under CS/CS/SB 1122 is, by reference, identical to the immunity provided under s. 768.13, F.S. This section is known as Florida's *Good Samaritan Act* and provides, in part:

> (2)(a) Any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, a state of emergency which has been declared pursuant to s. 252.36, or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.
>
> (b)1. Any health care provider, including a hospital licensed under chapter 395, providing emergency services pursuant to obligations imposed by 42 U.S.C. s. 1395dd, s. 395.1041, s. 395.401, or s. 401.45

[17] Section 1.01, F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

shall not be held liable for any civil damages as a result of such medical care or treatment unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

Section 3 provides that the bill's effective date is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/CS/SB 1122, private "authorized entities," such as restaurants, camps, youth sports, private schools, theme parks, and sports arenas could incur costs to stock and maintain the epinephrine auto-injectors. This is voluntary and the cost is indeterminate.

Immunity from civil liability has also been provided under the bill to certified organizations and certificate holders to encourage participation.

C. Government Sector Impact:

The DOH is required to establish rules and indicates that these costs can be absorbed within existing resources.

Other governmental agencies that may be impacted are any local municipalities or school boards that elect certification as an authorized entity for storage and maintenance of epinephrine auto-injectors. School districts, individual schools, parks, and recreation departments would likely be entities that participate in the program.

There is a cost to acquire the epinephrine auto-injectors and it is unclear who would bear the cost of the prescription. At least one distributor of the medication provides a limited, free supply of auto-injectors to schools.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are three other state statutes that address administration of epinephrine auto-injectors:

- Section 1002.20, F.S., relating to epinephrine supplies and authorization for student self-administration in public schools;
- Section 1002.42, F.S., relating to epinephrine supplies and authorization for student self-administration in private schools; and,
- Section 465.189, F.S.; relating to pharmacist administration of vaccines and epinephrine auto-injections.

All of these statutes require the third party (the school or the pharmacist) to have an approved protocol with a supervising physician prior to administration of epinephrine auto-injectors. The school-related statutes address only self-administered injections by a student authorized to self-administer, and by rule, the state Board of Education has required written authorization from the physician and the student's parent for the student to carry and self-administer epinephrine.

The bill describes a school as an authorized entity only for the purposes of s. 381.88(5), F.S., which refers to the bill's provisions for educational training programs. Section 1002.20(3)(i), F.S., already authorizes schools to purchase epinephrine auto-injectors from wholesale distributors and to maintain a supply of injectors in a secure, locked location for student use. It is unclear if the intent of the bill is to limit the role of the schools to only being an authorized entity for training and preclude them as sites for storage, administration, or distribution to certified individuals as created under this bill. A certificate of training may still be issued to a school teacher under the bill, yet the schools appear to be limited to student self-administration under s. 1002.20, F.S., since they are authorized entities only for training.

For pharmacists administering epinephrine auto-injectors, the bill also requires continuing education credit on the safe and effective administration of vaccines and epinephrine auto-injection as part of their biennial re-licensure or recertification. It is unclear whether a pharmacist – who is not precluded under the bill from being recognized as an authorized entity or certificate holder – would be required to complete both the continuing education requirements under s. 465.009(6)(a), F.S., and the education training program, or whether completion of one of the requirements would be sufficient.

In lines 123 to 127, the person who is believed to be suffering an adverse allergic reaction is not required to provide consent for treatment, if he or she is capable. The student self-administration requirements specifically require parental and physician authorization for the epinephrine auto-injector. In any other situation where medical care is rendered, authorization for medical treatment is required if the person who is believed to need treatment is capable.

VIII. Statutes Affected:

This bill substantially amends section 381.88 of the Florida Statutes.

This bill creates section 381.885 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on April 2, 2014:
The CS revises the bill's civil liability immunity provisions and makes the bill's liability protections identical to those under s. 768.13, F.S.

CS by Health Policy on March 11, 2014:
The CS makes technical corrections to update a cross reference that was re-numbered and to clarify who is authorized to possess and administer a prescription of an epinephrine auto-injector to a person suffering a severe allergic reaction.

B. Amendments:

None.

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

578150

576-03668-14

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

A bill to be entitled

An act relating to emergency allergy treatment; amending s. 381.88, F.S.; defining terms; expanding provisions to apply to all emergency allergy reactions, rather than to insect bites only; creating s. 381.885, F.S.; authorizing certain health care practitioners to prescribe epinephrine auto-injectors to an authorized entity; authorizing such entities to maintain a supply of epinephrine auto-injectors; authorizing certified individuals to use epinephrine auto-injectors; authorizing uncertified individuals to use epinephrine auto-injectors under certain circumstances; providing immunity from liability; providing an effective date.

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

Section 1. Section 381.88, Florida Statutes, is amended to read:

381.88 ~~Insect sting~~ Emergency allergy treatment.—

(1) This section and s. 381.885 may be cited as the "~~Insect Sting~~ Emergency Allergy Treatment Act."

(2) As used in this section and s. 381.885, the term:

(a) "Administer" means to directly apply an epinephrine auto-injector to the body of an individual.

(b) "Authorized entity" means an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas. However, a school as described in s. 1002.20(3)(i) is an authorized entity for the purposes of subsection (5) only.

(c) "Authorized health care practitioner" means a licensed practitioner authorized by the laws of the state to prescribe drugs.

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

(e) "Epinephrine auto-injector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(f) "Self-administration" means an individual's discretionary administration of an epinephrine auto-injector on herself or himself.

(3) ~~(2)~~ The purpose of this section is to provide for the certification of persons who administer lifesaving treatment to persons who have severe allergic ~~adverse~~ reactions ~~to insect stings~~ when a physician is not immediately available.

(4) ~~(3)~~ The department ~~of Health~~ may:

(a) Adopt rules necessary to administer this section.

(b) Conduct educational training programs as described in subsection (5) ~~(4),~~ and approve programs conducted by other persons or governmental agencies.

(c) Issue and renew certificates of training to persons who have complied with this section and the rules adopted by the department.

(d) Collect fees necessary to administer this section.

(5) ~~(4)~~ Educational training programs required by this

Florida Senate - 2014 PROPOSED COMMITTEE SUBSTITUTE
Bill No. CS for SB 1122

578150

576-03668-14

section must be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or individual approved by the department ~~physician licensed to practice medicine in this state~~. The curriculum must include at a minimum:

(a) Recognition of the symptoms of systemic reactions to food, insect stings, and other allergens; and

(b) The proper administration of an ~~a subcutaneous injection of~~ epinephrine auto-injector.

(6)~~(5)~~ A certificate of training may be given to a person who:

(a) Is 18 years of age or older;

(b) Has, or reasonably expects to have, responsibility for or contact with at least one other person ~~who has severe adverse reactions to insect stings~~ as a result of his or her occupational or volunteer status, including, but not limited to, a camp counselor, scout leader, school teacher, forest ranger, tour guide, or chaperone; and

(c) Has successfully completed an educational training program as described in subsection (5) ~~(4)~~.

(7)~~(6)~~ A person who successfully completes an educational training program may obtain a certificate upon payment of an application fee of $25.

(8)~~(7)~~ A certificate issued pursuant to this section authorizes the holder ~~thereof~~ to receive, upon presentment of the certificate, ~~from any physician licensed in this state or from the department,~~ a prescription for ~~premeasured doses of~~ epinephrine auto-injectors from an authorized health care practitioner or the department ~~and the necessary paraphernalia~~

~~for administration~~. The certificate also authorizes the holder ~~thereof~~ to possess and ~~administer~~, in an emergency situation when a physician is not immediately available, to administer a ~~the~~ prescribed epinephrine auto-injector to a person experiencing ~~suffering~~ a severe allergic ~~adverse~~ reaction ~~to an insect sting~~.

Section 2. Section 381.885, Florida Statutes, is created to read:

381.885 Epinephrine auto-injectors; emergency administration.—

(1) PRESCRIBING TO AN AUTHORIZED ENTITY.—An authorized health care practitioner may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this section, and pharmacists may dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity.

(2) MAINTENANCE OF SUPPLY.—An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this section. Such epinephrine auto-injectors must be stored in accordance with the epinephrine auto-injector's instructions for use and with any additional requirements that may be established by the department. An authorized entity shall designate employees or agents who hold a certificate issued pursuant to s. 381.88 to be responsible for the storage, maintenance, and general oversight of epinephrine auto-injectors acquired by the authorized entity.

(3) USE OF EPINEPHRINE AUTO-INJECTORS.—An individual who holds a certificate issued pursuant to s. 381.88 may, on the premises of or in connection with the authorized entity, use

epinephrine auto-injectors prescribed pursuant to subsection (1) to:

(a) Provide an epinephrine auto-injector to a person who the certified individual in good faith believes is experiencing a severe allergic reaction for that person's immediate self-administration, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(b) Administer an epinephrine auto-injector to a person who the certified individual in good faith believes is experiencing a severe allergic reaction, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(4) EXPANDED AVAILABILITY.—An authorized entity that acquires a stock supply of epinephrine auto-injectors pursuant to a prescription issued by an authorized health care practitioner in accordance with this section may make the auto-injectors available to individuals other than certified individuals identified in subsection (3) who may administer the auto-injector to a person believed in good faith to be experiencing a severe allergic reaction if the epinephrine auto-injectors are stored in a locked, secure container and are made available only upon remote authorization by an authorized health care practitioner after consultation with the authorized health care practitioner by audio, televideo, or other similar means of electronic communication. Consultation with an authorized health care practitioner for this purpose is not considered the practice of telemedicine or otherwise construed as violating any law or rule regulating the authorized health care practitioner's

professional practice.

(5) IMMUNITY FROM LIABILITY.—Any person, as defined in s. 1.01, including an authorized health care practitioner, a dispensing health care practitioner or pharmacist, an individual conducting training pursuant to s. 381.88(5), and a person certified pursuant to s. 381.88(7), who possesses, administers, or stores an epinephrine auto-injector in compliance with this act; and an uncertified person who administers an epinephrine auto-injector as authorized under subsection (4) in compliance with this act, is afforded the civil liability immunity protection provided under s. 768.13.

Section 3. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1122
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Bean and others
SUBJECT:	Emergency Allergy Treatment
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Brown/Loe	Pigott	AHS	**Fav/CS**
3.	Brown/Loe	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1122 renames the Insect Sting Emergency Treatment Act to the Emergency Allergy Treatment Act and expands the scope to include all emergency allergy reactions.

The educational training for certification of those who may administer epinephrine must be conducted by a nationally recognized organization or an individual or entity approved by the Department of Health (DOH), rather than a physician. Eligible persons include, but are not limited to, camp counselors, scout leaders, school teachers, forest rangers, tour guides, and chaperones who successfully complete the training program.

The bill replaces references to outdated epinephrine delivery devices and specifies the use and prescription of epinephrine auto-injectors.

The bill provides immunity from civil liability to certain persons who possess, administer, or store an epinephrine auto-injector in compliance with the Emergency Allergy Treatment Act under specified parameters.

The bill has an insignificant fiscal impact.

II. Present Situation:

Anaphylaxis is a severe, whole-body allergic reaction to a chemical that has become an allergen.[1] The human body releases chemicals during anaphylaxis that can cause shock, resulting in a sudden drop in blood pressure and the release of histamines, which may restrict breathing.[2] Symptoms of anaphylaxis include rapid, weak pulse; skin rash; nausea; and vomiting.[3] Common causes include certain medications, some foods, insect bites or stings, and exposure to latex.[4] Food allergies alone affect approximately 3.8 percent of all United States children, and the prevalence of such allergies has increased by 18 percent from 1997 to 2007.[5] Food allergies are also the most common cause of anaphylaxis cases in hospital emergency rooms.[6]

Anaphylaxis is an emergency situation that requires immediate medical attention. If anaphylaxis is not treated, it will lead to unconsciousness and possible death. Symptoms can vary but can include hives, itching, flushing, swelling of the lips, tongue, and roof of the mouth, tightness of the throat and chest, dizziness, and headaches.

Initial treatment of anaphylaxis includes the administration of epinephrine, also known as adrenaline. Epinephrine is classified as a sympathomimetic drug, meaning its effects mimic those of the stimulated sympathetic nervous system, which stimulates the heart and narrows the blood vessels. It is available through a prescription from a physician.

Many individuals with severe allergies that have resulted in, or can result in, anaphylaxis carry a pre-filled, auto-injector that contains one dose of epinephrine such as an EpiPen or Twinject.[7] Epinephrine acts quickly by stimulating the heart to improve breathing, relaxing muscles in the airways, and tightening blood vessels to reduce swelling of the face, lips, and throat. The effects of epinephrine are rapid, but not long-lasting.[8] When injected, epinephrine eases the symptoms until professional medical treatment is obtained.

In 2012, the Legislature authorized pharmacists to administer – in the event of an allergic reaction – epinephrine using an auto-injection delivery system within the framework of an established protocol with a physician. This provision was included in legislation that expanded pharmacists' existing authority to administer certain vaccinations under a protocol with a supervising physician.[9] The legislation further required any participating pharmacist to complete

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[1] U.S. National Library of Medicine, National Institute of Health, *Anaphylaxis*, *http://www.nlm.nih.gov/medlineplus/ency/article/000844.htm* (last visited Mar. 6, 2014).
[2] Mayo Foundation for Medical Education and Research, *First Aid: Anaphylaxis*, *http://www.mayoclinic.org/first-aid/first-aid-anaphylaxis/basics/art-20056608* (last visited Mar. 6, 2014).
[3] *Id.*
[4] Mayo Clinic, *Anaphylaxis - Definition*, *http://www.mayoclinic.org/diseases-conditions/anaphylaxis/basics/definition/con-20014324* (last visited: Mar. 6, 2014).
[5] McWilliams, Laurie, et al, *Future Therapies for Food Allergy*, landesbioscience.com, Human Vaccines and Immunotherapeutics, (October 2012), available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3660769/pdf/hvi-8-1479.pdf (last visited Mar. 6, 2014).
[6] *Id.*
[7] U.S. National Library of Medicine, National Institute of Health, *Epinephrine Injection*, http://www.nlm.nih.gov/medlineplus/druginfo/meds/a603002.html (last visited: Mar. 6, 2014).
[8] *Id.*
[9] Chapter Law 2012-60, s. 1, Laws of Florida.

a three-hour continuing education course as part of his or her re-licensure or recertification on the safe and effective administration of vaccines and epinephrine.[10]

For public and private schools, the 2013 Legislature authorized the purchase and maintenance of a supply of epinephrine auto-injectors in a secure, locked location on school premises for use if a student has an anaphylactic reaction.[11] Any participating school district or private school is required to adopt a protocol developed by a licensed physician for administration of the epinephrine by school personnel. The epinephrine auto-injectors may be administered by school personnel or self-administered by the student.

The state Board of Education's rule for the use of epinephrine auto-injectors is based solely on self-administration.[12] The rule provides that the auto-injector is a prescription medication in a specific dose-for-weight device that is packaged for self-delivery in the event of a life threatening allergic reaction. Written authorization is required from the physician and parent for the student to carry an epinephrine auto-injector and to self-administer epinephrine. The rule requires a school nurse to develop an annual child-specific action plan for an anticipated health emergency in the school setting.[13]

In November 2013, Congress passed and the President Barack Obama signed the School Access to Emergency Epinephrine Act.[14] The federal legislation provides a financial incentive for schools to maintain a supply of the medication and permit trained personnel to administer it. Participating schools will be given additional preference for receiving federal asthma-treatment grants. The federal act also requires that a state attorney general certify that the state's liability protections are adequate for school personnel. Currently, five states require or will require schools to stock epinephrine in the next school year.[15]

The marketer and distributer of the EpiPen, Mylan Specialty, offers four free auto-injectors to qualifying public and private kindergarten, elementary, middle, and high schools in the United States with a valid prescription.[16]

III. Effect of Proposed Changes:

Section 1 amends s. 381.88, F.S. This section, and newly created s. 381.885, F.S., may be cited as the Emergency Allergy Treatment Act. Section 381.88, F.S., was previously the Insect Sting Emergency Treatment Act. Definitions for the re-titled act are created for:

- Administrator
- Authorized entity

[10] Chapter Law 2012-60, s. 3, Laws of Florida.
[11] Chapter Law 2013-63, ss. 1 and 3, Laws of Florida.
[12] Rule 6A-6.0251, F.A.C.; Effective March 24, 2008.
[13] *Id.* The annual plan is developed in cooperation with the student, parent, healthcare provider, and school personnel for the student with life threatening allergies and must specify that the emergency number 911 will be called immediately for an anaphylaxis event. It must also describe a plan of action if the student is unable to perform self-administration of the epinephrine auto-injector.
[14] Pub. Law 113-48, H.R. 2094, 113th Cong. (Nov. 13, 2013)
[15] The five states that require epinephrine are Maryland, Michigan, Nebraska, Nevada and Virginia. Another 26 states permit schools to stock epinephrine but do not mandate stocking.
[16] *See* EpiPen4Schools Program, http://epipen4schools.com/ (last visited Mar. 6, 2014).

- Authorized health care practitioner
- Department
- Epinephrine auto-injector
- Self-administration

Under this section, references to "insect stings" are revised to "allergic" reactions to reflect the broader scope of the bill. References to the prescription or administration of epinephrine are clarified to specifically identify the epinephrine auto-injector.

Under the bill, the educational training program required for a layperson to obtain a certificate to obtain, produce, or administer epinephrine must be conducted by a nationally recognized organization with experience in training laypersons in emergency health treatment or an entity approved by the DOH, rather than a physician licensed in this state.

The list of eligible persons to whom a certificate of training under this section may be awarded is clarified to include, but not be limited to, a camp counselor, a scout leader, school teacher, forest ranger, tour guide, or chaperone who successfully completes the training program. The current list is an exclusive list of eligible entities.

Under the bill, a certificate holder is authorized to:
- Receive a prescription for epinephrine auto-injectors from either an authorized health care practitioner or the DOH;
- Possess the prescribed epinephrine auto-injector; and
- Administer the prescribed epinephrine auto-injector to a person experiencing a severe allergic reaction when a physician is not immediately available.

Section 2 creates s. 381.885, F.S., to permit an authorized health care practitioner to prescribe epinephrine auto-injectors to an authorized entity and authorizes pharmacists to dispense the prescription in the name of the authorized entity. The authorized entity is permitted to acquire and maintain a supply of epinephrine auto-injectors in accordance with the auto-injectors' instructions and any additional requirements established by the DOH. The authorized entity is also permitted to designate employees or agents who hold a certificate that is issued under s. 381.88, F.S., to be responsible for the storage, maintenance, and oversight of the epinephrine auto-injector supply.

The bill provides authorization for individuals who hold a certificate from the training program to use the epinephrine auto-injectors to:
- Provide to a person who the certified individual believes, in good faith, is experiencing a severe allergic reaction for that person's immediate self-administration; or
- Administer the epinephrine auto-injector to a person who the certified individual believes, in good faith, is experiencing a severe allergic reaction.

Use of the epinephrine auto-injector by the certified individual under either scenario may occur under the bill regardless of whether the affected person has a prescription or has been previously diagnosed with an allergy.

An authorized entity that acquires a stock supply of epinephrine auto-injectors via prescription from an authorized health care practitioner may also make the auto-injectors available to non-certified individuals. These non-certified individuals may administer the auto-injector in the following circumstances:

- Non-certified individual believes, in good faith, that a person is experiencing severe allergic reaction;
- The auto-injector is stored in a locked, secure container; and
- The auto-injectors can only be accessed upon remote authorization by an authorized health care provider after consultation with the authorized health care practitioner by audio, televideo, or other electronic communication. The bill provides that this consultation is not the practice of telemedicine or a violation of professional practice standards.

The administration of epinephrine auto-injectors under this section is specifically identified as not the practice of medicine.

The bill provides immunity from civil liability to any person, as defined in s. 1.01,[17] who possesses, administers, or stores an epinephrine auto-injectors under the bill, including:

- An authorized health care practitioner;
- A dispensing health care practitioner or pharmacist;
- Any person certified under the Emergency Allergy Treatment Act;
- Any non-certified individual who receives an epinephrine auto-injectors from an authorized entity for purposes of administering it to another person suffering from a severe allergic reaction; and
- A trainer who conducts an educational training program for recognizing the symptoms of a severe allergic reaction and administering an epinephrine auto-injectors.

The immunity granted under CS/CS/SB 1122 is, by reference, identical to the immunity provided under s. 768.13, F.S. This section is known as Florida's *Good Samaritan Act* and provides, in part:

> (2)(a) Any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, a state of emergency which has been declared pursuant to s. 252.36, or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.
>
> (b)1. Any health care provider, including a hospital licensed under chapter 395, providing emergency services pursuant to obligations imposed by 42 U.S.C. s. 1395dd, s. 395.1041, s. 395.401, or s. 401.45

[17] Section 1.01, F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

shall not be held liable for any civil damages as a result of such medical care or treatment unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

Section 3 provides that the bill's effective date is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/SB 1122, private "authorized entities," such as restaurants, camps, youth sports, private schools, theme parks, and sports arenas could incur costs to stock and maintain the epinephrine auto-injectors. This is voluntary and the cost is indeterminate.

Immunity from civil liability has also been provided under the bill to certified organizations and certificate holders to encourage participation.

C. Government Sector Impact:

The DOH is required to establish rules and indicates that these costs can be absorbed within existing resources.

Other governmental agencies that may be impacted are any local municipalities or school boards that elect certification as an authorized entity for storage and maintenance of epinephrine auto-injectors. School districts, individual schools, parks, and recreation departments would likely be entities that participate in the program.

There is a cost to acquire the epinephrine auto-injectors and it is unclear who would bear the cost of the prescription. At least one distributor of the medication provides a limited, free supply of auto-injectors to schools.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are three other state statutes that address administration of epinephrine auto-injectors:

- Section 1002.20, F.S., relating to epinephrine supplies and authorization for student self-administration in public schools;
- Section 1002.42, F.S., relating to epinephrine supplies and authorization for student self-administration in private schools; and,
- Section 465.189, F.S.; relating to pharmacist administration of vaccines and epinephrine auto-injections.

All of these statutes require the third party (the school or the pharmacist) to have an approved protocol with a supervising physician prior to administration of epinephrine auto-injectors. The school-related statutes address only self-administered injections by a student authorized to self-administer, and by rule, the state Board of Education has required written authorization from the physician and the student's parent for the student to carry and self-administer epinephrine.

The bill describes a school as an authorized entity only for the purposes of s. 381.88(5), F.S., which refers to the bill's provisions for educational training programs. Section 1002.20(3)(i), F.S., already authorizes schools to purchase epinephrine auto-injectors from wholesale distributors and to maintain a supply of injectors in a secure, locked location for student use. It is unclear if the intent of the bill is to limit the role of the schools to only being an authorized entity for training and preclude them as sites for storage, administration, or distribution to certified individuals as created under this bill. A certificate of training may still be issued to a school teacher under the bill, yet the schools appear to be limited to student self-administration under s. 1002.20, F.S., since they are authorized entities only for training.

For pharmacists administering epinephrine auto-injectors, the bill also requires continuing education credit on the safe and effective administration of vaccines and epinephrine auto-injection as part of their biennial re-licensure or recertification. It is unclear whether a pharmacist – who is not precluded under the bill from being recognized as an authorized entity or certificate holder – would be required to complete both the continuing education requirements under s. 465.009(6)(a), F.S., and the education training program, or whether completion of one of the requirements would be sufficient.

In lines 123 to 127, the person who is believed to be suffering an adverse allergic reaction is not required to provide consent for treatment, if he or she is capable. The student self-administration requirements specifically require parental and physician authorization for the epinephrine auto-injector. In any other situation where medical care is rendered, authorization for medical treatment is required if the person who is believed to need treatment is capable.

VIII. Statutes Affected:

This bill substantially amends section 381.88 of the Florida Statutes.

This bill creates section 381.885 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 22, 2014:
The CS revises the bill's civil liability immunity provisions and makes the bill's liability protections identical to those under s. 768.13, F.S.

CS by Health Policy on March 11, 2014:
The CS makes technical corrections to update a cross reference that was re-numbered and to clarify who is authorized to possess and administer a prescription of an epinephrine auto-injector to a person suffering a severe allergic reaction.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senators Bean, Gibson, and Bradley

588-02479-14 20141122c1

A bill to be entitled

An act relating to emergency allergy treatment; amending s. 381.88, F.S.; defining terms; expanding provisions to apply to all emergency allergy reactions, rather than to insect bites only; creating s. 381.885, F.S.; authorizing certain health care practitioners to prescribe epinephrine auto-injectors to an authorized entity; authorizing such entities to maintain a supply of epinephrine auto-injectors; authorizing certified individuals to use epinephrine auto-injectors; authorizing uncertified individuals to use epinephrine auto-injectors under certain circumstances; providing immunity from liability; providing an effective date.

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

Section 1. Section 381.88, Florida Statutes, is amended to read:

381.88 ~~Insect sting~~ Emergency allergy treatment.—

(1) This section and s. 381.885 may be cited as the "~~Insect Sting~~ Emergency Allergy Treatment Act."

(2) As used in this section and s. 381.885, the term:

(a) "Administer" means to directly apply an epinephrine auto-injector to the body of an individual.

(b) "Authorized entity" means an entity or organization at or in connection with which allergens capable of causing a severe allergic reaction may be present. The term includes, but is not limited to, restaurants, recreation camps, youth sports

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

Florida Senate - 2014 **CS for SB 1122**

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leagues, theme parks and resorts, and sports arenas. However, a school as described in s. 1002.20(3)(i) is an authorized entity for the purposes of subsection (5) only.

(c) "Authorized health care practitioner" means a licensed practitioner authorized by the laws of the state to prescribe drugs.

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

(e) "Epinephrine auto-injector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(f) "Self-administration" means an individual's discretionary administration of an epinephrine auto-injector on herself or himself.

(3) ~~(2)~~ The purpose of this section is to provide for the certification of persons who administer lifesaving treatment to persons who have severe allergic ~~adverse~~ reactions ~~to insect stings~~ when a physician is not immediately available.

(4) ~~(3)~~ The department ~~of Health~~ may:

(a) Adopt rules necessary to administer this section.

(b) Conduct educational training programs as described in subsection (5) ~~(4),~~ and approve programs conducted by other persons or governmental agencies.

(c) Issue and renew certificates of training to persons who have complied with this section and the rules adopted by the department.

(d) Collect fees necessary to administer this section.

(5) ~~(4)~~ Educational training programs required by this section must be conducted by a nationally recognized organization experienced in training laypersons in emergency

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

health treatment or an entity or individual approved by the department ~~physician licensed to practice medicine in this state~~. The curriculum must include at a minimum:

(a) Recognition of the symptoms of systemic reactions to food, insect stings, and other allergens; and

(b) The proper administration of an ~~a subcutaneous injection of~~ epinephrine auto-injector.

(6)~~(5)~~ A certificate of training may be given to a person who:

(a) Is 18 years of age or older;

(b) Has, or reasonably expects to have, responsibility for or contact with at least one other person ~~who has severe adverse reactions to insect stings~~ as a result of his or her occupational or volunteer status, including, but not limited to, a camp counselor, scout leader, school teacher, forest ranger, tour guide, or chaperone; and

(c) Has successfully completed an educational training program as described in subsection (5) ~~(4)~~.

(7)~~(6)~~ A person who successfully completes an educational training program may obtain a certificate upon payment of an application fee of $25.

(8)~~(7)~~ A certificate issued pursuant to this section authorizes the holder ~~thereof~~ to receive, upon presentment of the certificate, ~~from any physician licensed in this state or from the department,~~ a prescription for ~~premeasured doses of~~ epinephrine auto-injectors from an authorized health care practitioner or the department ~~and the necessary paraphernalia for administration~~. The certificate also authorizes the holder ~~thereof~~ to possess and ~~administer~~, in an emergency situation

when a physician is not immediately available, to administer a ~~the~~ prescribed epinephrine auto-injector to a person experiencing ~~suffering~~ a severe allergic ~~adverse~~ reaction ~~to an insect sting~~.

Section 2. Section 381.885, Florida Statutes, is created to read:

381.885 Epinephrine auto-injectors; emergency administration.—

(1) PRESCRIBING TO AN AUTHORIZED ENTITY.—An authorized health care practitioner may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this section, and pharmacists may dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity.

(2) MAINTENANCE OF SUPPLY.—An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this section. Such epinephrine auto-injectors must be stored in accordance with the epinephrine auto-injector's instructions for use and with any additional requirements that may be established by the department. An authorized entity shall designate employees or agents who hold a certificate issued pursuant to s. 381.88 to be responsible for the storage, maintenance, and general oversight of epinephrine auto-injectors acquired by the authorized entity.

(3) USE OF EPINEPHRINE AUTO-INJECTORS.—An individual who holds a certificate issued pursuant to s. 381.88 may, on the premises of or in connection with the authorized entity, use epinephrine auto-injectors prescribed pursuant to subsection (1) to:

(a) Provide an epinephrine auto-injector to a person who the certified individual in good faith believes is experiencing a severe allergic reaction for that person's immediate self-administration, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(b) Administer an epinephrine auto-injector to a person who the certified individual in good faith believes is experiencing a severe allergic reaction, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(4) EXPANDED AVAILABILITY.—An authorized entity that acquires a stock supply of epinephrine auto-injectors pursuant to a prescription issued by an authorized health care practitioner in accordance with this section may make the auto-injectors available to individuals other than certified individuals identified in subsection (3) who may administer the auto-injector to a person believed in good faith to be experiencing a severe allergic reaction if the epinephrine auto-injectors are stored in a locked, secure container and are made available only upon remote authorization by an authorized health care practitioner after consultation with the authorized health care practitioner by audio, televideo, or other similar means of electronic communication. Consultation with an authorized health care practitioner for this purpose is not considered the practice of telemedicine or otherwise construed as violating any law or rule regulating the authorized health care practitioner's professional practice.

(5) IMMUNITY FROM LIABILITY.—

(a) The administration of an epinephrine auto-injector in accordance with this section is not the practice of medicine.

(b) Any authorized health care practitioner who prescribes epinephrine auto-injectors to an authorized entity or to an individual that holds a certificate issued pursuant to s. 381.88; any authorized entity that possesses and makes available epinephrine auto-injectors; any individual who holds a certificate issued pursuant to s. 381.88; any noncertified individual under subsection (4); and any person that conducts the training under s. 381.88 is not liable for civil damages that result from the administration or self-administration of an epinephrine auto-injector, the failure to administer an epinephrine auto-injector, or any other act or omission committed, in good faith, pursuant to this section or s. 381.88.

(c) An authorized entity doing business in this state is not liable for injuries or related damages that result from the provision or administration of an epinephrine auto-injector by its employees or agents outside this state if the entity or its employees or agents would not have been liable for such injuries or related damages had the provision or administration occurred within this state, or would not have been liable under the law of the state in which such provision or administration occurred.

(d) This section does not eliminate, limit, or reduce any other immunity or defense that may be available under state law, including the immunity provided under s. 768.13.

Section 3. This act shall take effect July 1, 2014.

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2014

I respectfully request that **Senate Bill # 1122**, relating to Emergency Allergy Treatment Act, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AARON BEAN
4th District

April 11, 2014

Senator Joe Negron
Chairman, Committee on Appropriations
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

This letter is to request that the following bills be placed on the agenda of the next committee meeting:

- *CS/CS/SB 956 relating to an act of Coastal Management (Companion bill on 2nd. Reading)*
- *CS/SB 1212 relating to an act of behavioral analysts (Companion in last committee)*
- *SB 388 – Public Retirement (Companion bill on 2nd. Reading)*
- *SB 598 – Juvenile Justice Education Program (In Senate Messages}*
- *SB 992 – Infectious Disease Control (Companion in last committee)*
- *SB 1122 – Emergency Allergy Treatment (Companion bill on 2nd Reading)*
- *SB 1416 Sexual Predator & Sexual Offender Absconders (Companion in last committee)*

Thank you for your consideration of this request.

Respectfully,

Aaron Bean
State Senator, 4th District

Cc: Cindy Kynoch, Staff Director
Ann Roberts, Committee Administrative Assistant

REPLY TO:
❒ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
❒ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-14
Meeting Date

Topic Emergency Allergy Treatment

Bill Number SP 1122
(if applicable)

Name Amy Datz

Amendment Barcode
(if applicable)

Job Title Retiree

Address 1130 Crestview Ave.
Street
Tallahassee FL. 32303
City *State* *Zip*

Phone 850-322-7599

E-mail amdatz@mac.

Speaking: ☒ For ☐ Against ☐ Information

Representing Allergy Suffer.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1126
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Dean
SUBJECT:	Fish and Wildlife Conservation Commission
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	DeLoach	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1126 amends statutes relating to the Fish and Wildlife Conservation Commission (FWC). The bill:

- Requires boating law violators to complete a mandatory boating safety course in person or online;
- Extends the FWC's anchoring and mooring pilot program until July 1, 2017, and requires an updated report by Jan. 1, 2017;
- Expands uses of the Marine Resources Conservation Trust Fund to include additional boating-related projects;
- Repeals the fee the FWC is authorized to charge for hunting on areas subject to cooperative agreements between the FWC and the U.S. Forest Service (Forest Service);
- Repeals a provision permitting trawling for shrimp for personal use in the St. Johns River;
- Specifies that the annual military gold sportsman's license authorizes the same activities as the annual gold sportsman's license;
- Eliminates the Special Recreational Spiny Lobster license;
- Repeals the fees for the freshwater trawl seine gear license and the statewide freshwater haul seine gear license. It also repeals the ability to charge fees for the Lake Okeechobee haul and trawl seine permits; and
- Makes technical and conforming changes.

The bill has an insignificant negative fiscal impact on revenues relating to the repeal of fees on freshwater haul and trawl seines.

II. Present Situation:

The present situation for the relevant provisions of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

III. Effect of Proposed Changes:

Boating Safety Education for Boating Law Violators (Sections 1 and 3):

Section 327.395(1), F.S., requires that, subject to exceptions listed in s. 327.395(6), F.S., a person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless that person has a photographic identification and a boater safety identification card issued by the Fish and Wildlife Commission (FWC), which shows he or she has:

- Completed an FWC approved boater education course that meets the minimum eight-hour instruction requirement established by the National Association of State Boating Law Administrators;
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.

The boater safety education course covers a broad range of subjects designed to educate boaters on safe boating in Florida.[1] The boater safety education course may be taken in person, in a classroom, or online.[2] Failure to comply with the boating safety education requirement is a noncriminal infraction under s. 327.395(7), F.S., and is punishable with a $50 fine.

For violations of certain FWC rules related to boating, the boating safety education and/or a mandatory education for violators (MEV) course is required. These courses must be completed following the date of the violation that triggered the education requirement. The courses may not be taken online.[3]

The MEV course must, at a minimum, cover:

- Florida boating laws;
- Causes and prevention of boating accidents;
- The importance of wearing personal flotation devices;
- The use of common sense and common courtesy; and
- Operating defensively.[4]

If convicted of two non-criminal infractions within a 12-month period, the violator must take the boating safety course. If convicted of any criminal boating violation or convicted of any infraction that includes a reportable boating accident, the person must take the boating safety course and the MEV course.[5]

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[1] Rule 68D-36.104, F.A.C.
[2] FWC, *Boating Courses*, http://myfwc.com/boating/safety-education/courses/, (last visited Mar. 15, 2014).
[3] *Id.*
[4] Rule 68D-36.106(2), F.A.C.
[5] FWC, *FAQs: Florida Mandatory Education for Violators*, http://myfwc.com/boating/regulations/mandatory-boating-education/ (last visited Mar. 18, 2014).

Criminal violations of ch. 327, F.S., include:

- Unlawfully leaving the scene of a boating accident;[6]
- Reckless operation of a vessel of personal watercraft;[7] or
- Boating under the influence of alcohol or drugs.[8]

Reportable boating accidents are accidents that involve:

- Personal injury requiring medical treatment beyond first aid;
- The death of a person;
- The disappearance of a person under circumstances that indicate the possibility of death or injury; or
- Damage to a vessel or other property totaling $2,000 or more.[9]

Section 327.355(5)(c), F.S., requires any person under the age of 21 who is convicted of being in control of a vessel with a breath-alcohol level of 0.02 or higher to enroll in, attend, and complete only the boater safety education course.[10]

Approximately 500 boaters are required to complete MEV courses each year.[11] The courses are not offered online. Section 327.731, F.S., authorizes the FWC to provide by rule for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available.[12]

When ss. 327.355[13] and 327.731, F.S.,[14] were adopted, boating safety education courses were available only in a classroom setting or through home study courses. The home study course consists of a booklet containing the course material, the test, and the test sheet. Home study students take the course and complete the test at their leisure and without any oversight. Section 327.731, F.S., was changed to require classroom attendance, in part because of a concern about a lack of supervision for the home study course.[15]

There were no online boating safety courses available in Florida when the requirement to attend courses for violations was instituted.[16] With advances in technology, online courses have been growing in availability and popularity, and classroom course offerings have been declining. Over sixty percent of students who take an approved basic boating safety course in Florida do so online.[17]

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[6] Section 327.30(5), F.S.
[7] Section 327.33(1), F.S.
[8] Section 327.35(2)(a)-(b), F.S.
[9] FWC, *Boating Accidents: 2012 Boating Accident Statistics: Glossary of Definitions*, XIV *available at* http://myfwc.com/media/2602447/2012-BoatingStatistics-Glossary.pdf (last visited Mar. 15, 2014).
[10] Section 327.355, F.S.
[11] FWC, *Senate Bill 1126 Agency Analysis*, 3 (July 1, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).
[12] *Supra*, note 5.
[13] See ch. 98-308, s. 8, Laws of Fla.
[14] See ch. 88-133, s. 7, Laws of Fla.
[15] *Supra* note 11.
[16] *Supra* note 11.
[17] *Supra* note 11.

Of the 500 people required to complete the boater safety education courses each year, approximately 50 complaints are received concerning the difficulty people have in finding a course within a reasonable distance.[18]

Effect of Proposed Changes

Section 1 amends s. 327.355, F.S., providing that operators of vessels by persons under 21 years of age who have consumed alcoholic beverages must complete a boater safety education course at their own expense and may take the course in a classroom or online.

Section 3 amends s. 327.731, F.S., provides the option of taking the boater education safety course in a classroom or online. It also removes the FWC's rulemaking authority to waive the attendance requirement in areas where the class is not available. Lastly, it removes the exemption from taking the boater safety education course if the violator has previously taken a boater safety education course.

Anchoring and Mooring Pilot Program (Section 2):

Local governments face problems resolving issues with improperly stored, abandoned, and derelict boats. They must also interact with homeowners who dislike vessels anchored close to their residences and address property damage resulting from vessels breaking loose during weather events. These considerations present complex issues for local governments that want to regulate anchoring but have no legal means to do so outside properly permitted mooring fields.[19]

In 2009, the Florida Legislature directed the FWC, in consultation with the Florida Department of Environmental Protection, to establish a pilot program to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields. This has come to be called the "Anchoring and Mooring Pilot Program."[20]

The purpose of establishing the pilot program in five locations is to test policies and regulatory schemes that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of the state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect the environment; and
- Deter improperly stored, abandoned, or derelict vessels.[21]

The State of Florida has jurisdiction over the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields. Local governments have jurisdiction over the anchoring and mooring of live-aboard vessels and vessels within their permitted

[18] *Supra* note 11, at 4.
[19] FWC, Division of Law Enforcement, *Anchoring and Mooring Pilot Program: Report of Findings and Recommendations*, 1 (Dec. 31, 2013), *available at* http://myfwc.com/media/2704721/FindingsRecommendations.pdf, (last visited Mar. 13, 2014).
[20] *Id.*
[21] Section 327.4105, F.S.

mooring fields. The program seeks to explore the question of how much authority local governments should have with respect to vessels anchoring within their jurisdictions.[22]

Multiple locations were chosen to allow for the study of different approaches to the issue. The locations chosen for the pilot program are the cities of St. Augustine, St. Petersburg, and Sarasota, and Martin, and Monroe counties.[23]

General provisions of the program in St. Augustine provide examples of some of the approaches being taken, including:

- Buffer zones preventing anchoring near marine infrastructure;
- Buffer zones around sensitive environmental resources such as shellfish harvesting areas;
- Check-in provisions requiring stored vessels to navigate to the city marina twice a year; and
- Provisions providing limits on the amount of time an occupied vessel may stay anchored before it has to either move out of the jurisdiction for one day or move to one of the city's mooring fields.[24]

The pilot program is set to expire on July 1, 2014.[25] The latest program status report states that an extension of the program is necessary to "more fully evaluate each of the pilot program locations and assess effectiveness through continued data collection and public input opportunities."[26]

Effect of Proposed Changes

Section 2 amends s. 327.4105, F.S., extending the Anchoring and Mooring Pilot Program to July 1, 2017, and requiring an updated report on January 1, 2017.

Use of Vessel Registration Fees (Section 4):

Section 328.72, F.S., relates to vessel registration fees. The section details fees for seven classifications of vessels and the fee for a dealer registration certificate.[27] It also specifies the portion of each fee that is remitted to the county in which the vessel is registered. The fee schedule is based on boat length:

- **Class A-1** - Less than 12 feet in length, and all canoes to which propulsion motors have been attached, regardless of length: $5.50 for each 12-month period registered;
- **Class A-2** - 12 feet or more and less than 16 feet in length: $16.25 for each 12-month period registered; **County portion:** $2.85 for each 12-month period registered;
- **Class 1** - 16 feet or more and less than 26 feet in length: $28.75 for each 12-month period registered. **County portion:** $8.85 for each 12-month period registered;
- **Class 2** - 26 feet or more and less than 40 feet in length: $78.25 for each 12-month period registered. **County portion:** $32.85 for each 12-month period registered;

[22] *Supra* note 19.
[23] *Supra* note 19.
[24] *Supra* note 19, at 19.
[25] Section 327.4105(6), F.S.
[26] *Supra* note 19, at 2.
[27] Section 328.48(2), F.S.

- **Class 3** - 40 feet or more and less than 65 feet in length: $127.75 for each 12-month period registered. **County portion:** $56.85 for each 12-month period registered;
- **Class 4** - 65 feet or more and less than 110 feet in length: $152.75 for each 12-month period registered. **County portion:** $68.85 for each 12-month period registered; and
- **Class 5** - 110 feet or more in length: $189.75 for each 12-month period registered. **County portion:** $86.85 for each 12-month period registered.[28]

There are restrictions on what the funds remitted to the county may be used for. Specifically, they can be spent to provide for:

- Recreational channel marking and other uniform water markers;
- Public boat ramps;
- Lifts and hoists;
- Marine railways and other public launching facilities;
- Derelict vessel removal; and
- Removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with s. 327.53, F.S., which concerns marine sanitation.[29]

These designated uses do not allow for any other uses of the registration fees remitted to the counties, even if they could also be used for other marine and boating related projects and uses, such as piers and docks.[30] It allows for the removal of derelict vessels, but does not allow for the removal of waterway debris, which may inhibit navigation.[31] The statute allows for construction of boat ramps, uniform waterway markers, and other boat access facilities but it does not provide for operation and maintenance of them.[32]

Counties must report yearly on how vessel registration fees are used.[33] The FWC reports that counties frequently ask the FWC if they may use the fees for the benefit of the boating community and in keeping with the spirit of the statute. However, any uses not specifically permitted by statute are not allowed.[34]

Effect of Proposed Changes

Section 4 amends s. 328.72, F.S., expanding the list of acceptable uses of county portions of vessel registration fees. This expansion:

- Provides for the maintenance and operation of channel markers, public boat ramps, lifts, hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities, the removal of derelict vessels, and debris that impedes boat access;
- Adds boat piers, docks, and mooring buoys to the list of projects that may be funded by county vessel registration fees;
- Allows the removal of debris that impedes boat access; and
- Provides that the fees may not be used for dredging channels.

[28] Section 328.72(1), F.S.
[29] Section 328.72(15), F.S.
[30] *Supra* note 19, at 6.
[31] *Supra* note 11, at 6.
[32] *Supra* note 11, at 6.
[33] *Supra* note 19.
[34] *Supra* note 11, at 6.

Cooperative Agreements between the FWC and the U.S. Forest Service (Forest Service) (Section 5):

The FWC is authorized to enter into cooperative agreements with the Forest Service to develop game bird, fish, reptile, or fur-bearing animal management and demonstration projects.[35] The law also provides that, in addition to the hunting license fees already required, the FWC may charge up to an additional $5 for every person 18 years of age or older using lands covered by the cooperative agreements, and up to an additional $2 for every person under the age of 18, using lands covered by the cooperative agreement.[36] Neither the FWC, nor its predecessor, the Game and Freshwater Fish Commission, has charged those fees since at least 1978.[37]

The FWC issues a management area permit to hunt on lands owned, leased, or managed by the FWC. The fee may not exceed $30 per year.[38] Currently, the annual management area permit costs $26.50.[39] Even if the additional fees were being charged, they would be much less than the current fee.

Effect of Proposed Changes

Section 5 repeals s. 379.2257(3), F.S., eliminating the ability to charge a fee in addition to the fee for a hunting license on land subject to cooperative agreements with the Forest Service.

Non-commercial Shrimp Trawling for Personal Food Use in the St. Johns River (Section 6):

Section 379.247(5), F.S., authorizes noncommercial trawling for shrimp in the St. Johns River for personal use as food. To do so, each person wanting to trawl for shrimp must obtain a permit, costing $50. All trawling is restricted to the St. Johns River north of the Acosta Bridge in Jacksonville, Florida, and none of the shrimp that are caught under the permit may be sold or offered for sale.[40]

In January 1996, the Marine Fisheries Commission (predecessor to the FWC) adopted a rule prohibiting the use of trawls in the recreational shrimp fishery.[41] Since then, no noncommercial permits have been issued.

Effect of Proposed Changes

Section 6 repeals s. 379.247(5), F.S., removing authorization for noncommercial shrimp trawling. The bill also amends s. 379.247(4)(d), F.S., making a conforming change by removing a prohibition on holding a commercial dead shrimp permit and a noncommercial dead shrimp

[35] Section 379.2257(1), F.S.
[36] Section 379.2257(3), F.S.
[37] *Supra* note 11, at 9.
[38] Section 379.354(8)(g), F.S.
[39] FWC, *Recreational Land Use Permits*, http://myfwc.com/license/public-land-use/ (last visited Mar. 15, 2014). The Wildlife Management Permit fee is in addition to fees charged for a required hunting license.
[40] Section 379.247(5)(a)-(c), F.S.
[41] See Rule 68B-31.007, F.A.C., which lists the gear that may be used to harvest shrimp recreationally. Trawls are absent from the list.

permit at the same time. Since 1996, the FWC has prohibited noncommercial trawling for shrimp, therefore the change will have no effect.

Recreational Hunting and Fishing License Exemptions (Section 7):

A person who wants to hunt or fish recreationally in Florida must obtain a recreational license, permit, or authorization number and pay the appropriate fee.[42] Section 379.353(2), F.S., exempts specified individuals from having to possess a recreational license while hunting or fishing. Section 379.353(2)(g), F.S., provides an exemption for any person fishing who has been accepted as a client for developmental disabilities services by the Department of Children and Family Service (DCF), provided the DCF furnishes the necessary proof.

In 2004, HB 1823 was signed into law, creating the Agency for Persons with Disabilities (APD) as an entity separate from the DCF.[43] The APD was subsequently tasked with serving the needs of Floridians with developmental disabilities. Consequently, s. 379.353(2)(g), F.S., has an incorrect statutory reference.

Effect of Proposed Changes

Section 7 amends s. 379.353, F.S., to correct the incorrect reference to DCF. The bill correctly references the APD.

Resident Hunting and Fishing Licenses (Section 8):

There are several recreational hunting licenses offered by the FWC. The two licenses relevant to this analysis are the annual gold sportsman's license and the annual military gold sportsman's license. Both licenses include hunting, freshwater and saltwater fishing licenses; and wildlife management area, archery, muzzleloading gun, crossbow, deer, turkey, Florida waterfowl, snook, and lobster permits. The only difference between the two licenses is cost – $100 for the regular license and $20 for the military one.[44]

The annual military gold sportsman's license is available to:

- All active duty military personnel who can show military orders stating that they are stationed in Florida;
- Florida residents who are active duty military personnel, stationed anywhere, and who can show a current military identification card and a Florida driver license; and
- Resident retired military persons who can show a current red or blue military identification card and proof of Florida residency.

This license is not available to family members unless they are also active duty or retired.[45]

[42] Section 379.354, F.S.
[43] Chapter 2004-267, s. 70, Laws of Fla.
[44] FWC, *Recreational Hunting Licenses & Permits*, http://myfwc.com/license/recreational/hunting/ (last accessed Mar. 21, 2014).
[45] FWC, *Military Gold Sportsman's License*, http://myfwc.com/license/recreational/military-gold/ (last accessed Mar. 21, 2014).

Effect of Proposed Changes

Section 8 amends s. 379.354, F.S., clarifying that the authorized activities granted by annual military gold sportsman's license are the same as the annual gold sportsman's license. The bill has no substantive effect because the authorized activities under each license are currently identical.

Repeal of the Special Recreational Spiny Lobster Permit (Section 9):

Spiny lobster may be harvested both commercially and recreationally. Spiny lobsters and stone crabs may be harvested recreationally by anyone who has a valid recreational saltwater fishing license and a spiny lobster permit.[46] The spiny lobster bag limit during the regular recreational spiny lobster season is six spiny lobsters per person per day. During the two-day sport season, the recreational bag limit is 12 spiny lobster per person per day, except in Monroe County, where the limit is six spiny lobsters per day. For commercial fishermen fishing during the commercial season, there is no bag limit when using traps.[47]

In order to harvest spiny lobster commercially, fishermen must possess a saltwater products license (SPL) and a restricted species (RS) and crawfish endorsement.

Florida offers three types of SPLs:[48]

- An individual SPL authorizes one individual person to engage in commercial fishing activities from the shore or a vessel. The Individual SPL is not tied to any one vessel and is issued in the individual's name.
- A crew SPL is also issued in an individual's name and authorizes the named individual to engage in commercial fishing activities from shore or a vessel. It also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This means the license holder can take a crew out on any vessel to harvest saltwater fish and the SPL covers the crew as well.
- A vessel SPL is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. Unlike the first two SPLs, the vessel SPL is tied to a vessel rather than a person.

The cost for each license:[49]

SPL Type	Florida Resident	Non-Resident	Alien
Individual	$50.00	$200.00	$300.00
Crew	$150.00	$600.00	$900.00
Vessel	$100.00	$400.00	$600.00

[46] FWC, *Spiny Lobster – Panulirus argus*, http://myfwc.com/fishing/saltwater/recreational/lobster/ (last visited Mar. 14, 2014).
[47] FWC, *Commercial Regulations for Spiny Lobster (Crawfish)*, http://myfwc.com/fishing/saltwater/recreational/lobster/ (last visited Mar. 15, 2014).
[48] Section 379.361(2)(e)1.-3., F.S.
[49] FWC, *Commercial Saltwater Products License Fees*, http://myfwc.com/license/saltwater/commercial-fishing/csl-fees/ (last visited Mar. 16, 2014).

In addition to an SPL, a restricted species endorsement (RS) is required to commercially harvest and sell the following species: amberjack, bluefish, cobia, dolphin, black drum, flounder, golden tilefish, most types of grouper, hogfish (hog snapper), jack, king and Spanish mackerel, mullet, permit fish, pompano, red porgy, rudderfish, sea bass, spotted seatrout, sheepshead, most types of snapper, tripletail, wahoo, blue crab, stone crab, spiny lobster, and most types of shrimp.[50]

There is no cost to acquire an RS. Licensed commercial fishermen must qualify by showing proof of landings (actual saltwater products harvested and brought to shore) reported under their SPLs that indicate either $5,000 or 25 percent of their total annual income during one of the previous three years was attributable to reported landings and sales of saltwater products to a Florida wholesale dealer unless the fisherman qualifies for an exemption.[51]

The spiny lobster was designated a restricted species in 1994.[52] That same year, the Florida Legislature created the special recreational spiny lobster license.[53] The license was available to any individual with a spiny lobster trap number who also had an SPL during the 1993-1994 license year.[54] People issued the license were precluded from having both the special recreational spiny lobster license and a trap number. They were required, however, to have a recreational spiny lobster license.[55] The total number of special recreational spiny lobster licenses is limited to the number of licenses issued during the 1994-1995 license year.[56]

Provisions for receiving a special recreational crawfish license are detailed in rule 68B-24.0035, Florida Administrative Code (F.A.C.). The rule specifies that beginning with the 2012-2013 license year and every year thereafter, no special recreational spiny recreational spiny lobster license are to be issued or renewed.[57] Rule 68B-24.004, F.A.C, established Special Recreational Spiny Lobster bag limits. Starting in the 2003-2004 permit year, the bag limit was 50 spiny lobsters. Every year thereafter, the bag limit was reduced by five. The current bag limit is less than the recreational harvest limit of six spiny lobsters per day.[58]

Effect of Proposed Changes

Section 9 repeals s. 379.355, F.S., eliminating the special recreational spiny lobster license, which is outdated and has no effect since the bag limit is now less than the recreational bag limit. By rule, no special recreational spiny lobster licenses are being issued as of the 2012-2013 license year.

[50] FWC, *Commercial Food and Bait Species*, http://www.myfwc.com/license/saltwater/commercial-fishing/restricted-species/ (last visited Mar. 15, 2014).
[51] FWC, *Qualifying for the Restricted Species Endorsement (RS)*, http://myfwc.com/license/saltwater/commercial-fishing/qualifying-for-rs/ (last visited Mar. 15, 2014).
[52] See rule 68B-24.001, F.A.C.
[53] The license was originally called the special recreational crawfish license, but has come to be known as the special recreational spiny lobster license
[54] Section 379.355(1), F.S.
[55] Section 379.355(3), F.S.
[56] Section 379.355(4), F.S.
[57] Rule 68B-24.0035(2)(g), F.A.C.
[58] Rule 68B-24.004(3)(a-j), F.A.C.

Haul and Trawl Seine Annual Gear License Fees (Section 10):

All commercial fishermen permitted to fish in freshwaters with trawl seine nets (baglike nets that are pulled behind a boat to harvest fish) are required to pay a $50 annual gear license fee.[59] All commercial fishermen permitted to fish in freshwaters with haul seines (long nets pulled by boats to harvest fish) must pay a $100 annual gear license fee.[60] Both fees have remained unchanged since 1978.[61]

The FWC issues five freshwater haul seine annual gear licenses each year, which are limited for use in Polk County.[62] The number of permits that may be issued annually is five.[63] The FWC has not issued a statewide trawl seine license in more than 25 years.[64]

Effect of Proposed Changes

Section 10 repeals s. 379.363(h) and (i), F.S., removing the annual gear license fees for trawl and haul seine nets.

Haul and Trawl Seine Permits in Lake Okeechobee (Section 11):

The FWC is authorized to issue permits for the commercial use of haul or trawl seines on Lake Okeechobee.[65] The three permits that may be issued by the FWC and their fees are:

- Resident trawl seine permit: $50;
- Resident haul seine permit: $100; and
- Nonresident trawl or haul seine permit: $500.[66]

Currently, the FWC issues six resident haul seine permits for commercial activity on Lake Okeechobee. Permits for resident trawl seines for commercial activity have not been issued in over 30 years and nonresident trawl or haul seine permits have never been issued.[67]

Effect of Proposed Changes

Section 11 repeals s. 379.3635, F.S., eliminating the FWC's authority to charge fees for haul or trawl seines in Lake Okeechobee. The FWC may still issue permits under its constitutional authority. This only eliminates the ability to charge fees.

Sections 12-14 amend ss. 373.101, 379.208, and 379.401, F.S., respectively, making conforming and cross-reference changes.

Section 15 provides an effective date of July 1, 2014.

[59] Section 379.363(1)(h), F.S.
[60] Section 379.363(1)(i), F.S.
[61] *Supra* note 11, at 12.
[62] Rule 68A-23.003(9)(a)4., F.A.C.
[63] Rule 68A-23.003(9)(a)1., F.A.C.
[64] *Supra* note 11, at 13.
[65] See rule 68A-23.012, F.A.C. See also ss. 379.363 and 379.3635, F.S.
[66] Section 379.3635(2), F.S.
[67] *Supra* note 11, at 11.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the fees for mandatory education for violators (MEV) classroom courses tend to be higher than for online courses, there may be a negative effect on businesses offering those courses. However, these businesses may offer the online courses as well, so the impact will likely be minimal. The ability to take the MEV course online will benefit those who would otherwise have to travel a significant distance to take the course in person. The online course may also cost less.

Repealing permit fees for haul and trawl seines will have a positive effect on those using those permits to fish, but given the number of permits issued, the effect will be minimal.

C. Government Sector Impact:

According to the Fish and Wildlife Commission (FWC), the repeal of fees on freshwater haul and trawl seines will have a minimal negative effect on revenues. Currently, the FWC only collects $500 for freshwater haul seine annual gear licenses, and $600 for Lake Okeechobee haul seine permits on an annual basis. There is no negative revenue impact to the other fees being repealed as they are obsolete and are not currently being collected.

Expanding the uses of vessel registration funds distributed to counties for boating related activities will allow increased flexibility for county expenditures. The bill does not provide an increases in the distribution of vessel registration funds to counties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.355, 327.4105, 327.731, 328.72, 379.101, 379.208, 379.247, 379.353, 379.354, and 379.401.

This bill repeals the following sections of the Florida Statutes: 379.2257(3), 379.355, 379.363(1)(h) and (i), and 379.3635.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on March 20, 2014:
The committee substitute removes provisions redefining "game" to mean "wildlife" for the purpose of requiring a hunting license, and makes conforming changes.

B. Amendments:

None.

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

638358

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2014	.	
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The Committee on Appropriations (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 77 and 78
insert:

Section 3. Subsection (3) of section 327.60, Florida Statutes, is amended to read:

327.60 Local regulations; limitations.—

(3)(a) Nothing in this section shall be construed to prohibit local governmental authorities from the enactment or

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enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40.

(b) However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields of vessels other than live-aboard vessels as defined in s. 327.02.

(c) Notwithstanding paragraph (b), a municipality located within a charter county that has a population of at least 1.748 million may regulate overnight anchoring if the regulation is limited to the distance a vessel may be anchored from a private residence. This paragraph expires on October 31, 2017.

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

And the title is amended as follows:

Delete line 12

and insert:

regulation of mooring vessels; amending s. 327.60, F.S.; authorizing certain municipalities to regulate overnight anchoring; specifying limitations for such regulations; providing an expiration date for the authorization; amending s. 327.731,

By the Committee on Environmental Preservation and Conservation; and Senator Dean

592-02907-14 20141126c1

A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; amending s. 327.355, F.S.; providing that a boating safety course may be offered in a classroom or online; conforming provisions relating to the reassignment of the boating safety program from the Department of Environmental Protection to the commission; amending s. 327.4105, F.S.; requiring the commission to submit an updated report relating to the regulation of mooring vessels; extending the expiration date of the pilot program for the regulation of mooring vessels; amending s. 327.731, F.S.; providing that a boating safety course may be offered in a classroom or online; eliminating an exemption from boating safety education requirements for boating law violators; amending s. 328.72, F.S.; expanding a county's authorization to use moneys collected from vessel registration fees; repealing s. 379.2257(3), F.S., relating to a charge to be applied to areas covered by cooperative agreements with the United States Forest Service over and above the license fee for hunting; amending s. 379.247, F.S.; removing provisions relating to noncommercial trawling; amending s. 379.353, F.S.; conforming provisions relating to the change in responsibility for providing developmental disabilities services from the Department of Children and Families to the Agency for Persons with Disabilities; amending s. 379.354, F.S.; clarifying the activities authorized under an

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

592-02907-14 20141126c1

annual military gold sportsman's license; repealing s. 379.355, F.S., relating to special recreational spiny lobster licenses; repealing s. 379.363(1)(h) and (i), F.S., relating to the annual gear license fee; repealing s. 379.3635, F.S., relating to haul seine and trawl permits to be used in Lake Okeechobee; amending ss. 379.101, 379.208, and 379.401, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (5) of section 327.355, Florida Statutes, is amended to read:

327.355 Operation of vessels by persons under 21 years of age who have consumed alcoholic beverages.—

(5) A ~~Any~~ person ~~who is~~ convicted of a violation of subsection (1) shall be ordered by the court to ~~be punished as follows~~:

(a) ~~The court shall order the defendant to~~ Participate in public service or a community work project for a minimum of 50 hours;

(b) ~~The court shall order the defendant to~~ Refrain from operating any vessel until the 50 hours of public service or community work has been performed; and

(c) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course that meets minimum standards established by commission ~~the department by~~ rule.

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

Section 2. Subsections (5) and (6) of section 327.4105, Florida Statutes, are amended to read:

327.4105 Pilot program for regulation of mooring vessels outside of public mooring fields.—The Fish and Wildlife Conservation Commission, in consultation with the Department of Environmental Protection, is directed to establish a pilot program to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.

(5) The commission shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014, and shall submit an updated report by January 1, 2017.

(6) The pilot program shall expire on July 1, 2017 ~~2014~~, unless reenacted by the Legislature. All ordinances enacted under this section shall expire concurrently with the expiration of the pilot program and shall be inoperative and unenforceable thereafter.

Section 3. Subsection (1) of section 327.731, Florida Statutes, is amended to read:

327.731 Mandatory education for violators.—

(1) A ~~Every~~ person convicted of a criminal violation under ~~of~~ this chapter, ~~every person~~ convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, or ~~and every person~~ convicted of two noncriminal infractions as specified ~~defined~~ in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), said infractions occurring within a 12-month period, must:

(a) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course that is approved by and meets the minimum standards established by ~~the~~ commission ~~by~~ rule; ~~however, the commission may provide by rule pursuant to chapter 120 for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available;~~

(b) File with the commission within 90 days proof of successful completion of the course; and

(c) Refrain from operating a vessel until he or she has filed ~~the~~ proof of successful completion of the course with the commission.

~~Any person who has successfully completed an approved boating course shall be exempt from these provisions upon showing proof to the commission as specified in paragraph (b).~~

Section 4. Subsection (15) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers.—

(15) DISTRIBUTION OF FEES.—Except for the first $2, $1 of which shall be remitted to the state for deposit into the Save the Manatee Trust Fund created within the Fish and Wildlife Conservation Commission and $1 of which shall be remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities~~,~~ pursuant to s. 206.606, giving priority consideration to counties with more than 35,000 registered vessels, moneys designated for the use of the counties, as specified in

subsection (1), shall be distributed by the tax collector to the board of county commissioners for use only as provided in this section. Such moneys to be returned to the counties are for the sole purposes of providing, maintaining, or operating recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities; and removing~~,~~ derelict vessels, debris that specifically impede boat access, not including the dredging of channels ~~vessel removal~~, and ~~removal of~~ vessels and floating structures deemed a hazard to public safety and health for failure to comply with s. 327.53. Counties shall demonstrate through an annual detailed accounting report of vessel registration revenues that the registration fees were spent as provided in this subsection. This report shall be provided to the Fish and Wildlife Conservation Commission no later than November 1 of each year. If, before ~~prior to~~ January 1 of each calendar year, the ~~annual detailed~~ accounting report meeting the prescribed criteria has still not been provided to the commission, the tax collector of that county may ~~shall~~ not distribute the moneys designated for the use of counties, as specified in subsection (1), to the board of county commissioners but shall, ~~instead,~~ for the next calendar year, remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The commission shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply with this section within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and

may be appropriated for the purposes specified in this subsection.

Section 5. Subsection (3) of section 379.2257, Florida Statutes, is repealed.

Section 6. Paragraph (d) of subsection (4) and subsection (5) of section 379.247, Florida Statutes, are amended to read:

379.247 Regulation of shrimp fishing; Clay, Duval, Nassau, Putnam, Flagler, and St. Johns Counties.—

(4) DEAD SHRIMP PRODUCTION.—Any person may operate as a commercial dead shrimp producer provided that:

(d) ~~No person holding a dead shrimp production permit issued pursuant to this subsection shall simultaneously hold a permit for noncommercial trawling under the provisions of subsection (5).~~ The number of permits issued by the commission for commercial trawling or dead shrimp production in any one year shall be limited to those active in the base year, 1976, and renewed annually since 1976. All permits for dead shrimp production issued pursuant to this section shall be inheritable or transferable to an immediate family member and annually renewable by the holder thereof. Such inheritance or transfer shall be valid upon being registered with the commission. Each permit not renewed shall expire and shall not be renewed under any circumstances.

~~(5) NONCOMMERCIAL TRAWLING.—If noncommercial trawling is authorized by the Fish and Wildlife Conservation Commission, any person may trawl for shrimp in the St. Johns River for his or her own use as food under the following conditions:~~

~~(a) Each person who desires to trawl for shrimp for use as food shall obtain a noncommercial trawling permit from the local~~

~~office of the Fish and Wildlife Conservation Commission upon filling out an application on a form prescribed by the commission and upon paying a fee for the permit, which shall cost $50.~~

~~(b) All trawling shall be restricted to the confines of the St. Johns River proper in the area north of the Acosta Bridge in Jacksonville and at least 100 yards from the nearest shoreline.~~

~~(c) No shrimp caught by a person licensed under the provisions of this subsection may be sold or offered for sale.~~

Section 7. Paragraph (g) of subsection (2) of section 379.353, Florida Statutes, is amended to read:

379.353 Recreational licenses and permits; exemptions from fees and requirements.—

(2) A hunting, freshwater fishing, or saltwater fishing license or permit is not required for:

(g) Any person fishing who has been accepted as a client for developmental disabilities services by the Agency for Persons with Disabilities if ~~Department of Children and Family Services, provided~~ the agency ~~department~~ furnishes proof thereof.

Section 8. Paragraph (j) of subsection (4) of section 379.354, Florida Statutes, is amended to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(4) RESIDENT HUNTING AND FISHING LICENSES.—The licenses and fees for residents participating in hunting and fishing activities in this state are as follows:

(j) Annual military gold sportsman's license, $18.50. A ~~The gold sportsman's license authorizes the person to whom it is~~

~~issued to take freshwater fish, saltwater fish, and game, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, a deer permit, an archery season permit, a snook permit, and a spiny lobster permit. Any~~ resident who is an active or retired member of the United States Armed Forces, the United States Armed Forces Reserve, the National Guard, the United States Coast Guard, or the United States Coast Guard Reserve may ~~is eligible to~~ purchase the military gold sportsman's license upon submission of a current military identification card. The annual military gold sportsman's license authorizes the same activities as the annual gold sportsman's license.

Section 9. Section 379.355, Florida Statutes, is repealed.

Section 10. Paragraphs (h) and (i) of subsection (1) of section 379.363, Florida Statutes, are repealed.

Section 11. Section 379.3635, Florida Statutes, is repealed.

Section 12. Subsection (30) of section 379.101, Florida Statutes, is amended, to read:

379.101 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(30) "Resident" or "resident of Florida" means:

(a) For purposes of part VII ~~and for purposes of s. 379.355~~, a citizen of the United States who has continuously

resided in this state for 1 year before applying for a hunting, fishing, or other license. However, for purposes of ss. 379.363, ~~379.3635,~~ 379.364, 379.3711, 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752, 379.3761, and 379.3762, the term ~~"resident" or "resident of Florida"~~ means a citizen of the United States who has continuously resided in this state for 6 months before applying for a hunting, fishing, or other license.

(b) For purposes of part VI~~, except s. 379.355~~:

1. A ~~Any~~ member of the United States Armed Forces who is stationed in the state and his or her family members residing with such member; or

2. A ~~Any~~ person who has declared Florida as his or her only state of residence as evidenced by a valid Florida driver license or identification card that has ~~with~~ both a Florida address and a Florida residency verified by the Department of Highway Safety and Motor Vehicles, or, in the absence thereof, one of the following:

a. A current Florida voter information card;

b. A sworn statement manifesting and evidencing domicile in Florida in accordance with s. 222.17;

c. Proof of a current Florida homestead exemption; or

d. For a child younger than 18 years of age, a student identification card from a Florida school or, if ~~when~~ accompanied by his or her parent at the time of purchase, the parent's proof of residency.

Section 13. Paragraph (c) of subsection (2) of section 379.208, Florida Statutes, is amended to read:

379.208 Marine Resources Conservation Trust Fund; purposes.—

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(2) The Marine Resources Conservation Trust Fund shall receive the proceeds from:

(c) All fees collected under ss. 379.2424, ~~379.355,~~ 379.357, 379.365, 379.366, and 379.3671.

Section 14. Paragraph (a) of subsection (1) and paragraph (a) of subsection (3) of section 379.401, Florida Statutes, are amended to read:

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

(1)(a) LEVEL ONE VIOLATIONS.—A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.

3. Rules or orders of the commission relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.

4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.

~~5. Section 379.355, providing for special recreational spiny lobster licenses.~~

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5.~~6.~~ Section 379.354(1)-(15), providing for recreational licenses to hunt, fish, and trap.

6.~~7.~~ Section 379.3581, providing hunter safety course requirements.

7.~~8.~~ Section 379.3003, prohibiting deer hunting unless required clothing is worn.

(3)(a) LEVEL THREE VIOLATIONS.—A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.

2. Rules or orders of the commission prohibiting the illegal importation or possession of exotic marine plants or animals.

3. Section 379.407(2), establishing major violations.

4. Section 379.407(4), prohibiting the possession of certain finfish in excess of recreational daily bag limits.

5. Section 379.28, prohibiting the importation of freshwater fish.

6. Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.

7. Section 379.3014, prohibiting the illegal sale or possession of alligators.

8. Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.

9. Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.

Section 15. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

April 3, 2014

The Honorable Joe Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron,

I respectfully request you place Committee Substitute for Senate Bill 1126, relating to Fish and Wildlife Commission, on your Appropriations Committee agenda at your earliest convenience.

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

Sincerely,

Charles S. Dean
State Senator District 5

cc: Cindy Kynoch, Staff Director

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

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 22, 2014
Meeting Date

Topic Anchorage amendment

Bill Number 1126 *(if applicable)*

Name David Childs

Amendment Barcode 638358 *(if applicable)*

Job Title Counsel

Address 119 S. Monroe St Suite 300
Street

Phone 850 222-7500

Tallahassee FL 32301
City *State* *Zip*

E-mail DAVIDC@HGSLAW.com

Speaking: ☐ For ☑ Against amendment ☐ Information

Representing National Marine Manufacturers Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Fish & Wildlife

Bill Number 1126 *(if applicable)*

Name Kelly Mallette

Amendment Barcode 638358 *(if applicable)*

Job Title

Address 104 West Jefferson Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 224-3427

E-mail kelly@rlbookpa.com

Speaking: ☑ For ☐ Against ☐ Information

Representing City of Fort Lauderdale

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-00

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Margolis Amendment to SB 1126 Bill Number SB 1126 *(if applicable)*

Name Bonnie Basham Amendment Barcode 638358 *(if applicable)*

Job Title

Address 133 Oak St, #15 Phone 850-933-7277
Street

Tlh, FL 32301 E-mail Capitol.ideas@Att.net
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing BOAT U.S.

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 22, 2014
Meeting Date

Topic FWC Legislative Package

Bill Number 1126 *(if applicable)*

Name Jackie Fauls

Amendment Barcode _____ *(if applicable)*

Job Title Leg. Affairs Director

Address 620 S. Meridian Street
Street

Phone 487-3795

Tallahassee FL 32399
City *State* *Zip*

E-mail jackie.fauls@myfwc.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Fish & Wildlife ~~Co~~ Conservation Commission

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-22-14
Meeting Date

Topic Amendment to SB 1176 Barcode 638358 Bill Number 1176 *(if applicable)*

Name Missy Timmins Amendment Barcode *(if applicable)*

Job Title

Address 2910 Kerry Forest Pkwy D4-368 Phone 668-8005
Street

TLH FL 32309 E-mail missy@timminsconsulting.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Marine Industry Association of FLA

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1206
INTRODUCER:	Education Committee and Senator Montford
SUBJECT:	Agricultural Industry Certifications
DATE:	April 21, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	**Fav/CS**
2.	Akhavein	Becker	AG	**Favorable**
3.	Elwell	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1206 establishes a process by which industry certifications for farm occupations are added to the list of certifications approved for funding in public schools and postsecondary institutions.

Specifically, the bill requires the Department of Agriculture and Consumer Services (DACS), in cooperation with the University of Florida and Florida Agriculture and Mechanical University, to annually furnish to the State Board of Education (SBE) and the Department of Education (DOE) industry certifications for farm occupations to be placed on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List.

Additionally, the bill requires that the SBE use the expertise of the DACS to develop and adopt rules for implementing an industry certification process. The list of industry certifications approved by Workforce Florida, Inc., the DACS, and the DOE must be published and updated annually.

The bill requires the DOE to include the DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

This bill does not have a fiscal impact to the state.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Section 1003.492, F.S., requires the State Board of Education (SBE) to work with Workforce Florida, Inc., to establish and adopt rules for implementing an industry certification process. The Department of Economic Opportunity (DEO) must define industry certification based on the highest available national standards for specific industry certification to ensure student skill proficiency and to address emerging labor market and industry trends.[1] The DEO currently defines industry certification as "a voluntary process, through which individuals are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies, resulting in the award of a time-limited credential that is nationally recognized and applicable to an occupation that is included in the workforce system's targeted occupation list or determined to be an occupation that is critical, emerging, or addresses a local need."[2]

The selection of industry certifications for academy courses and career-themed courses occurs in two phases. First, Workforce Florida, Inc., must determine industry certifications that meet the DEO definition and compile them into a list.[3] Second, the Department of Education (DOE) must:

- Review the list;[4]
- Identify certifications that are academically rigorous and at least 150 hours in length;[5]
- Compile a preliminary list of industry certifications that qualify for additional weighted funding;[6]
- Consider district requests that industry certifications be added to the approved list;[7] and
- Annually publish a final list.[8]

However, a regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skill, high-wage, and high-demand job requirements in the regional economy.[9]

Workforce Florida, Inc.'s list includes 428 industry certifications.[10] From this list, the DOE has identified 201 industry certifications and 287 postsecondary industry certifications as eligible for funding in the 2013-2014 school year.[11] Most industry certifications require passage of a subject area examination and some combination of work experience, educational achievement, or on-

[1] Section 1003.492(2), F.S.
[2] Florida Department of Education, Division of Career and Adult Education, *Career and Professional Education Act CAPE*, at 1 (2012), *available at* http://www.fldoe.org/workforce/pdf/CAPE-Act-TechAssist.pdf
[3] Section 1003.492(2), F.S.; Rule 6A-6.0573(1)-(3), F.A.C.
[4] Rule 6A-6.0573(3), F.A.C.
[5] Rule 6A-6.0573(3)(b), F.A.C.
[6] Rule 6A-6.0573(4), F.A.C.
[7] Rule 6A-6.0573(4)(a)-(4)(b), F.A.C.
[8] Rule 6A-6.0573(8), F.A.C.
[9] Section 1003.492(2), F.S.
[10] Workforce Florida, Inc. Career and Professional Education (CAPE), *2013-14 Comprehensive Industry Certification List*, *available at* http://careersourceflorida.com/wp-content/uploads/2014/02/2013-14ComprehensiveCondensedFINAL.pdf
[11] Rule 6A-6.0573(6), F.A.C. The Industry Certification Funding List is incorporated by reference in the rule. See also Florida Department of Education, Division of Career and Adult Education, *2013-14 Final Industry Certification Funding List* (2013), *available at* www.fldoe.org/workforce/fcpea/pdf/1314icfl.pdf.

the-job training. The DOE has approved industry certification in such career fields as information technology, automotive and aircraft mechanics, welding, and nursing. Certifying entities include Adobe System, Apple Computer, Inc., Hewlett-Packard, Microsoft Corporation, the National Institute for Automotive Services Excellence, the American Welding Society, the Federal Aviation Administration, and Florida Department of Health.[12]

Industry certifications on the final approved list are eligible for additional weighted funding through the Florida Education Finance Program (FEFP).[13] The list may include both industry certifications that are achievable in a secondary education program and those that have minimum age, grade-level, diploma or degree, post-graduation work experience of at least twelve months, or other requirements that make it impossible for the student to obtain full certification while in a public secondary school program. Funding industry certifications in which full certification cannot be achieved in a secondary program allows students to begin working toward these certifications while in high school, without having to fulfill all requirements before graduation.[14]

The DOE must also collect student achievement and performance data in industry-certified career education programs and career-themed courses and must work with Workforce Florida, Inc., in the analysis of collected data. The data collection and analyses must examine the performance of participating students over time. Performance factors must include, but are not limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, and employer satisfaction.[15]

III. Effect of Proposed Changes:

The bill requires the Department of Agriculture and Consumer Services (DACS), in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the State Board of Education (SBE) and the Department of Education (DOE) information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The bill establishes that the process by which industry certifications for farm occupations are added to the list of certifications approved for funding in public schools and postsecondary institutions is identical to the current process in existing law for identifying industry certifications for placement on this list.[16]

The bill defines industry certification as a voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a time-limited credential that is nationally recognized and must be at least one of the following:

- Within an industry that addresses a critical local or statewide economic need;

[12] *See* Florida Department of Education, Division of Career and Adult Education, *Industry Certification Funding List*, *available at* http://www.fldoe.org/workforce/pdf/PS-ICFL.pdf.
[13] Section 1011.62(1)(p), F.S.; Rule 6A-6.0573(3), F.A.C.
[14] Section 1008.44(3), F.S.
[15] Section 1003.492(3), F.S.
[16] Section 1008.44, F.S.

- Linked to an occupation that is included in the workforce system's targeted occupation list; or
- Linked to an occupation that is identified as emerging.

The bill requires the SBE to use the expertise of the DACS to develop and adopt rules for implementing an industry certification process. The list of industry certifications approved by Workforce Florida, Inc., the DACS, and the DOE must be published and updated annually.

The bill requires the DOE to include the DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1206 does not have a fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 570.07, 1003.492, and 1003.4935.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education on March 25, 2014
The committee substitute differs from SB 1206 in the following ways:

- Removes secondary schools and "other appropriate agencies" from the list of institutions the Department of Agriculture should cooperate with to provide data.
- Removes the agricultural industry, the Institute of Food and Agricultural Sciences at the University of Florida, Florida Agricultural and Mechanical University, secondary schools, and "other appropriate agencies" the Department of Agriculture should consult with in determining data.
- Removes the term "time limited" in describing an industry certification.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Education; and Senator Montford

581-03156A-14 20141206c1

A bill to be entitled

An act relating to agricultural industry certifications; amending s. 570.07, F.S.; requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education information and industry certifications for farm occupations to be considered for placement on industry certification funding lists; amending s. 1003.492, F.S.; defining the term "industry certification"; requiring the state board to adopt rules for implementing an industry certification process for farm occupations; amending s. 1003.4935, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (43) is added to section 570.07, Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(43) In cooperation with the Institute of Food and Agricultural Sciences at the University of Florida and the College of Agriculture and Food Sciences at Florida Agricultural and Mechanical University, annually provide to the State Board of Education and the Department of Education information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the

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581-03156A-14 20141206c1

Postsecondary Industry Certification Funding List pursuant to s. 1008.44. The information and industry certifications provided by the department must be based upon the best available data.

Section 2. Section 1003.492, Florida Statutes, is amended to read:

1003.492 Industry-certified career education programs.—

(1) Secondary schools offering career-themed courses, as defined in s. 1003.493(1)(b), and career and professional academies shall be coordinated with the relevant and appropriate industry to prepare a student for further education or for employment in that industry.

(2) As used in this section, the term "industry certification" means a voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, and resulting in the award of a credential that is nationally recognized and must be at least one of the following:

(a) Within an industry that addresses a critical local or statewide economic need.

(b) Linked to an occupation that is included in the workforce system's targeted occupation list.

(c) Linked to an occupation that is identified as emerging.

(3) ~~(2)~~ The State Board of Education shall use the expertise of Workforce Florida, Inc., and the Department of Agriculture and Consumer Services, to develop and adopt rules pursuant to ss. 120.536(1) and 120.54 for implementing an industry certification process.

(a) For nonfarm occupations, industry certification shall be ~~defined by the Department of Economic Opportunity,~~ based upon

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the highest available national standards for specific industry certification~~,~~ to ensure student skill proficiency and to address emerging labor market and industry trends. A regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certifications based on high-skill, high-wage, and high-demand job requirements in the regional economy. ~~The list of industry certifications approved by Workforce Florida, Inc., and the Department of Education shall be published and updated annually by a date certain, to be included in the adopted rule.~~

(b) For farm occupations submitted pursuant to s. 570.07, industry certification shall demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs.

(4) The list of industry certifications approved by Workforce Florida, Inc., the Department of Agriculture and Consumer Services, and the Department of Education shall be published and updated annually by a date certain, to be included in the adopted rule.

(5)~~(3)~~ The Department of Education shall collect student achievement and performance data in industry-certified career education programs and career-themed courses and shall work with Workforce Florida, Inc., and the Department of Agriculture and Consumer Services in the analysis of collected data. The data collection and analyses shall examine the performance of participating students over time. Performance factors shall include, but not be limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry

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certification, and employer satisfaction. The results of this study shall be submitted to the President of the Senate and the Speaker of the House of Representatives annually by December 31.

Section 3. Subsection (3) of section 1003.4935, Florida Statutes, is amended to read:

1003.4935 Middle grades career and professional academy courses and career-themed courses.—

(3) Beginning with the 2012-2013 school year, if a school district implements a middle school career and professional academy or a career-themed course, the Department of Education shall collect and report student achievement data pursuant to performance factors identified under s. 1003.492(5) ~~s. 1003.492(3)~~ for students enrolled in an academy or a career-themed course.

Section 4. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:
Select Committee on Indian River Lagoon and Lake Okeechobee Basin, *Vice Chair*

SENATOR BILL MONTFORD
Democratic Policy Chair
3rd District

April 14, 2014

Senator Joe Negron, Chair
Senate Committee on Appropriations
201 The Capitol
Tallahassee, Florida 32399-1100

Dear Chairman Negron:

I respectfully request that the following bill(s) be scheduled for a hearing before the Senate Full Appropriations Committee:

SB 628 Education Facilities Financing
SB 886 Florida Teachers Supply Assistance Program
SB 908 Education Funding
SB 1202 Career Centers and Charter Technical Career Centers
SB 1206 Agricultural Industry Certifications

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

William "Bill" Montford
State Senator, District 3

Cc Cindy Kynoch Staff Director

WM/md

REPLY TO:
❒ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
❒ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656
❒ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-22-14
Meeting Date

Topic Ag. Ed. Bill Number CS/SB 1206 *(if applicable)*

Name Doug Mann Amendment Barcode _____ *(if applicable)*

Job Title —

Address 310 W. College Ave. Phone 222-7535
Street

Tallahassee FL 32301 E-mail _____
City *State* *Zip*

Waive

Speaking: ☑ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Ag Industry Certifications

Bill Number 1206 *(if applicable)*

Name Adam Basford

Amendment Barcode _____ *(if applicable)*

Job Title Legislative Affairs

Address 315 S Calhoun St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 222-2557

E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Farm Bureau

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Agriculture Industry Certifications

Bill Number SB 1206 *(if applicable)*

Name Jonathon Rees

Amendment Barcode *(if applicable)*

Job Title Deputy Director of Leg. Affairs

Address 400 S. Monroe St.
Street
Tallahassee FL 32399
City *State* *Zip*

Phone (850) 617-7700

E-mail Jonathon.Rees@freshfromflorida.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Department of Agriculture and Consumer Svcs.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1208
INTRODUCER:	Health Policy Committee; Criminal Justice Committee; and Senator Latvala
SUBJECT:	Fraudulent Controlled Substance Prescriptions
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Looke	Stovall	HP	**Fav/CS**
3.	Clodfelter	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1208 amends s. 893.13, F.S., to increase the penalty, from a first degree misdemeanor to a third degree felony, for a first time violation of the prohibition on a non-authorized person possessing a prescription form that has not been signed and completed by the practitioner whose name is printed on the prescription form.[1]

The Criminal Justice Impact Conference has found the bill will have an insignificant impact on the need for prison beds.

II. Present Situation:

Currently, s. 893.13(7)(a)7., F.S., prohibits any person from possessing a prescription form which has not been completed and signed by the practitioner whose name is printed on the form, unless the person possessing the form is the practitioner, the practitioner's agent, a pharmacist, or an authorized prescription form supplier. The first violation of this provision is punishable as a first degree misdemeanor[2] while second and subsequent violations are punishable as third degree felonies.[3]

[1] *See* s. 893.13(7)(a)7., F.S.

[2] A first degree misdemeanor is punishable with either or both of a prison sentence of up to one year and a fine of up to $1,000. *See* ss. 775.082 and 775.083, F.S.

[3] A third degree felony is punishable with either or both of a prison sentence of up to five years and a fine of up to $5,000. If the person is a habitual felony offender, as defined in s. 775.084(1)(a), F.S., the court may increase the sentence to up to

Section 893.04(1)(b) and (c), F.S., requires that a written prescription must be dated and signed by the prescribing practitioner on the same day issued and the following information must appear on the face of the prescription:

- The full name and address for whom the controlled substance is dispensed, or the owner of the animal for which the prescription was written;
- The full names and address of the prescribing practitioner and the practitioner's federal controlled substance registry number;
- The species of animal for which the prescription was written, if written for an animal;
- The name of the controlled substance and the strength, quantity, and directions for use; and,
- The date.[4]

In addition, s. 456.42, F.S., requires the prescription be legibly written or typed and, if written for a controlled substance listed in ch. 893, F.S., the prescription must be on a standardized counterfeit-proof prescription pad produced by a vendor approved by the Department of Health (DOH).

Currently, 545 vendors are approved by the Department of Health (DOH) to sell counterfeit-proof prescription pads.[5] Vendors are required to apply to the DOH for approval and to produce counterfeit-proof prescription pads that adhere to the DOH's specifications.[6] Vendors are also responsible for the secure production and distribution of the pads and must adhere to the DOH's regulations including maintaining records and information about the production and distribution of the pads and submitting a monthly report to the DOH with details about each transaction they enter into.[7]

III. Effect of Proposed Changes:

The bill amends s. 893.13, F.S., to increase the penalty for a first-time violation of the prohibition on a non-authorized person possessing a prescription that has not been completed and signed by the practitioner whose name is on the prescription form. The penalty is increased from a first degree misdemeanor to a third degree felony.[8] The bill also makes other technical changes to that section of law.

The bill establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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ten years in prison and, according to s. 775.082(10), F.S., if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a non-state prison sanction, unless the court makes written findings that this sanction could present a danger to the public. *See* ss. 775.082, 775.083, and 775.084, F.S.

[4] For prescriptions written for controlled substances listed in ch. 893, F.S., the date must be written with an abbreviated month. *See* s. 456.42, F.S.

[5] A list of vendors can be found at http://ww2.doh.state.fl.us/ppv_search/default.aspx, last visited on March 14, 2014.

[6] *See* Rule 64B-3.005, F.A.C

[7] *Id.*

[8] Section 893.13(7)(a)7., F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has found CS/CS/SB 1208 will have an insignificant impact on the need for prison beds.[9]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.13 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Health Policy on March 19, 2014:
Reinstates current law with respect to requiring a prescription to be "completed and signed by the practitioner whose name appears thereon."

CS by Criminal Justice on March 10, 2014:
Rewords the description of the prescription fraud act in s. 893.13(7)(a)7., F.S. As a result of this rewording, it appears the practitioner whose name appears printed on the form will

[9] *See* Criminal Justice Impact Conference estimate for HB 517, available at: http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm, last visited on Mar. 14, 2014.

still have to sign the form but the form can be completed by either the practitioner or another authorized person (current law: completed and signed by the practitioner).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committees on Health Policy; and Criminal Justice; and Senator Latvala

588-02842-14 20141208c2

A bill to be entitled

An act relating to fraudulent controlled substance prescriptions; amending s. 893.13, F.S.; revising provisions prohibiting possession of incomplete prescription forms; providing enhanced criminal penalties for violations involving incomplete prescription forms; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (c), and (d) of subsection (7) of section 893.13, Florida Statutes, are amended to read:

893.13 Prohibited acts; penalties.—

(7)(a) A person may not:

1. Distribute or dispense a controlled substance in violation of this chapter.

2. Refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. Refuse entry into any premises for any inspection or refuse to allow any inspection authorized by this chapter.

4. Distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. Keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in

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588-02842-14 20141208c2

violation of this chapter.

6. Use to his or her own personal advantage, or reveal, any information obtained in enforcement of this chapter except in a prosecution or administrative hearing for a violation of this chapter.

7. Possess a prescription form which has not been completed and signed by the practitioner whose name appears printed thereon. This subparagraph does not apply if~~, unless~~ the person in possession of the form is that practitioner, is an agent or employee of that practitioner, is a pharmacist, or is a supplier of prescription forms who is authorized by that practitioner to possess those forms.

8. Withhold information from a practitioner from whom the person seeks to obtain a controlled substance or a prescription for a controlled substance that the person making the request has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the previous 30 days.

9. Acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

10. Affix any false or forged label to a package or receptacle containing a controlled substance.

11. Furnish false or fraudulent material information in, or omit any material information from, any report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter.

12. Store anhydrous ammonia in a container that is not approved by the United States Department of Transportation to

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hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

13. With the intent to obtain a controlled substance or combination of controlled substances that are not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtain or attempt to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subparagraph, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner or as described in subparagraph 8.

(c) A ~~Any~~ person who violates ~~the provisions of~~ subparagraphs (a)1.-6. ~~(a)1.-7.~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, ~~,~~ except that, upon a second or subsequent violation, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A ~~Any~~ person who violates ~~the provisions of~~ subparagraphs (a)7.-12. ~~(a)8.-12.~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

March 20, 2014

The Honorable Joe Negron, Chairman
Senate Appropriations Committee
404 S. Monroe St., 201 Capitol
Tallahassee, FL 32399-1100

Dear Chairman Negron:

I respectfully request that Senate Bill 1208/Fraudulent Controlled Substance Prescriptions be placed on the agenda of the Senate Committee on Appropriations at your earliest convenience. The bill was favorably referred from the Senator Committee on Health Policy on March 19, 2014.

The current law is vague regarding the legality of possessing a fraudulent prescription that is partially completed. The result is that it is challenging for law enforcement to build a case against someone who fills in any portion of a fraudulently obtained script.

This bill would clarify that regardless of how much, or little, a fraudulent script is filled out, it is still against the law. It would also increase the penalty for possession of a fraudulent script from a 1st degree misdemeanor to a 3rd degree felony.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

JL:tc

CC: Cindy Kynoch, Staff Director: Alicia Weiss, Administrative Assistant

SENATE APPROPRIATIONS
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STAFF DIR. STAFF

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Fradulent Prescription Pads Bill Number 1208 *(if applicable)*

Name Brigitta Johnson Amendment Barcode *(if applicable)*

Job Title

Address 2617 Mahan Dr. Phone
Street

Tallahassee, FL E-mail
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

Representing FL Sheriffs

Appearing at request of Chair: [ ] Yes [ ] No Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1212
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Bean
SUBJECT:	Behavior Analysts
DATE:	April 23, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Fav/CS**
2.	Niles	Imhof	RI	**Favorable**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1212 creates chapter 470, Florida Statutes, entitled "Behavior Analysts," for the purpose of regulating the practice of applied behavior analysis. The bill provides definitions of terms used in the chapter and creates a seven-member Board of Applied Behavior Analysis (board), whose members are appointed by the governor and confirmed by the Senate.

The bill establishes eligibility criteria for initial or renewal licensure as a behavior analyst or assistant behavior analyst, both of which require board-certification and background screening. The bill contains a lengthy series of exemptions from licensure.

The bill creates specific actions that are grounds for denial of a license application or for disciplinary action. The board is authorized to adopt rules to implement the act, including rules defining standards of practice, supervision, fees, and continuing education. The Department of Health (DOH) is authorized to adopt rules related to procedures for initial and renewal licensure.

The DOH estimates that the bill will have a net positive fiscal impact for the Medical Quality Assurance Trust Fund. The bill is estimated to generate $810,000 in new fee revenue for the trust fund in the first two years of implementation, and the DOH estimates its costs for implementation to be approximately $270,000 on an annualized basis, which may be paid from the trust fund.

II. Present Situation:

Behavior Analysis

Behavior analysis grew out of the scientific study of principles of learning and behavior. It has two main branches: experimental and applied behavior analysis. The experimental analysis of behavior is the basic science which provides the scientific foundation for applied behavior analysis.[1] Florida law defines applied behavior analysis as "the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior."[2] Examples of applied behavior analysis practice include: building the skills and achievements of children in school settings and enhancing the development, abilities, and choices of children and adults with different kinds of emotional and behavioral disabilities.[3]

Certification of Behavior Analysts

The Behavior Analyst Certification Board (BACB) is the exclusive entity that certifies behavior analysts. The BACB is a nonprofit 501(c)(3) corporation located in Littleton, Colorado, that was established in 1998 based on the behavior analysis certification program developed in Florida. Similar programs were established in California, Texas, Pennsylvania, New York and Oklahoma. All of these programs have transferred their certification and credentialing responsibilities to the BACB and closed.[4]

As part of its credentialing program, the BACB has developed:[5]

- Eligibility standards;
- Renewal and recertification standards to maintain certification;
- Guidelines for responsible conduct;
- Professional disciplinary standards with appeal procedures;
- A certificant registry;
- A process to approve university course sequences and practica;
- Procedures to approve continuing education providers; and
- Certification examinations.

Currently, the BACB offers two certifications: Board Certified Behavior Analyst and Board Certified Assistant Behavior Analyst. The Board Certified Behavior Analyst conducts descriptive and systematic behavioral assessments, including functional analyses, and provides

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[1] Behavior Analyst Certification Board, *About Behavior Analysis* http://www.bacb.com/index.php?page=2 (Last visited April 7, 2014).
[2] Sections 627.6686(2)(a) and 641.31098(2)(a), F.S. The definitions are part of a mandate for health care coverage for individuals with autism spectrum disorder. Applied behavior analysis is one of the required services.
[3] *Supra* note 1.
[4] Behavior Analyst Certification Board, *About the BACB* http://www.bacb.com/index.php?page=1 (Last visited April 7, 2014).
[5] *Id.*

behavior analytic interpretations of the results.[6] The Board Certified Behavior Analyst also designs and supervises behavior analytic interventions.[7] To be eligible for certification as a behavior analyst, an applicant must have a master's degree in behavior analysis or other natural science, education, human services, engineering, medicine or a field related to behavior analysis approved by the BACB. In addition, the applicant must have 225 hours of graduate level instruction; must have completed a 1-year, full-time faculty appointment at a college or university with the responsibility of teaching behavior analysis; or must have completed a doctoral degree conferred 10 years prior to applying for certification and meet certain experience requirements.[8]

The Board Certified Assistant Behavior Analyst conducts descriptive behavioral assessments, interprets their results, and designs behavior analytic interventions under the supervision of a Board Certified Behavior Analyst.[9] To be eligible for certification as a Board Certified Assistant Behavior Analyst, an applicant must have a bachelor's degree and 135 hours of instruction and meet certain experience requirements.[10]

Currently, there are 1,821 behavior analysts or assistant behavior analysts in Florida who are board-certified by the BACB.[11]

Florida-Certified Behavior Analysts

Florida began training and certifying behavior analysts in 1983 through the Department of Health and Rehabilitative Services. In 2001, the Florida program was discontinued and all credentialing responsibilities were transferred to the BACB.[12] Behavior analysts certified through the Florida program are authorized to use only the designation Florida Certified Behavior Analyst. Recertification as a Florida Certified Behavior Analyst occurs every three years and requires 36 hours of continuing education.[13]

Recognition of Behavior Analysis in Florida Law

Although Florida does not license behavior analysts, its laws do recognize them in ways that may provide for some oversight. Specific references are as follows:

- Section 381.75, F.S., requires that transitional living facilities that provide services to patients in the brain and spinal cord injury program must offer behavior analysis services.

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[6] Behavior Analyst Certification Board, *About BACB Credentials*, *available at* http://www.bacb.com/index.php?page=4 (Last visited April 7, 2014).
[7] *Id*.
[8] Behavior Analyst Certification Board, *Standards for Board Certified Behavior Analysts (BCBA)*, *available at* http://www.bacb.com/index.php?page=158 (Last visited March 30, 2014).
[9] Behavior Analyst Certification Board, *About BACB Credentials*, *available at* http://www.bacb.com/index.php?page=4 (Last visited March 29, 2014).
[10] Behavior Analyst Certification Board, *Standards for Board Certified Assistant Behavior Analysts (BCABA)*, http://www.bacb.com/index.php?page=52 (Last visited March 31, 2014).
[11] Behavior Analyst Certification Board, *Certificant Registry* http://www.bacb.com/index.php?page=100155&by=state (Last visited March 30, 2014).
[12] *See Infra* note 20 at 2.
[13] Behavior Analyst Certification Board, *Florida Behavior Analyst Certification Committee* http://www.bacb.com/index.php?page=100202 (Last visited March 29, 2014).

The law does not specify credentials, but the services must be provided under contract and by a facility that is subject to state licensure.

- Section 393.17, F.S., authorizes the Agency for Persons with Disabilities (APD) to establish a certification process for behavior analysts who serve its clients and requires the APD to recognize the certification "awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services." This language describes the BACB.[14] The APD has opted not to create a separate certification process.[15]
- Section 393.18, F.S., requires a behavior analyst who provides services as part of a comprehensive transitional education program for persons with developmental disabilities to be certified as provided under s. 393.17, F.S.
- Section 409.906(26), F.S., authorizes the Agency for Health Care Administration to obtain federal approval to provide behavior analysis services to children five years old and younger who have a developmental disability, autism spectrum disorder, or Down syndrome through the Medicaid program.
- Sections 627.6686 and 641.31098, F.S., mandate coverage for autism spectrum disorder which includes applied behavior analysis services. The services must be provided by a person who is licensed under ch. 490 or 491, F.S., or certified pursuant to s. 393.17, F.S.
- Section 1002.66, F.S., includes applied behavioral analysis among the specialized instructional services a parent may select for a child with disabilities who is eligible for prekindergarten. As part of the exceptional student education legislation, the 2013 Legislature created a definition of private instructional personnel which includes persons certified under s. 393.17, F.S., or licensed under ch. 490 or 491, F.S., to provide behavior analysis.

Currently, the Florida Department of Law Enforcement does not perform criminal history record checks on persons seeking licensure as a behavior analyst.[16]

Regulation of Health Care Professions

The Department of Health (DOH) is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.[17] General licensing provisions applicable to health care practitioners are contained in ch. 456, F.S., which also sets out in more detail the policy framework for regulation. Specifically, regulation is to occur when:[18]

- Unregulated practice can harm or endanger the health, safety, and welfare of the public, and the potential for harm outweighs the potentially anticompetitive effect of regulation;
- The public is not adequately protected by other means, including other statutes, federal law, or local ordinances; or
- Less restrictive means of regulation are not available.

[14] *Supra*, note 4.
[15] Rule 65G-4.0011, F.A.C.
[16] *2104 Legislative Bill Analysis for SB 1212,* Florida Department of Law Enforcement (April 3, 2014).
[17] Section 20.43(1)(g), F.S.
[18] Section 456.003(2), F.S.

The Division of Medical Quality Assurance (MQA) within the DOH has responsibility for licensing health care practitioners and certain facilities and businesses; enforcing health care practitioner standards; and providing licensure and disciplinary information to enable health care consumers to make more informed health care decisions.[19]

Regulation of some professions occurs under the purview of a board or council. A board is a statutorily-created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.[20] In general, boards are responsible for approving or denying applications for licensure, establishing continuing education requirements, and disciplining practitioners for violations of their applicable practice act.[21] Currently, The MQA regulates seven types of facilities and 200-plus license types in 43 health care professions through coordination with 22 boards and six councils.[22]

The Sunrise Act

Section 11.62, F.S., "The Sunrise Act," sets forth policy and minimum requirements for legislative review of bills proposing regulation of an unregulated function. In general, the act states that regulation should not occur unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

The act directs the Legislature to consider the following factors:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide detailed information regarding the need and potential impact of the regulation. The Sunrise Questionnaire

[19] Fla. Dept. of Health, *Resource Manual for the Florida Department of Health*, 252 (FY 2012–2013)
[20] Section 456.001(1), F.S.
[21] *See, e.g.* s. 491.004, F.S., creating the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling and authorizing it to adopt rules necessary to implement and enforce provisions of ch. 491, F.S.
[22] *Supra* note 16 at 167.

is used for that purpose.[23] The act also requires the agency that will be responsible for its implementation to assess the cost of implementation, the technical sufficiency of the proposal, and whether alternatives to regulation exist.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

Statutory Creation of Advisory Bodies, Commissions, or Boards

The statutory creation of any collegial body to serve as an adjunct to an executive agency is subject to certain provisions in s. 20.052, F.S. Such a body may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose, and it must be terminated by the Legislature when it no longer fulfills such a purpose. The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of any collegial or advisory bodies.

A board of trustees is defined as "a board created by specific statutory enactment and appointed to function adjunctively to a department, the governor, or the Executive Office of the Governor to administer public property or a public program."[24] Private citizen members of a board of trustees may only be appointed by the governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of Art. II, s. 5(a) of the State Constitution.

Members of a board of trustees serve for 4-year staggered terms, unless expressly provided otherwise in the State Constitution, and are ineligible for any compensation other than travel expenses. Unless an exemption is specified by law, all meetings are public, and records of minutes and votes must be maintained.

III. Effect of Proposed Changes:

The bill creates ch. 470, F.S., entitled "Behavior Analysts" for the purpose of regulating the practice of applied behavior analysis.

The bill creates the following definitions:

- "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not limited to, the use of direct

[23] The Sunrise Questionnaire is a questionnaire developed by legislative staff to solicit the responses required by the proponent of new regulation pursuant to s. 11.62(4), F.S. CS/SB 1212 has been proposed by the Florida Association for Behavioral Analysis, and a copy of the proponent's completed questionnaire is on file with the Senate Health Policy Committee.

[24] Section 20.03(12), F.S.

observation, measurement, and functional analysis of the relations between environment and behavior." The definition expressly excludes certain acts that are within the definition of "practice of psychology" in ch. 490, F.S. The definition, excluding the exception, is identical to the current definition in chs. 627 and 641, F.S., relating to health care coverage for persons with autism spectrum disorder.

- "Board" means the Board of Applied Behavior Analysis, as created by the bill, unless the term appears in the context of board certification.
- "Board-certified behavior analyst" and "Board-certified assistant behavior analyst" are practitioners certified by the BACB.
- "Department" is the Department of Health.
- "Licensed behavior analyst" and "licensed assistant behavior analyst" are practitioners licensed by the board created by the bill.

The bill creates the Board of Applied Behavior Analysis, which is a seven-member board whose members are appointed by the governor and confirmed by the Senate. Three members must be board-certified behavior analysts, at least two of whom hold a doctoral level degree. One member must be a board-certified assistant behavior analyst. One member must be a psychologist or clinical social worker, marriage and family therapist, or mental health counselor whose practice primarily includes treatment of behavior disorders. The board must include two layperson members. The bill provides for staggered four-year terms and requires that subsequent appointees be licensed under the act. A person may not serve more than two consecutive terms.

The bill directs the board to adopt rules to implement the act, which must include rules related to:

- Standards of practice;
- Supervision, including the number of persons that a licensed behavior analyst or assistant behavior analyst may supervise;
- Continuing education; and,
- Fees, not to exceed $100 for an application and $300 for licensure. Fees must be based on the actual cost to regulate.

The bill authorizes the DOH to adopt rules to implement its duties under the act, including, rules related to initial and renewal licensure applications, processes, and fees.

The bill requires the DOH to license any person applying for initial or renewal licensure as a behavior analyst who:

- Submit a completed application;
- Be board-certified;
- Pay the licensure or renewal licensure fee; and
- Pass a criminal background check.

The bill requires a person applying for initial or renewal licensure as an assistant behavior analyst to:

- Submit a completed application;
- Be board-certified;
- Identify a licensed behavior analyst who is qualified to supervise the applicant;
- Pay the licensure or renewal licensure fee; and

- Pass a criminal background check.

The bill authorizes the board to renew a license when it receives proof of continued certification by the BACB; a completed renewal application and fee; and proof of compliance with required continuing education.

The bill creates specific actions that constitute grounds for the board to deny a license or to discipline licensees which are the disciplinary standards set forth in ch. 490, F.S., and which are applicable to psychologists.

The bill prohibits the practice of applied behavior analysis or the use of the titles without first obtaining a license under ch. 470, F.S. Unlicensed practice is a third degree felony and unauthorized use of the title is a second degree misdemeanor. Both violations are punishable as provided in ch. 775, F.S. A third degree felony is punishable by a fine of up to $5,000 or up to five years in prison. A second degree misdemeanor is punishable by a fine of up to $500 or up to 60 days in prison.

The bill contains a lengthy series of exemptions from licensure, including:
- Psychologists licensed under ch. 490, F.S.;
- A certified teacher, for behavior analysis services delivered in the course of employment as a teacher that are within the scope of the teacher's education, training, and experience, if the teacher does not hold himself or herself out as a behavior analyst; and a teaching assistant who is supervised by a qualified certified teacher;
- An applied behavior analyst or assistant behavior analyst who work with animals;
- A person who teaches behavior analysis or conducts related research not involving direct patient care;
- A college graduate or postdoctoral fellow, working under the direct supervision of a licensed behavior analyst or instructor in an accredited program, whose activities are part of a defined behavior analysis program of study or practicum approved by the BACB, subject to specified title restrictions;
- A person pursuing training experience required for board certification if supervised by a licensee who has been approved by the BACB to supervise;
- A family member of a patient who implements procedures if the family member does not hold himself or herself out as a behavior analyst;
- A behavior analyst or assistant behavior analyst who provides services to an organization and not to individuals;
- A physician licensed under ch. 458 or 459, F.S.;
- An occupational therapist licensed under ch. 468, F.S., if he or she does not hold himself or herself out as a behavior analyst;
- A clinical social worker, marriage and family therapist, or mental health counselor licensed under ch. 491, F.S.;
- An employee of a nonprofit organization that provides behavior analysis services to children at no charge, if the employee does not hold himself or herself out as a behavior analyst;
- A certified school psychologist who performs behavior analysis as an employee of a public or private school; and
- A member of the clergy acting within the scope of his or her religious duties.

Conforming provisions of the bill include amendments to:

- Section 20.43, F.S., which sets forth the organizational structure of the DOH, to add the Board of Applied Behavior Analysis;
- Section 456.0135, F.S., related to the general background screening procedures for certain health care practitioners, to add a reference to chapter 470; and
- The definition of "health care practitioner" in ch. 456, F.S., to add practitioners licensed under ch. 470, F.S.

The bill has an effective date of January 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 1212 will have a negative impact on persons who are providing behavior analysis services but do not meet the bill's qualifications for licensure. Persons currently certified by the BACB will need to obtain a state license and pay the licensure fee to practice behavior analysis.

C. Government Sector Impact:

Revenue[25]
The DOH estimates it will receive 2,000 applications in the first two-year licensure cycle (biennium) that will be subject to an application fee of $100; a licensure fee of $300; and an unlicensed activity fee of $5,[26] for a total of $810,000 in fee collections. For the second biennium, the DOH estimates it will receive 2,000 licensure renewals that will be subject to the licensure fee of $300 and the unlicensed activity fee of $5, for a total of $610.000. Revenue from DOH fee collections is deposited into the DOH's Medical Quality Assurance Trust Fund.

Expenses[27]
The DOH estimates it will need 2.5 full-time equivalent positions (FTE) and one OPS position to implement the provisions of the bill.

The OPS position and one FTE can manage the licensing requirements. The requested expenses are one FTE regulatory specialist II, no travel ($48,078) and one OPS regulatory specialist II, no travel ($38,485) for a total cost of $86,563.

The DOH estimates it will receive 30 complaints filed against certified behavior analysts and assistant behavior analysts and 12 of those complaints will be deemed legally sufficient for investigation and prosecution. The DOH estimates the need for two half-time FTE for these enforcement functions: one half-time investigation specialist II, medium travel, and one half-time senior attorney, no travel, for a total of $87,281.

The DOH estimates it will receive approximately 1,200 additional telephone calls in the communication center under the bill and estimates the need for one half-time regulatory specialist II, no travel, in the communication center with a total cost of $29,228.

The DOH anticipates holding four 1.5 day meetings per year with seven board members and two staff. Total estimated meeting costs are $51,081 per year.

The DOH currently contracts for processing of initial and renewal applications and related fees. The cost of the contracted service is based on a $7.69 per application for the estimated 2,000 applications, for a total cost of $15,380.

The DOH will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.

Consistent with adding any new profession, the DOH will update the Customer Oriented Medical Practitioner Administration System (COMPAS) to accommodate the new Certified Behavior Analyst and Assistant Behavior Analyst license, which current resources are adequate to absorb.

[25] Department of Health, *House Bill 1085 Fiscal Analysis* (March 25, 2014).
[26] Section 456.065(3), F.S.
[27] *Supra,* note 25.

The DOH will incur an increase in workload associated with the development and maintenance of a new website, online renewals, online applications, and related functions, which current resources are adequate to absorb.

The DOH's total estimated costs to implement the bill are $269,533 on an annualized basis, which may be paid from the Medical Quality Assurance Trust Fund. The biennial fees collected under the bill are estimated to be sufficient to offset these costs.

According to the Department of Law Enforcement (FDLE), the bill does not necessitate additional FTE or other resources because revenue generated by the fees for background screening and fingerprinting will offset the FDLE's costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to consider whether to amend the existing statutes that mandate the provision of behavior analysis services to cross-reference and require compliance with ch. 470, F.S., and the licensing standards created by this bill.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 20.43, 456.001, and 456.0135.

This bill creates the following sections of the Florida Statutes: 470.40, 470.41, 470.415, 470.42, 470.43, 470.44, 470.45, 470.46, 470.47, and 470.48.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 22, 2014:
The CS:

- Strengthens the legislative findings relating to the need for regulation.
- Conforms the definition of "applied behavior analysis" to the definition in ss. 627.6686 and 641.31098, F.S., which mandate coverage for individuals with autism spectrum disorder.
- Removes references to the BACB successor.
- Modifies the composition and initial terms of appointees to the Applied Behavioral Analysis Board.
- Revises the language describing licensure and renewal licensure application procedures.
- Removes authority for the DOH to issue a reciprocal license to out-of-state licensees.

- Shifts responsibility for prescribing continuing education requirements from the DOH to the Board (which is consistent with other practice acts).
- Removes the authority of the DOH to adopt rules relating to the educational qualifications necessary for licensure.
- Establishes specific acts that constitute grounds for discipline under the act.
- Deletes the exemption from licensure for certain out-of-state behavior analysts who practice or provide services in Florida less than 12 days per year.
- Appropriates $113,541 in recurring and $37,911 in non-recurring funds in the 2014-2015 fiscal year, and $77,266 in recurring and $26,592 in non-recurring funds in the 2015-2016 fiscal year, from the Medical Quality Assurance Trust Fund.

CS by Health Policy on April 1, 2014:
The CS:

- Rewrites the bill in a format that conforms it to other practice acts and eliminates provisions that conflict with or duplicate provisions in ch. 456, F.S. Specifically, the CS:
  - Changes the term of a member of the Board of Applied Behavior Analysis to 4 years, consistent with the requirements of s. 20.052, F.S.
  - Revises the rules the board must adopt to include standards of practice and supervision requirements, only.
  - Authorizes the DOH to adopt rules related to licensure and renewal licensure procedures and fees; educational qualifications for licensure; and continuing education.
  - Deletes language that specified certain administrative responsibilities of the board, including: adopting a code of ethics; maintaining minutes and a registry and directory of licensees; and adopting a seal.
  - Substitutes the DOH, in lieu of the board, as the entity that receives and processes applications for licensure and conforms the terms to standard language used elsewhere.
  - Removes language expressly limiting the board's disciplinary authority.
  - Removes language that requires licensees and employers of licensees to report certain information about criminal acts of a licensee or actions against a licensees certification.
- Deletes the definition of "supervised experience," which is not used elsewhere in the bill.
- Removes exemptions for an unlicensed person working under the extended authority of a licensed behavior analyst; and Florida-certified behavior analysts.
- Adds an exemption for occupational therapists licensed under ch. 491, F.S.
- Changes the effective date to January 1, 2015.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (g) of subsection (3) of section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(3) The following divisions of the Department of Health are established:

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(g) Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

1. The Board of Acupuncture, created under chapter 457.

2. The Board of Medicine, created under chapter 458.

3. The Board of Osteopathic Medicine, created under chapter 459.

4. The Board of Chiropractic Medicine, created under chapter 460.

5. The Board of Podiatric Medicine, created under chapter 461.

6. Naturopathy, as provided under chapter 462.

7. The Board of Optometry, created under chapter 463.

8. The Board of Nursing, created under part I of chapter 464.

9. Nursing assistants, as provided under part II of chapter 464.

10. The Board of Pharmacy, created under chapter 465.

11. The Board of Dentistry, created under chapter 466.

12. Midwifery, as provided under chapter 467.

13. The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.

14. The Board of Nursing Home Administrators, created under part II of chapter 468.

15. The Board of Occupational Therapy, created under part III of chapter 468.

16. Respiratory therapy, as provided under part V of chapter 468.

17. Dietetics and nutrition practice, as provided under

part X of chapter 468.

18. The Board of Athletic Training, created under part XIII of chapter 468.

19. The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.

20. The Board of Applied Behavior Analysis, created under chapter 470.

21.~~20.~~ Electrolysis, as provided under chapter 478.

22.~~21.~~ The Board of Massage Therapy, created under chapter 480.

23.~~22.~~ The Board of Clinical Laboratory Personnel, created under part III of chapter 483.

24.~~23.~~ Medical physicists, as provided under part IV of chapter 483.

25.~~24.~~ The Board of Opticianry, created under part I of chapter 484.

26.~~25.~~ The Board of Hearing Aid Specialists, created under part II of chapter 484.

27.~~26.~~ The Board of Physical Therapy Practice, created under chapter 486.

28.~~27.~~ The Board of Psychology, created under chapter 490.

29.~~28.~~ School psychologists, as provided under chapter 490.

30.~~29.~~ The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

31.~~30.~~ Emergency medical technicians and paramedics, as provided under part III of chapter 401.

Section 2. Subsection (4) of section 456.001, Florida Statutes, is amended to read:

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456.001 Definitions.—As used in this chapter, the term:

(4) "Health care practitioner" means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 470; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

Section 3. Section 456.0135, Florida Statutes, is amended to read:

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 470 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation.

(2) All fingerprints submitted to the Department of Law

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Enforcement as required under subsection (1) shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3). The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the applicant subject to the background screening.

Section 4. Chapter 470, Florida Statutes, is created and entitled "Behavior Analysts."

Section 5. Section 470.40, Florida Statutes, is created to read:

470.40 Purpose.—The Legislature finds that the practice of applied behavior analysis in this state by unskilled and incompetent practitioners presents a danger to the health and safety of the public. The Legislature finds further that it is difficult for the public to make informed choices about behavior analysts and that the consequences of a wrong choice could endanger public health. This act is intended to protect the public from the harmful conduct of unqualified, unprofessional, or unethical behavior analysts.

Section 6. Section 470.41, Florida Statutes, is created to read:

470.41 Definitions.—As used in this chapter, the term:

(1) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and

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functional analysis of the relations between environment and behavior. The term does not include psychological testing, the diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term counseling.

(2) "Board" means the Board of Applied Behavior Analysis established in s. 470.415, except when the term is used in the context of board certification.

(3) "Board-certified behavior analyst" means a practitioner who is certified as a behavior analyst, or is recognized as a Florida-certified behavior analyst, by the national Behavior Analyst Certification Board (BACB).

(4) "Board-certified assistant behavior analyst" means a practitioner who is certified by the national Behavior Analyst Certification Board, as an assistant behavior analyst.

(5) "Department" means the Department of Health.

(6) "Licensed behavior analyst" means an individual who is licensed by the board and meets the requirements of this chapter.

(7) "Licensed assistant behavior analyst" means an individual who is licensed by the board as an assistant behavior analyst and meets the requirements of this chapter.

Section 7. Section 470.415, Florida Statutes, is created to read:

470.415 Board of Applied Behavior Analysis.—

(1) The Board of Applied Behavior Analysis is created within the department. The board consists of seven members appointed by the Governor and confirmed by the Senate.

(2) The initial board members, who are not required to be

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licensed as a condition of appointment, shall be appointed as follows:

(a) Three board-certified behavior analysts, two of whom must hold a doctoral level degree. One shall be appointed to a 4-year term, one shall be appointed to a 2-year term, and one shall be appointed to a 1-year term;

(b) One board-certified assistant behavior analyst, who shall be appointed to a 3-year term;

(c) One psychologist licensed pursuant to chapter 490 or one clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491, who shall be appointed to a 3-year term. The majority of the appointee's professional practice must be related to the treatment of behavior disorders, including, but not limited to, autism spectrum disorders; and

(d) Two laypersons, who may include a parent or guardian of an individual who is a recipient of applied behavior analysis services, one of whom shall serve a 4-year term, and one of whom shall serve a 2-year term.

(3) As the terms of the initial members expire, the Governor shall appoint successors for 4-year terms. Each successor, except for the laypersons, must be licensed. A member may not serve more than two consecutive terms.

Section 8. Section 470.42, Florida Statutes, is created to read:

470.42 Rulemaking authority.—

(1) The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it. Such rules must include, but

are not limited to, rules relating to:

(a) Standards of practice for licensed behavior analysts and licensed assistant behavior analysts.

(b) Supervision of licensed assistant behavior analysts, or students in training to be licensed behavior analysts or licensed assistant behavior analysts, including the number of persons that a licensed behavior analyst or licensed assistant behavior analyst may supervise at one time.

(2) The department may adopt rules to implement the provisions of this chapter conferring duties upon it. Such rules shall include, but are not limited to, rules relating to licensure and license renewal applications, processes, and fees.

Section 9. Section 470.43, Florida Statutes, is created to read:

470.43 Licensure.—

(1) The department shall license an applicant as a behavior analyst if the applicant:

(a) Submits a completed application to the department using a form approved by the board;

(b) Remits the appropriate fees; and

(c) Submits proof that the applicant is a board-certified behavior analyst.

(2) The department shall license an applicant as an assistant behavior analyst if the applicant:

(a) Submits a completed application to the department using a form approved by the board;

(b) Remits the appropriate fees;

(c) Submits proof to the department that the applicant is a board-certified assistant behavior analyst; and

(d) Identifies a supervising licensed behavior analyst who is qualified to supervise the applicant under BACB requirements and this chapter.

Section 10. Section 470.44, Florida Statutes, is created to read:

470.44 Renewal of license.—

(1) The department shall renew a license upon receipt of proof that the applicant is certified by the BACB and a completed renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The board shall by rule prescribe continuing education not to exceed 32 hours required biennially as a condition for renewal of a license as a behavior analyst, or not to exceed 20 hours required biennially as a condition for renewal of a license as an assistant behavior analyst. The criteria for continuing education programs shall be approved by the board. The board may authorize by rule continuing education earned for BACB certification to be used to meet the continuing education requirements of this subsection.

Section 11. Section 470.45, Florida Statutes, is created to read:

470.45 Fees.—

(1) The board shall establish by rule a fee not to exceed $100 for an application and a fee not to exceed $300 for an initial license or licensure renewal.

(2) All moneys collected by the department under this chapter shall be deposited in the Medical Quality Assurance Trust Fund as provided under s. 456.025.

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Section 12. Section 470.46, Florida Statutes, is created to read:

470.46 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery or fraudulent misrepresentation or through an error of the board or the department.

(b) Having a license to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.

(c) Being convicted or found guilty of, regardless of adjudication, or having entered a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.

(d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.

(e) Advertising, practicing, or attempting to practice under a name other than one’s own.

(f) Maintaining a professional association with any person who the applicant, licensee or has reason to believe, is in violation of this chapter or of a rule of the department or the

board.

(g) Knowingly aiding, assisting, procuring, or advising any nonlicensed person to hold himself or herself out as licensed under this chapter.

(h) Failing to perform any statutory or legal obligation placed upon a person licensed under this chapter.

(i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record. Such report or record includes only a report or record which requires the signature of a person licensed under this chapter.

(j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of applied behavior analysis services or to a provider of health care services or goods; referring a patient or client to oneself for services on a fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct. Sexual misconduct shall be defined by rule by the board.

(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed under

this chapter.

(m) Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct.

(n) Failing to make available to a patient or client, upon written request, copies of tests, reports, or documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client.

(o) Failing to respond within 30 days to a written communication from the department or the board concerning any investigation by the department or the board, or failing to make available any relevant records with respect to any investigation about the licensee's conduct or background.

(p) Being unable to practice the profession for which he or she is licensed under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General's designee, or the board that probable cause exists to believe that the licensee, is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee to submit to a mental or physical examination by a physician designated by the department or board. If the licensee refuses to comply with such order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee resides or does business. The licensee against whom the petition

is filed may not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed with reasonable skill and safety to patients.

(q) Performing any treatment or prescribing any therapy which, by the prevailing standards of the behavior analysts in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(r) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee is not qualified by training or experience.

(s) Delegating professional responsibilities to a person whom the licensee knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(t) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.

(u) Failure of the licensee to maintain in confidence a communication made by a patient or client in the context of such services.

(v) Making public statements which are derived from test data, client contacts, or behavioral research and which identify

or damage research subjects or clients.

(w) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The department, or, in the case of, the board, may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating subsection (1) or who is found guilty of violating s. 456.072(1).

Section 13. Section 470.47, Florida Statutes, is created to read:

470.47 Violations and penalties.—

(1) It is unlawful and a violation of this chapter for any person to engage in the practice of applied behavior analysis, assist in the practice of applied behavior analysis, render services designated as applied behavior analysis, or represent himself or herself as a practitioner of applied behavior analysis in this state. Any person who violates any provision of this subsection commits a felony of the third degree, punishable as provided under s. 775.082, s. 775.083, or s. 775.084.

(2) It is unlawful and a violation of this chapter for any person to use the following titles or any combination thereof, unless she or he holds a valid, active license as a behavior analyst or assistant behavior analyst pursuant to this chapter:

(a) "Licensed behavior analyst."

(b) "Licensed assistant behavior analyst."

(3) Any person who violates any provision of subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 14. Section 470.48, Florida Statutes, is created to

read:

470.48 Exceptions to applicability.—This chapter does not prohibit or restrict the practice of the following:

(1) An individual licensed pursuant to chapter 458 or chapter 459.

(2) An individual licensed pursuant to part III of chapter 468 if the occupational therapist does not represent himself or herself as a behavior analyst.

(3) An individual licensed under chapter 490 to practice psychology.

(4) An individual licensed pursuant to chapter 491 as a clinical social worker, marriage and family therapist, or mental health counselor.

(5) A certified teacher authorized to practice in this state who is not a behavior analyst if he or she does not represent himself or herself as a behavior analyst. The services provided by a certified teacher must be within his or her authorized scope of practice and within the scope of his or her education, training, and experience and must be provided in the course of his or her employment in a program approved by the Department of Education. Teaching assistants, other than those engaged in pupil personnel services, and student support professionals are exempt from the requirements of this chapter if they provide applied behavior analysis services under the supervision of a certified teacher who meets the requirements of this subsection.

(6) A behavior analyst or assistant behavior analyst who practices with nonhuman clients, including, but not limited to, applied animal behaviorists and animal trainers.

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(7) An individual who teaches applied behavior analysis or who conducts behavior analytic research if such teaching or research does not involve the delivery of applied behavior analysis.

(8) A matriculated college or university student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum if his or her practice under this subsection is directly supervised by a licensed behavior analyst or an instructor of course sequence approved by the Behavior Analyst Certification Board (BACB). A student or intern may not represent himself or herself as a professional behavior analyst but may use a title indicating his or her trainee status, such as "behavior analyst student," "behavior analyst intern," or "behavior analyst trainee."

(9) An unlicensed individual pursuing supervised experiential training to meet eligibility requirements for BACB certification if such training is supervised by a licensed behavior analyst or a licensed assistant behavior analyst who meets BACB supervisor requirements and if the supervised experience is conducted in accordance with other BACB standards and requirements.

(10) A family member of a recipient of applied behavior analysis services who implements certain procedures with the recipient. Such a family member may not represent himself or herself as a licensed behavior analyst or a licensed assistant behavior analyst.

(11) A behavior analyst or assistant behavior analyst who provides general behavior analysis services to organizations if

the services are for the benefit of the organizations and do not involve direct services to individuals.

(12) A salaried employee of a private, nonprofit organization providing behavior analysis services to children, youth, and families if the services are provided for no charge, the employee is performing duties for which he or she was trained and hired, and the employee does not represent himself or herself as a licensed behavior analyst or licensed assistant behavior analyst.

(13) A school psychologist certified in school psychology by the Department of Education who performs behavior analysis services as an employee of a public or private educational institution. Such exemption does not authorize unlicensed practice that is not performed directly as an employee of an educational institution.

(14) A rabbi, priest, minister, or member of the clergy of a religious denomination or sect if engaging in activities that are within the scope of the performance of his or her regular or specialized ministerial duties and for which no separate fee is charged, or if such activities are performed, with or without a fee, for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect; and if the person rendering service remains accountable to the established authority thereof.

Section 15. (1) For the 2014-2015 fiscal year, the sums of $113,541 in recurring funds and $37,911 in nonrecurring funds are appropriated from the Medical Quality Assurance Trust Fund to the Department of Health, and two full-time equivalent

positions with associated salary rate of 70,359 are authorized, for the purpose of implementing the regulatory provisions of this act.

(2) For the 2015-2016 fiscal year, the sums of $77,266 in recurring funds and $26,592 in nonrecurring funds from the Medical Quality Assurance Trust Fund are appropriated to the Department of Health for the purpose of implementing the regulatory provisions of this act.

Section 16. This act shall take effect on January 1, 2015.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to behavior analysts; amending s. 20.43, F.S.; establishing the Board of Applied Behavior Analysis within the Division of Medical Quality Assurance; amending s. 456.001, F.S.; including licensed behavior analysts and licensed assistant behavior analysts in the definition of "health care practitioner"; amending s. 456.0135, F.S.; requiring an applicant for licensure under chapter 470, F.S., to submit to certain fingerprinting requirements; creating chapter 470, F.S.; entitling the chapter; creating s. 470.40, F.S.; providing a purpose; creating s. 470.41, F.S.; defining terms; creating s. 470.415, F.S.; creating the Board of Applied Behavior Analysis; providing for membership

and terms of members; creating s. 470.42, F.S.; creating rulemaking authority for the board and the department; creating s. 470.43, F.S.; providing requirements for licensure as a behavior analyst or assistant behavior analyst; creating s. 470.44, F.S.; providing requirements for renewal of license; creating s. 470.45, F.S.; establishing maximum fees for applications, initial licenses, and license renewals; requiring fees collected by the department to be deposited in to a specified trust fund; creating s. 470.46, F.S.; providing grounds for denial of license or disciplinary action; creating s. 470.47, F.S.; providing penalties for practicing applied behavior analysis without a license or wrongfully identifying oneself as a licensed behavior analyst or licensed assistant behavior analyst; creating s. 470.48, F.S.; providing exceptions to applicability of the chapter; providing appropriations and authorizing positions; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment to Amendment (387820)

Delete lines 197 - 375
and insert:
Section 9. Section 470.43, Florida Statutes, is created to read:
470.43 Licensure.—
(1) The department shall license an applicant as a behavior analyst if the applicant:
(a) Submits a completed application to the department using

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a form approved by the board;

(b) Remits the appropriate fees;

(c) Has passed a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135; and

(d) Submits proof that the applicant is a board-certified behavior analyst.

(2) The department shall license an applicant as an assistant behavior analyst if the applicant:

(a) Submits a completed application to the department using a form approved by the board;

(b) Remits the appropriate fees;

(c) Has passed a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135;

(d) Submits proof to the department that the applicant is a board-certified assistant behavior analyst; and

(e) Identifies a supervising licensed behavior analyst who is qualified to supervise the applicant under BACB requirements and this chapter.

Section 10. Section 470.44, Florida Statutes, is created to read:

470.44 Renewal of license.—

(1) The department shall renew a license upon receipt of proof that the applicant is certified by the BACB and a completed renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The board shall by rule prescribe continuing education not to exceed 32 hours required biennially as a condition for renewal of a license as a behavior analyst, or not to exceed 20

hours required biennially as a condition for renewal of a license as an assistant behavior analyst. The criteria for continuing education programs shall be approved by the board. The board may authorize by rule continuing education earned for BACB certification to be used to meet the continuing education requirements of this subsection.

Section 11. Section 470.45, Florida Statutes, is created to read:

470.45 Fees.—

(1) The board shall establish by rule a fee not to exceed $100 for an application, $300 for an initial license, or $300 for license renewal.

(2) All moneys collected by the department under this chapter shall be deposited in the Medical Quality Assurance Trust Fund as provided under s. 456.025.

Section 12. Section 470.46, Florida Statutes, is created to read:

470.46 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery or fraudulent misrepresentation or through an error of the board or the department.

(b) Having a license to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.

(c) Being convicted or found guilty of, regardless of adjudication, or having entered a plea of nolo contendere to, a

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crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.

(d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Maintaining a professional association with any person who the applicant or licensee knows, or has reason to believe, is in violation of this chapter or of a rule of the department or the board.

(g) Knowingly aiding, assisting, procuring, or advising any nonlicensed person to hold himself or herself out as licensed under this chapter.

(h) Failing to perform any statutory or legal obligation placed upon a person licensed under this chapter.

(i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record. Such report or record includes only a report or record which requires the signature of a person licensed under this chapter.

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(j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of applied behavior analysis services or to a provider of health care services or goods; referring a patient or client to oneself for services on a fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct. Sexual misconduct shall be defined by rule by the board.

(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of applied behavior analysis licensed under this chapter.

(m) Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct.

(n) Failing to make available to a patient or client, upon written request, copies of test results, reports, or documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client.

(o) Failing to respond within 30 days to a written communication from the department concerning any investigation by the department, or failing to make available any relevant records with respect to any investigation about the licensee's conduct or background.

(p) Being unable to practice the profession for which he or

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she is licensed under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General's designee, or the board that probable cause exists to believe that the licensee, is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee to submit to a mental or physical examination by a physician designated by the department or board. If the licensee refuses to comply with such order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee resides or does business. The licensee against whom the petition is filed may not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed with reasonable skill and safety to patients.

(q) Performing any treatment or prescribing any therapy which, by the prevailing standards of the behavior analysts in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(r) Failing to meet the minimum standards of performance in

professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee is not qualified by training or experience.

(s) Delegating professional responsibilities to a person whom the licensee knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(t) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.

(u) Failure of the licensee to maintain in confidence a communication made by a patient or client in the context of such services.

(v) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.

(w) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating subsection (1) or who is found guilty of violating s. 456.072(1).

Section 13. Section 470.47, Florida Statutes, is created to read:

470.47 Violations and penalties.—

(1) It is unlawful and a violation of this chapter for any person to engage in the practice of applied behavior analysis, assist in the practice of applied behavior analysis, render

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services designated as applied behavior analysis, or represent himself or herself as a practitioner of applied behavior analysis in this state unless she or he holds a valid, active license as a behavior analyst or assistant behavior analyst pursuant to this chapter. Any person who violates any provision of

By the Committee on Health Policy; and Senator Bean

588-03591-14 20141212c1

A bill to be entitled

An act relating to behavior analysts; creating ch. 470, F.S.; entitling the chapter; creating s. 470.40, F.S.; providing a purpose; creating s. 470.41, F.S.; defining terms; creating s. 470.415, F.S.; creating the Board of Applied Behavior Analysis; creating s. 470.42, F.S.; specifying the authority and duties of the board; creating s. 470.43, F.S.; providing requirements for licensure and renewal; creating s. 470.44, F.S.; establishing maximum fees for applications, initial licenses, and license renewals; providing for the deposit of funds; creating s. 470.45, F.S.; providing grounds for disciplinary action by the board; creating s. 470.46, F.S.; providing penalties for practicing applied behavior analysis without a license or wrongfully identifying oneself as a licensed behavior analyst; creating s. 470.47, F.S.; providing exceptions to applicability of the chapter; amending s. 20.43, F.S.; making the Division of Medical Quality Assurance within the Department of Health responsible for the board; amending s. 456.001, F.S.; including licensed behavior analysts and licensed assistant behavior analysts in the definition of "health care practitioner"; amending s. 456.0135, F.S.; requiring an applicant for licensure under ch. 470, F.S., to submit to certain fingerprinting requirements; providing an effective date.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03591-14 20141212c1

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 470, Florida Statutes, is created and entitled "Behavior Analysts."

Section 2. Section 470.40, Florida Statutes, is created to read:

470.40 Purpose.—The practice of applied behavior analysis in this state affects the public health, safety, and welfare of its residents, and this act is intended to protect the public from any harmful conduct of unqualified, unprofessional, or unethical applied behavior analysts.

Section 3. Section 470.41, Florida Statutes, is created to read:

470.41 Definitions.—As used in this chapter, the term:

(1) "Applied behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior and includes functional assessment and analysis. The term does not include psychological testing, the diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term counseling.

(2) "Board" means the Board of Applied Behavior Analysis established in s. 470.415, except when the term is used in the context of board certification.

(3) "Board-certified behavior analyst" means a practitioner who is certified as a Board Certified Behavior Analyst, or is recognized as a "Florida-certified behavior analyst," by the national Behavior Analyst Certification Board (BACB), or its

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

successor pursuant to s. 470.42.

(4) "Board-certified assistant behavior analyst" means a practitioner who is certified by the national Behavior Analyst Certification Board, or its successor pursuant to s. 470.42, as a Board Certified Assistant Behavior Analyst.

(5) "Department" means the Department of Health.

(6) "Licensed behavior analyst" means an individual who is licensed by the board and meets the requirements of this chapter.

(7) "Licensed assistant behavior analyst" means an individual who:

(a) Is licensed by the board as an assistant behavior analyst and meets the requirements of this chapter; and

(b) Works under the supervision of a licensed behavior analyst.

Section 4. Section 470.415, Florida Statutes, is created to read:

470.415 Board of Applied Behavior Analysis.—

(1) The Board of Applied Behavior Analysis is created within the department. The board consists of seven members who must be appointed by the Governor and confirmed by the Senate.

(2) The initial board members, who are not required to be licensed as a condition of appointment, shall be appointed as follows:

(a) Three board-certified behavior analysts, which may include board-certified behavior analysts who are at the doctoral level, two of whom shall be selected from a list of six nominations submitted by the Florida Association for Behavior Analysis. One shall be appointed to a 1-year term, and two shall

be appointed to 3-year terms;

(b) One board-certified assistant behavior analyst, who shall be appointed to a 1-year term;

(c) One health care practitioner licensed in this state, who shall be appointed to a 2-year term. The majority of the appointed health care practitioner's practice must be related to the treatment of behavior disorders, including, but not limited to, autism spectrum disorders; and

(d) Two laypersons, who may include a parent or guardian of an individual who is a recipient of applied behavior analysis services, one of whom shall serve a 1-year term, and one of whom shall serve a 2-year term.

(3) As the terms of the initial members expire, the Governor shall appoint successors for 4-year terms. Each successor, except for the laypersons, must be licensed. A member may not serve more than two consecutive terms.

Section 5. Section 470.42, Florida Statutes, is created to read:

470.42 Authority of the board; board duties; authority of the department.—

(1) The board may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it. Such rules must include, but are not limited to, rules relating to all of the following:

(a) Standards of practice for licensed behavior analysts and licensed assistant behavior analysts.

(b) Supervision of licensed assistant behavior analysts or students in training to be licensed behavior analysts, including the number of persons that a licensed behavior analyst or

licensed assistant behavior analyst may supervise at one time.

(2) If the Behavior Analyst Certification Board stops certifying practitioners of applied behavior analysis in this state, the board shall approve a successor certification board that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to certify applied behavior analysts.

(3) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it. Such rules must include, but are not limited to, rules relating to all of the following:

(a) Licensure and licensure renewal applications and processes, including licensure fees.

(b) Educational qualifications for licensure.

(c) Continuing education requirements for biennial renewal of licensure not to exceed 30 hours biennially as a condition for renewal of a license.

Section 6. Section 470.43, Florida Statutes, is created to read:

470.43 Licensure and renewal.—

(1) A person applying for an initial or renewal license as a licensed behavior analyst or licensed assistant behavior analyst shall apply to the department on such form and in such manner as the department prescribes. The person shall furnish evidence to the department that he or she:

(a) Is a board-certified behavior analyst;

(b) Has paid the licensure fee or the biennial renewal fee; and

(c) Has passed a criminal background check after submitting

fingerprints and a fee pursuant to s. 456.0135.

(2) A person applying for an initial or renewal license as an assistant behavior analyst shall apply to the department upon such form and in such manner as the department prescribes and shall furnish evidence to the department that such person:

(a) Is a board-certified assistant behavior analyst;

(b) Is supervised by a licensed behavior analyst in a manner consistent with BACB requirements and this chapter;

(c) Has paid the licensure fee or the biennial renewal fee; and

(d) Has passed a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135.

(3) The board may issue a license to a person who holds an active license as a behavior analyst or assistant behavior analyst in another state if the person:

(a) Submits proof of licensure and board certification;

(b) Passes a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135; and

(c) Pays the licensure fee.

Section 7. Section 470.44, Florida Statutes, is created to read:

470.44 Fees.—

(1) The board shall establish by rule a fee not to exceed $100 for an application and a fee not to exceed $300 for an initial license or license renewal.

(2) All moneys collected by the department under this chapter shall be deposited as provided under s. 456.025.

Section 8. Section 470.45, Florida Statutes, is created to read:

470.45 Disciplinary grounds and actions.—The board may enter an order imposing any of the penalties provided under s. 456.072(2) against a licensee who violates any provision of s. 456.072(1).

Section 9. Section 470.46, Florida Statutes, is created to read:

470.46 Violations and penalties.—

(1) Unless licensed or authorized under this chapter, a person who engages in the practice of applied behavior analysis, assists in the practice of applied behavior analysis, renders services designated as applied behavior analysis, or represents himself or herself as a practitioner of applied behavior analysis in this state commits a felony of the third degree, punishable as provided under s. 775.082, s. 775.083, or s. 775.084.

(2) Unless licensed or authorized under this chapter, a person who uses the title "licensed behavior analyst," "licensed assistant behavior analyst," or any other title that is substantially similar commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 10. Section 470.47, Florida Statutes, is created to read:

470.47 Exceptions to applicability.—This chapter does not prohibit or restrict the practice of the following:

(1) An individual licensed under chapter 490 to practice psychology.

(2) A certified teacher authorized to practice in this state who is not a behavior analyst if he or she does not represent himself or herself as a behavior analyst. The services

provided by a certified teacher must be within his or her authorized scope of practice and within the scope of his or her education, training, and experience and must be provided in the course of his or her employment in a program approved by the Department of Education. Teaching assistants, other than those engaged in pupil personnel services, and student support professionals are exempt from the requirements of this chapter if they provide applied behavior analysis services under the supervision of a certified teacher who meets the requirements of this paragraph.

(3) A behavior analyst who practices with nonhuman clients, including, but not limited to, applied animal behaviorists and animal trainers.

(4) An individual who teaches applied behavior analysis or who conducts behavior analytic research if such teaching or research does not involve the delivery of applied behavior analysis.

(5) A matriculated college or university student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum if his or her practice under this subsection is directly supervised by a licensed behavior analyst or an instructor of an accredited course sequence approved by the Behavior Analyst Certification Board (BACB). A student or intern may not represent himself or herself as a professional behavior analyst but may use a title indicating his or her trainee status, such as "behavior analyst student," "behavior analyst intern," or "behavior analyst trainee."

(6) An unlicensed individual pursuing supervised

experiential training to meet eligibility requirements for BACB certification if such training is supervised by an individual who is licensed to practice applied behavior analysis and who meets BACB supervisor requirements and if the supervised experiential training is conducted in accordance with other BACB standards and requirements.

(7) A board-certified behavior analyst, a doctoral level board-certified behavior analyst, or an individual licensed to practice applied behavior analysis in another state who resides in another state and provides applied behavior analysis in this state or to a resident of this state for less than 12 days per year.

(8) A family member of a recipient of applied behavior analysis services who implements certain procedures with the recipient. Such a family member may not represent himself or herself as a professional behavior analyst.

(9) A behavior analyst who provides general behavior analysis services to organizations if the services are for the benefit of the organizations and do not involve direct services to individuals.

(10) A physician licensed pursuant to chapter 458 or chapter 459.

(11) An occupational therapist licensed pursuant to chapter 468 if he or she does not represent himself or herself as a behavior analyst.

(12) An individual licensed pursuant to chapter 491 as a clinical social worker, marriage and family therapist, or mental health counselor.

(13) A salaried employee of a private, nonprofit

organization providing behavior analysis services to children, youth, and families if the services are provided for no charge, the employee is performing duties for which he or she was trained and hired, and the employee does not represent himself or herself as a professional behavior analyst.

(14) A school psychologist certified in school psychology by the Department of Education who performs behavior analysis services as an employee of a public or private educational institution. Such exemption does not authorize unlicensed practice that is not performed directly as an employee of an educational institution.

(15) A rabbi, priest, minister, or member of the clergy of a religious denomination or sect if engaging in activities that are within the scope of the performance of his or her regular or specialized ministerial duties and for which no separate fee is charged, or if such activities are performed, with or without a fee, for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect; and if the person rendering service remains accountable to the established authority thereof.

Section 11. Paragraph (g) of subsection (3) of section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(3) The following divisions of the Department of Health are established:

(g) Division of Medical Quality Assurance, which is responsible for the following boards and professions established

within the division:

1. The Board of Acupuncture, created under chapter 457.

2. The Board of Medicine, created under chapter 458.

3. The Board of Osteopathic Medicine, created under chapter 459.

4. The Board of Chiropractic Medicine, created under chapter 460.

5. The Board of Podiatric Medicine, created under chapter 461.

6. Naturopathy, as provided under chapter 462.

7. The Board of Optometry, created under chapter 463.

8. The Board of Nursing, created under part I of chapter 464.

9. Nursing assistants, as provided under part II of chapter 464.

10. The Board of Pharmacy, created under chapter 465.

11. The Board of Dentistry, created under chapter 466.

12. Midwifery, as provided under chapter 467.

13. The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.

14. The Board of Nursing Home Administrators, created under part II of chapter 468.

15. The Board of Occupational Therapy, created under part III of chapter 468.

16. Respiratory therapy, as provided under part V of chapter 468.

17. Dietetics and nutrition practice, as provided under part X of chapter 468.

18. The Board of Athletic Training, created under part XIII

of chapter 468.

19. The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.

20. The Board of Applied Behavior Analysis, created under chapter 470.

21.~~20.~~ Electrolysis, as provided under chapter 478.

22.~~21.~~ The Board of Massage Therapy, created under chapter 480.

23.~~22.~~ The Board of Clinical Laboratory Personnel, created under part III of chapter 483.

24.~~23.~~ Medical physicists, as provided under part IV of chapter 483.

25.~~24.~~ The Board of Opticianry, created under part I of chapter 484.

26.~~25.~~ The Board of Hearing Aid Specialists, created under part II of chapter 484.

27.~~26.~~ The Board of Physical Therapy Practice, created under chapter 486.

28.~~27.~~ The Board of Psychology, created under chapter 490.

29.~~28.~~ School psychologists, as provided under chapter 490.

30.~~29.~~ The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

31.~~30.~~ Emergency medical technicians and paramedics, as provided under part III of chapter 401.

Section 12. Subsection (4) of section 456.001, Florida Statutes, is amended to read:

456.001 Definitions.—As used in this chapter, the term:

(4) "Health care practitioner" means any person licensed

under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 470; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

Section 13. Section 456.0135, Florida Statutes, is amended to read:

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 470 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation.

(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) shall be retained by the Department of Law Enforcement as provided under s.

943.05(2)(g) and (h) and (3). The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the applicant subject to the background screening.

Section 14. This act shall take effect January 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR AARON BEAN
4th District

April 11, 2014

Senator Joe Negron
Chairman, Committee on Appropriations
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

This letter is to request that the following bills be placed on the agenda of the next committee meeting:

- *CS/CS/SB 956 relating to an act of Coastal Management (Companion bill on 2nd. Reading)*
- *CS/SB 1212 relating to an act of behavioral analysts (Companion in last committee)*
- *SB 388 – Public Retirement (Companion bill on 2nd. Reading)*
- *SB 598 – Juvenile Justice Education Program (In Senate Messages}*
- *SB 992 – Infectious Disease Control (Companion in last committee)*
- *SB 1122 – Emergency Allergy Treatment (Companion bill on 2nd Reading)*
- *SB 1416 Sexual Predator & Sexual Offender Absconders (Companion in last committee)*

Thank you for your consideration of this request.

Respectfully,

Aaron Bean
State Senator, 4th District

Cc: Cindy Kynoch, Staff Director
Ann Roberts, Committee Administrative Assistant

REPLY TO:
❒ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
❒ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Behavior Analysis

Bill Number 1212 *(if applicable)*

Name Dr Carolyn Stimel

Amendment Barcode *(if applicable)*

Job Title Psychologist

Address 2704 Apalachee
Street

Phone 850 386 8116

Tallahassee FL 32301
City *State* *Zip*

E-mail stimel@aol.com

Speaking: ☐ For ☒ Against ☐ Information

Representing FL Psychological Ass.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Licensing of Behavior Analysts

Bill Number 1212 *(if applicable)*

Name Connie Galietti

Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 408 Office Plaza Dr. *Street*

Phone 850-656-2222

Tallahassee FL 32301 *City State Zip*

E-mail connie@flapsych.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Psychological Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/22/14
Meeting Date

Topic BEHAVIOR ANALYSIS

Bill Number 1212 *(if applicable)*

Name DR LIZ CAMPBELL

Amendment Barcode *(if applicable)*

Job Title CLINICAL PSYCHOLOGIST

Address 700 KAYWOOD DR
Street

ORLANDO FL 32825
City *State* *Zip*

Phone 407 353 9276

E-mail DR.LIZ.CAMPBELL@GOTSOUP.NET

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA PSYCHOLOGICAL ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Behavior Analysts

Bill Number SB 1212 *(if applicable)*

Name Dr. Mary Riordan

Amendment Barcode *(if applicable)*

Job Title BCBA

Address 1010 Redbud

Phone 850 933-6654

Street Tallahassee FL 32303

E-mail mmriordan@me.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Association of Behavior Analysis

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic _____ Bill Number 1212 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 22, 2014
Meeting Date

Topic Behavior Analysts

Bill Number SB 1212 *(if applicable)*

Name Donna Franklin

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 10796 NW Mickey Drive
Street
Bristol FL 32321
City *State* *Zip*

(850)
Phone 447-0234

E-mail waynedonna2001@yahoo.com

Speaking: [X] For [ ] Against [ ] Information

Representing myself

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 22, 2014
Meeting Date

Topic Behavior Analysts

Bill Number SB 1212 *(if applicable)*

Name Michelle Dunham

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 8132 Nar Del Plata
Street
Jacksonville, FL 32256
City *State* *Zip*

Phone 904-993-0045

E-mail mdunham.jsa@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

Waive in Support

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Behavior Analysts

Bill Number SB 1212 *(if applicable)*

Name Ron Watson

Amendment Barcode *(if applicable)*

Job Title Lobbyist

Address 3738 Mundon Way *Street*

Phone 850 567-1202

Tallahassee *City* FL *State* 32309 *Zip*

E-mail Watson.Strategies@Comcast.net

Speaking: [X] For [ ] Against [ ] Information

Representing myself

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 1254
INTRODUCER:	Appropriations Committee; Rules Committee; Health Policy Committee; and Senator Grimsley
SUBJECT:	Health Care Services
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Looke	Phelps	RC	**Fav/CS**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1254 amends various sections of the Florida Statutes to delete unused, obsolete, and redundant rulemaking authority granted to the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) and make other technical and conforming changes. The bill also:

- Changes "certification" to "licensure" for organ, eye, and tissue procurement organizations and removes specified procurement groups in favor of allowing the AHCA to choose appropriate procurement groups on which to base organ procurement standards and guidelines;
- Moves Medicaid recipients under the age of 21 who are not receiving waiver services but who are authorized to reside in certain group home facilities from the mandatory enrollment group to the voluntary group for statewide Medicaid managed care;
- Allows all hospitals, rather than only specialty-licensed children's hospitals, that are authorized to provide certain pediatric cardiovascular services, to provide cardiovascular services to adults who the hospital treated as children for congenital heart disease; and
- Amends the parameters for certain reports made by a home health agency and exempts certain home health agencies from the requirement to obtain and maintain certification from an accrediting entity.

The bill has an indeterminate but likely insignificant fiscal impact.

II. Present Situation:

The Agency for Health Care Administration (AHCA) has a number of regulatory responsibilities, among these being the licensure of health care facilities, including abortion clinics, nursing homes, and clinical laboratories.

In recent years, many of the facilities licensed by the AHCA have come under increasing regulatory control of federal law relating to Medicaid and Medicare, with state laws providing greater specificity than previously provided. At the same time, frequent changes to many of these overlapping legal environments have made it difficult for the AHCA to maintain rules consistent with current law. Some of this difficulty has related to unnecessary rulemaking mandates, particularly relating to statutes that provide sufficient specificity to enforce without the need for rulemaking.

Rulemaking is required by Florida's Administrative Procedure Act (APA) whenever a government agency has express authority to make rules, and must resort to rulemaking in order to implement, interpret, or prescribe law, policy, or requirements, including mandatory forms.[1] Rulemaking is not discretionary under the APA.[2]

In 2009, and again in 2013, the Joint Administrative Procedures Committee held hearings focusing on 2007 legislation that, on its face, requires the AHCA to make rules that have yet to be finally adopted. In some cases, that legislation and similar legislation contemplated rulemaking that was either unnecessary under the APA or already promulgated under previously enacted law.

Statewide Medicaid Managed Care

Part IV of ch. 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the Statewide Medicaid Managed Care program (SMMC). The program, authorized by a federal Medicaid waiver, is designed for the AHCA to issue invitations to negotiate[3] and competitively procure contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most of the state's enrollees in the Medicaid program. SMMC has two components: managed medical assistance (MMA) and long-term care managed care (LTCMC).

The LTCMC component began enrolling Medicaid recipients in August 2013 and was scheduled to complete its statewide roll-out in March 2014.[4] The MMA component is scheduled to begin enrolling Medicaid recipients in May 2014 and finish its roll-out in August 2014.[5]

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[1] Section 120.52(16), F.S., defines "rule" to mean "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute…"
[2] Section 120.54(1)(a), F.S.
[3] An "invitation to negotiate" is a written or electronically posted solicitation for vendors to submit competitive, sealed replies for the purpose of selecting one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. *See* s. 287.012(17), F.S.
[4] *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#LTCMC >, last visited March 20, 2014.
[5] *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#MMA >, last visited March 20, 2014.

Group Home Facilities for Persons with Developmental Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing all services for persons with developmental disabilities that are provided under ch. 393, F.S., including the operation of all state-related institutional programs and the programmatic management of Medicaid waivers established to provide services to persons with developmental disabilities.[6] A person determined eligible by the APD to receive APD services is known as a "client,"[7] and the term includes persons receiving APD services and those on a waiting list to receive APD services.

The AHCA has been granted waiver authority from the federal Medicaid program for the state to implement a four-tiered system to serve eligible clients through a Developmental Disabilities Waiver (DD waiver). For the purpose of this waiver program, eligible clients include individuals with a diagnosis of Down syndrome or a developmental disability. The APD is required to assign all clients receiving services through this waiver to a tier, based on financial eligibility guidelines and APD assessments.[8]

Under the DD waiver, the APD operates four tier-based programs that provide home and community-based supports and services to clients living at home or in a home-like setting. DD waiver services are funded by state revenue and federal Medicaid matching dollars. APD operates the DD waiver under the authorization of the AHCA's Division of Medicaid.

The purpose of the DD waiver is to promote, maintain, and restore the health of APD clients; to minimize the effects of illness and disabilities through the provision of needed supports and services in order to delay or prevent institutionalization; and to foster the principles of self-determination as a foundation for services and supports. The intent of the waiver is to provide a viable choice of services that allow clients to live as independently as possible in their own home or in the community and to achieve productive lives as close to normal as possible, as opposed to residing in an institutional setting.[9]

Under ch. 393, F.S., the Legislature declared that all persons with developmental disabilities who live in licensed community homes will have a living environment comparable to other Floridians and that such residences will be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home.[10]

The APD regulates group home facilities for persons with developmental disabilities. A "group home facility" is an APD-licensed residential facility that provides a family living environment, including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of a group home facility is limited to at least four but not more than 15

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[6] *See* s. 20.197(3), F.S.
[7] *See* s. 393.063(5), F.S.
[8] *See* s. 393.0661(2), F.S.
[9] Agency for Health Care Administration, *Developmental Disabilities Waiver Services Coverage and Limitations Handbook,* November 2010, sec. 1, p. 8, available at < http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/DD_Waiver_Handbook_Final_Rule_Nov_2010.pdf >, last visited March 20, 2014.
[10] *See* s. 393.062, F.S.

residents.[11] "Residential facilities" provide room and board and personal care for persons with developmental disabilities.[12] "Personal care services" are defined as individual assistance with or supervision of essential activities of daily living for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar services that are incidental to the care furnished and essential to the health, safety, and welfare of a person with developmental disabilities if no one else is available to perform those services.[13]

Not all residents of APD-licensed group homes are APD clients. Some are private-pay residents. Some are eligible for Medicaid without being eligible for DD waiver services. The APD currently issues licenses to 1,661 group homes statewide in which approximately 8,000 persons with developmental disabilities reside. Approximately 250 of these residents are not APD clients while 7,673 APD clients in group home settings are enrolled in Medicaid for health care services. The number of group home residents who are not APD clients but are Medicaid-eligible is unknown.[14]

Under SMMC, all Medicaid recipients are required to receive covered Medicaid services through managed care plan enrollment, except for certain groups of individuals that are exempt from participation in SMMC.[15] Other Medicaid-eligible individuals are not required to enroll in managed care plans but may do so voluntarily, including Medicaid recipients who are receiving DD waiver services or are on a waiting list to receive DD waiver services,[16] which includes all APD clients. However, a resident of an APD-licensed group home who is not an APD client is not included in this "voluntary" category for managed care plan enrollment and is therefore required to join a Medicaid managed care plan under SMMC if he or she is Medicaid eligible and enrolls in Medicaid.

Organ Donations in Florida

Over 3,500 people in Florida are registered and waiting for organ transplants, and thousands more wait for tissue donations.[17] The most common types of organ transplants include the kidneys, liver, heart, lungs, and pancreas, but many other organs and tissues can be transplanted or used for various other medical procedures.[18] Nationwide, nearly 6,000 people die each year waiting for an organ donation.[19]

Four major organ and tissue procurement agencies operate in Florida to facilitate the process of organ donation. These agencies are certified by the U.S. Centers for Medicare and Medicaid Services (CMS) and operate in Florida to increase the number of registered donors and

[11] *See* s. 393.063(17), F.S.
[12] *See* s. 393.063(28), F.S.
[13] *See* s. 393.063(24), F.S.
[14] Email from APD staff to Senate Appropriations Committee staff (March 20, 2014) (on file with staff of the Senate Health and Human Services Appropriations Subcommittee).
[15] *See* s. 409.965, F.S.
[16] *See* s. 409.972(2), F.S.
[17] *See* Donate Life Florida, 2009, *FAQs About Donation*, available at: http://www.donatelifeflorida.org/content/about/facts/faq/#faq_22 (last visited Mar. 26, 2013).
[18] Id.
[19] Id.

coordinate the donation process when organs become available.[20] Each agency serves a different region of the state.[21] In addition to federal certification of organ procurement organizations, the AHCA also certifies these organ procurement organizations and other eye and tissue organizations.[22]

The Organ Procurement and Transplantation Network (OPTN) is the unified network established by Congress in 1984. The OPTN is a public-private partnership of professionals involved in the donation and transplantation system. The main goals of the OPTN are to increase the effectiveness and efficiency of organ sharing, increase the equity of the national system of organ allocation, and increase the supply of donated organs.[23]

The Association of Organ Procurement Organizations (AOPO) is the national representative of the 58 federally-designated organ procurement organizations. The AOPO's main goal is to help member OPOs maximize the availability of organs and tissues for transplantation and enhance the quality, effectiveness, and integrity of the donation process. The AOPO also works closely with the OPTN and has two seats on the OPTN Board of Directors.[24]

The Eye Bank Association of America (EBAA) is the oldest transplant association in the United States. The EBAA is also a nationally-recognized accrediting body for eye banks, and the EBAA Medical Advisory Board develops standards to ensure consistently acceptable levels of quality, proficiency, and ethics in dealing with ocular tissue for transplantation and defines the minimum standards of practice in the recovery, preservation, storage, and distribution of eye tissue for transplantation and research, as determined by the ophthalmological medical community. The EBAA Medical Standards are reviewed semi-annually and are endorsed by the American Academy of Ophthalmology (AAO).[25]

Specialty-Licensed Children's Hospitals

Presently, s. 395.003, F.S., states that a specialty hospital may not provide any service or regularly serve any population group beyond those that are specified in its license, with an exception made for specialty-licensed children's hospitals to allow them to treat certain adult patients with cardiovascular issues who the hospital treated as children. The AHCA licenses all hospital types in the state of Florida either as a Class I general acute care hospital or as a Class II specialty hospital. The options for a class II specialty hospital are a women's hospital or a children's hospital. To offer services to the population as a whole, a hospital must be licensed as a class I general acute care hospital. A hospital must also obtain a Certificate of Need (CON) from the AHCA before offering specialized types of services, including routine adult cardiac surgery.

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[20] *See* Donate The Gift of Life, *Organ Procurement Organizations*, available at http://organdonor.gov/materialsresources/materialsopolist.html (last visited Mar. 26, 2014).
[21] Id.; LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves east Florida, and LifeAlliance Organ Recovery Services serves south Florida.
[22] *See* AHCA's authority for certifying organ, eye, and tissue banks can be found in s. 765.542, F.S., and a list of organ, eye and tissue banks, *FloridaHealthFinder* at www.floridahealthfinder.gov (last visited on Mar. 26, 2013).
[23] *See* http://optn.transplant.hrsa.gov/optn/, (last visited on Mar. 26, 2013) and http://www.aopo.org/about-aopo, for the OPTN's policies (last visited Mar. 26, 2014).
[24] *See* http://www.aopo.org/about-aopo (last visited on Mar. 26, 2014).
[25] *See* http://www.restoresight.org/about-us/ (last visited on Mar. 26, 2014).

In addition to the three hospitals in Florida that qualify as specialty-licensed children's hospitals,[26] some Class I general acute care hospitals offer specialty services for children but are not technically considered specialty-licensed children's hospitals. One example of such an embedded children's hospital is the Palm Beach Children's Hospital located within St. Mary's Medical Center in West Palm Beach. Currently, St. Mary's Hospital is authorized to perform pediatric cardiac surgeries, including pediatric open heart surgery and pediatric cardiac catheterization. However, since St. Mary's Medical Center does not have a CON for routine adult cardiac surgery and since the present exception in s. 395.003, F.S., only applies to specialty-licensed children's hospitals, St. Mary's Medical Center may not continue to treat children for the same congenital heart conditions once they reach adulthood without obtaining a waiver from the AHCA for each instance.

Home Health Agencies

A home health agency (HHA) is an organization that provides home health services and staffing services.[27] Home health services provided by an HHA include health and medical services and medical equipment provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services.[28] Home health agencies are regulated by the AHCA under Part III of ch. 400, F.S.

In 2008 the Florida Legislature passed ch. 2008-246, L.O.F., with anti-fraud measures, including the requirement for an HHA quarterly report to be submitted to the AHCA within 15 days following the end of each quarter. The Legislature passed ch. 2008-246, L.O.F., to combat an increase in Medicaid fraud in HHAs during the early to mid 2000s. In Fiscal Year 2004-2005, the AHCA's Bureau of Medicare Program Integrity (MPI) opened 47 investigations of HHAs for Medicaid fraud, 72 in Fiscal Year 2005-2006, and 144 in Fiscal Year 2006-2007.[29] Between 2004 and 2007, 19 HHAs were terminated from the Medicaid program in Miami-Dade County alone.[30]

Section 400.474(6)(f), F.S., enacted in ch. 2008-246, L.O.F., requires HHAs to report data as it existed on the last day of the quarter for four items that are markers for possible fraudulent activity. These items include:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and hospice services;
- The number of patients receiving HHA services; and
- Name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of $25,000 during the quarter.

[26] All Children's Hospital in Saint Petersburg, Miami Children's Hospital in Miami, and Nemours Children's Hospital in Orlando. See AHCA bill analysis for SB 1264, dated Mar. 15, 2013, on file with the Senate Health Policy Committee.
[27] S. 400.462(12), F.S.
[28] S. 400.462(14)(a)-(c), F.S.
[29] Staff analysis of SB 1374 (Mar. 7, 2008) (on file with the Senate Committee on Health Policy).
[30] Id.

The AHCA is required to impose a fine of $200 per day, up to $5,000 per reporting period, if the report is not submitted within the first 15 days following the close of the quarter. From January 1, 2009, through December 31, 2012, there were a total of 1,407 fines imposed.[31] For the 2012-2013 state fiscal year, fines of $932,750 were imposed by final order. Also, the number of HHAs that fail to submit the reports each quarter has decreased. For the quarter ending December 31, 2012, 42 of the 2,250 licensed HHAs failed to submit their reports.[32]

The AHCA uses the data on the number of patients on the last day of the quarter as an indicator of the number of patients when a home health agency is closing. In addition, the data on numbers of patients is used as an indicator that the home health agency may not be operational, along with other information. Failing to provide at least one service directly for a period of 60 days is grounds to deny or revoke a license under s. 400.474(1)(2)(e), F.S. The AHCA already collects the number of patients admitted over a 12-month period, from each home health agency on the biennial license renewal application as required by s. 400.471(2)(c), F.S.[33]

III. Effect of Proposed Changes:

Section 1 amends s. 390.012, F.S., relating to the disposal of fetal remains, to repeal the requirement that the AHCA must adopt rules to require that abortion clinics be in compliance with s. 390.0111, F.S., relating to termination of pregnancies. This rule requirement is not necessary since abortion clinics must already comply with that section of law.

Section 2 amends s. 395.003, F.S., to allow all hospitals, rather than only specialty-licensed children's hospitals, that are authorized to provide pediatric cardiac catheterization and pediatric open-heart surgery to provide cardiovascular services to adults that the hospital treated as children for congenital heart disease. This change will allow St. Mary's Medical Center in West Palm Beach to continue to offer cardiac services to adult patients that were by the Medical Center treated for congenital cardiac disorders as children without obtaining a waiver from the AHCA.

Sections 3, 4, and 5 amend ss. 400.021, 400.0712, and 400.23, F.S., relating to the regulation of nursing homes, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to implement part II of ch.400, F.S.

Section 6 amends s. 400.471, F.S., to exempt home health agencies (HHAs) that are not Medicare or Medicaid certified and that do not provide skilled nursing care from the requirement to provide documentation of accreditation, or application for accreditation, from an accrediting organization recognized by the AHCA on the HHAs initial licensure application and from maintaining accreditation in order to maintain licensure.

Section 7 amends 400.474, F.S., to reduce the frequency of reports that HHAs are required to submit to the AHCA from quarterly to every 6 months, adjusting the remuneration amount required to be reported from $25,000 to $50,000 to account for the extended reporting period, and to require that the reports be submitted electronically. The bill also exempts from the

[31]AHCA, House Bill 4031 Analysis (SB 1094) (Mar. 14, 2013) (on file with the Senate Committee on Health Policy).
[32] Id.
[33]Supra n. 19

reporting requirements HHAs that share a controlling interest with a licensee that bills Medicaid or Medicare so long as the HHA is not a Medicaid or Medicare provider itself.

Sections 8, 9, 10, and 11 amend ss. 400.487, 400.497, 400.506, and 400.509, F.S., relating to home health agencies, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to implement part III of ch. 400, F.S.

Sections 12, 22, and 23 amend ss. 400.6095, 429.255, and 429.73, F.S., respectively, to repeal the requirement to adopt rules to implement "do not resuscitate" orders under s. 401.45, F.S., in hospice, assisted living facilities, and adult family-care homes. These grants of rulemaking authority are unnecessary since s. 401.45, F.S., includes rulemaking authority.

Sections 13 and 14 amend s. 400.914, F.S., and create s. 400.9141, F.S., respectively, to substitute mandatory rulemaking with discretionary rulemaking authority as needed to administer part VI of ch. 400, F.S., relating to prescribed pediatric extended care centers. Section 400.9141, F.S., is created with language moved from s. 400.914, F.S., to make the conditions self-executing.

Sections 15 and 16 amend ss. 400.934 and 400.935, F.S., relating to home medical equipment providers, to repeal certain specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer part VII of ch. 400, F.S. In addition s. 400.934, F.S., requires the comprehensive emergency management plan of a home medical equipment provider to include criteria for a patient's equipment and supply list to accompany a patient who is transported from his or her home.

Sections 17 and 18 amend ss. 400.962 and 400.967, F.S., relating to intermediate care facilities for developmentally disabled persons, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer part VIII of ch. 400, F.S.

Section 19 amends s. 400.980, F.S., relating to health care service pools, to repeal a mandate that the AHCA adopt rules for the registration of health care services pools.

Section 20 amends s. 409.912, F.S., relating to the cost-effective purchasing of health care in the Medicaid program, to repeal the requirement for the AHCA to adopt rules to administer subsection 409.912(43), F.S., related to provider lock-in programs. The subsection expires on October 1, 2014.

Section 21 amends s. 409.972, F.S., to exempt from mandatory enrollment in Medicaid managed care Medicaid recipients under the age of 21 who are not receiving waiver services but who are authorized by the Agency for Persons with Disabilities or the Department of Children and Families to reside in a group home facility, and instead make enrollment in Medicaid managed care voluntary.

Section 24 amends s. 440.102, F.S., to clarify the AHCA's rulemaking responsibilities pertaining to drug-free workplace laboratories.

Section 25 amends s. 483.245, F.S., to repeal the requirement that the AHCA adopt rules to assess administrative penalties for clinical laboratories that pay or receive kickbacks.

Sections 26 and 27 amend ss. 765.541 and 765.544, F.S., relating to organ and tissue procurement agencies, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer ss. 765.541 - 765.546, F.S. The bill also changes "certification" to "licensure" for organ, eye, and tissue procurement organizations and amends the procurement groups specified in statute. The AHCA must substantially base its procurement organizations licensure program on the standards and guidelines of one or more nationally recognized accreditation organizations or federally regulated networks determined by the AHCA to possess reasonable expertise in organ procurement.

The bill also makes technical, clarifying, and conforming changes as necessary throughout the sections of law amended by the bill.

Section 28 establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under CS/CS/CS/SB 1254, the AHCA may see an indeterminate negative fiscal impact due to an increase in the number of home health agencies that are no longer certified by an accreditation organization and, therefore, will no longer need to be inspected by the

AHCA. The AHCA expects to absorb any additional inspection costs within existing resources.[34]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 390.012, 395.003, 400.021, 400.0712, 400.23, 400.471, 400.474, 400.487, 400.497, 400.506, 400.509, 400.6095, 400.914, 400.934, 400.935, 400.962, 400.967, 400.980, 409.912, 409.972, 429.255, 429.73, 440.102, 483.245, 765.541, and 765.544.

This bill creates section 400.9141 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on April 22, 2014:
The CS:

- Removes language that amends the definition of "provider service network" and requires the AHCA to terminate the contract of a Medicaid managed care plan if the plan was contracted as the only PSN in a region but no longer meets the definition of a PSN;
- Exempts home health agencies that are not Medicare or Medicaid certified and that do not provide skilled nursing care from the requirement to be accredited;
- Restores to current law several sections of the bill in which the requirement to comply with rules of the Department of Elder Affairs or the Agency for Health Care Administration (AHCA) for "Do Not Resuscitate" orders was inadvertently struck; and
- Replaces the specified list of organ procurement groups in s. 765.451, F.S. with the requirement that the AHCA base its rules on the standards and guidelines of one or more nationally recognized accreditation organizations or federally regulated networks determined by the AHCA to possess reasonable expertise in organ procurement.

[34] According to a phone conversation with Josh Spagnola, Legislative Affairs Director for the AHCA.

CS/CS by Rules on April 2, 2014:
The CS:

- Allows all hospitals, rather than only specialty-licensed children's hospitals, that are authorized to provide pediatric cardiac catheterization and pediatric open-heart surgery to provide cardiovascular services to adults that the hospital treated as children for congenital heart disease; and
- Reduces the frequency of reports that HHAs are required to submit to the AHCA from quarterly to every 6 months and to require that the reports be submitted electronically. The CS also exempts from the reporting requirements HHAs that share a controlling interest with a licensee that bills Medicaid or Medicare so long as the HHA is not a Medicaid or Medicare provider itself.

CS by Health Policy on March 25, 2014:
The CS:

- Reinstates some of the minimum standards the AHCA is required to adopt in rule to regulate home medical equipment providers;
- Changes certification to licensure for organ, eye, and tissue procurement organizations and amend which groups are specified in statute. The AHCA must substantially base its procurement organizations licensure program on the standards and guidelines of the specified organizations as well as federal and state laws;
- Makes technical changes to the rulemaking authority over nurse registries and drug-free workplace laboratories.
- Allows voluntary enrollment in statewide Medicaid managed care for Medicaid recipients under the age of 21 who are not receiving waiver services but who are authorized by the Agency for Persons with Disabilities or the Department of Children and Families to reside in a group home facility; and
- Amends the definition of "provider service network" and requires the AHCA to terminate the contract of a Medicaid managed care plan if the plan was contracted as the only PSN in a region but no longer meets the definition of a PSN. The AHCA must re-procure another PSN in such a region within 12 months after the first PSN no longer meets the definition of a PSN.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

506302

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 89 - 106.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 30 - 32

and insert:

procurement program; amending s.

119536

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 457 and 458
insert:

Section 6. Paragraph (h) of subsection (2) of section 400.471, Florida Statutes, is amended to read:

400.471 Application for license; fee.—

(2) In addition to the requirements of part II of chapter 408, the initial applicant must file with the application satisfactory proof that the home health agency is in compliance

119536

with this part and applicable rules, including:

(h) In the case of an application for initial licensure, documentation of accreditation, or an application for accreditation, from an accrediting organization that is recognized by the agency as having standards comparable to those required by this part and part II of chapter 408. Notwithstanding s. 408.806, an applicant that has applied for accreditation must provide proof of accreditation that is not conditional or provisional within 120 days after the date of the agency's receipt of the application for licensure or the application shall be withdrawn from further consideration. Such accreditation must be maintained by the home health agency to maintain licensure. The agency shall accept, in lieu of its own periodic licensure survey, the submission of the survey of an accrediting organization that is recognized by the agency if the accreditation of the licensed home health agency is not provisional and if the licensed home health agency authorizes releases of, and the agency receives the report of, the accrediting organization. A home health agency that is not Medicare or Medicaid certified and does not provide skilled nursing care is exempt from this paragraph.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 32 and 33

insert:

400.471, F.S.; exempting a home health agency that is not Medicare or Medicaid certified and does not provide skilled nursing care does not have to provide

119536

documentation of accreditation; amending s.

888440

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment

Delete lines 507 - 508
and insert:
resuscitation pursuant to such an order and rules adopted by the agency.
Delete line 1124
and insert:
pursuant to such an order and rules adopted by the department.
Delete lines 1140 - 1141

888440

and insert:
cardiopulmonary resuscitation pursuant to such an order and applicable rules.

978004

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1018 - 1111.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 35 - 47

and insert:

limiting services at PPEC centers; providing an

780912

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1018 - 1111.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 39 - 47

and insert:

patient equipment and supply lists; providing an

661670

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Substitute for Amendment (780912) (with title amendment)

Delete lines 1018 - 1030.
Delete lines 1045 - 1111.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 40 - 47
and insert:

661670

409.972, F.S.; exempting certain people from the requirement to enroll in Medicaid managed care; providing an

556020

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1195 - 1203

and insert:

and guidelines of one or more nationally recognized accreditation organizations or federally regulated networks determined by the agency to possess reasonable expertise in organ procurement if such guidelines are consistent with the requirements of ss. 765.541-765.546. ~~the United Network for Organ Sharing (UNOS), the American Association of Tissue Banks~~

556020

~~(AATB), the South-Eastern Organ Procurement Foundation (SEOPF), the North American Transplant Coordinators Organization (NATCO), and the Eye Bank Association of America (EBAA). In addition, the agency shall, before adopting these standards and guidelines, seek input from all procurement organizations based in this state.~~

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 47

and insert:

contract with a provider service network; amending s. 765.541, F.S.; amending the organizations on whose standards the agency must base rules for standards and guidelines for organ procurement organizations; providing an

By the Committees on Rules; and Health Policy; and Senator Grimsley

595-03708-14 20141254c2

A bill to be entitled

An act relating to health care services; amending ss. 390.012, 400.021, 400.0712, 400.23, 400.487, 400.497, 400.506, 400.509, 400.6095, 400.914, 400.935, 400.962, 400.967, 400.980, 409.912, 429.255, 429.73, 440.102, 483.245, 765.541, and 765.544, F.S.; removing certain rulemaking authority relating to the disposal of fetal remains by abortion clinics, nursing home equipment and furnishings, license applications for nursing home facilities, evaluation of nursing home facilities, home health agencies and cardiopulmonary resuscitation, home health agency standards, nurse registry emergency management plans, registration of certain service providers, hospice and cardiopulmonary resuscitation, standards for prescribed pediatric extended care facilities, minimum standards relating to home medical equipment providers, standards for intermediate care facilities for the developmentally disabled, rules and the classification of deficiencies for intermediate care facilities for the developmentally disabled, the registration of health care service pools, participation in a Medicaid provider lock-in program, assisted living facilities and cardiopulmonary resuscitation, adult family-care homes and cardiopulmonary resuscitation, guidelines for drug-free workplace laboratories, penalties for rebates, standards for organ procurement organizations; administrative penalties for violations of the organ and tissue donor education and

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

595-03708-14 20141254c2

procurement program; amending s. 395.003, F.S.; revising provisions relating to the provision of cardiovascular services by a hospital; amending s. 400.474, F.S.; revising the report requirements for home health agencies; creating s. 400.9141, F.S.; limiting services at PPEC centers; amending s. 400.934, F.S., relating to home medical equipment providers; requiring that the emergency management plan include criteria relating to the maintenance of patient equipment and supply lists; amending s. 409.962, F.S.; redefining the term "provider service network"; amending s. 409.972, F.S.; exempting certain people from the requirement to enroll in Medicaid managed care; amending s. 409.974, F.S.; providing for contracting with eligible plans; revising provisions relating to negotiation with a provider service network; providing requirements for termination of a contract with a provider service network; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (3) of section 390.012, Florida Statutes, is amended to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

provisions of this chapter, including the following:

(d) Rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum, these rules must ~~shall~~ require:

1. A medical history including reported allergies to medications, antiseptic solutions, or latex; past surgeries; and an obstetric and gynecological history.

2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.

3. The appropriate laboratory tests, including:

a. Urine or blood tests for pregnancy performed before the abortion procedure.

b. A test for anemia.

c. Rh typing, unless reliable written documentation of blood type is available.

d. Other tests as indicated from the physical examination.

4. An ultrasound evaluation for all patients. The rules must ~~shall~~ require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that he or she has completed a course in the operation of ultrasound equipment as prescribed in rule. ~~The rules shall require clinics to be in compliance with s. 390.0111.~~

5. That the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule and shall write the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound

examination of a patient in the patient's medical history file.

Section 2. Paragraph (a) of subsection (6) of section 395.003, Florida Statutes, is amended to read:

395.003 Licensure; denial, suspension, and revocation.—

(6)(a) A specialty hospital may not provide any service or regularly serve any population group beyond those services or groups specified in its license. A ~~specialty-licensed children's~~ hospital that is authorized to provide pediatric cardiac catheterization and pediatric open-heart surgery services may provide cardiovascular service to adults who, as children, were previously served by the hospital for congenital heart disease, or to ~~those~~ patients who are referred only for a specialized procedure ~~only~~ for congenital heart disease by an adult hospital, without obtaining additional licensure as a provider of adult cardiovascular services. The agency may request documentation as needed to support patient selection and treatment. This subsection does not apply to a specialty-licensed children's hospital that is already licensed to provide adult cardiovascular services.

Section 3. Subsection (11) of section 400.021, Florida Statutes, is amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(11) "Nursing home bed" means an accommodation that ~~which~~ is ready for immediate occupancy, or is capable of being made ready for occupancy within 48 hours, excluding the provision of staffing, ~~,~~ and that ~~which~~ conforms to minimum space requirements, including the availability of appropriate equipment and furnishings within the 48 hours, as specified by

~~rule of~~ the agency, for the provision of services specified in this part to a single resident.

Section 4. Subsection (3) of section 400.0712, Florida Statutes, is amended to read:

400.0712 Application for inactive license.—

~~(3) The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this section.~~

Section 5. Section 400.23, Florida Statutes, is amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this part and part II of chapter 408 ~~shall~~ include criteria by which a reasonable and consistent quality of resident care may be ensured, ~~and~~ the results of such resident care can be demonstrated, and ~~by which~~ safe and sanitary nursing homes can be provided. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a nursing home. In addition, efforts shall be made to minimize the amount of paperwork associated with the reporting and documentation requirements of these rules.

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Department of Health and the Department of Elderly Affairs, may ~~shall~~ adopt ~~and enforce~~ rules to administer ~~implement~~ this part and part II of chapter 408. The rules must specify, but are not limited to, ~~which shall include~~ reasonable and fair criteria relating ~~in relation~~ to:

(a) The location of the facility and housing conditions

that will ensure the health, safety, and comfort of residents, including an adequate call system. In adopting ~~making~~ such rules, the agency shall be guided by criteria recommended by nationally recognized reputable professional groups and associations that have ~~with~~ knowledge of such subject matters. The agency shall update or revise the ~~such~~ criteria as the need arises. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. In performing ~~any~~ inspections of facilities authorized by this part or part II of chapter 408, the agency may enforce the special-occupancy provisions of the Florida Building Code and the Florida Fire Prevention Code which apply to nursing homes. A resident ~~Residents~~ or his or her representative must ~~their representatives shall~~ be able to request a change in the placement of the bed in his or her ~~their~~ room if, ~~provided that~~ at admission, the resident is ~~they are~~ presented with a room that meets requirements of the Florida Building Code. The location of a bed may be changed if the requested placement does not infringe on the resident's roommate or interfere with the resident's care or safety as determined by the care planning team in accordance with facility policies and procedures. In addition, the bed placement may not be used as a restraint. Each facility shall maintain a log of resident rooms with beds that are not in strict compliance with the Florida Building Code in order for such log to be used by surveyors and nurse monitors during inspections and visits. A resident or a resident's ~~resident~~ representative who requests that a bed be moved must ~~shall~~ sign a statement indicating that he or she understands that the room will not be in compliance with the

Florida Building Code, but that he or she ~~they~~ would prefer to exercise the ~~their~~ right to self-determination. The statement must be retained as part of the resident's care plan. A ~~Any~~ facility that offers this option must submit a letter signed by the nursing home administrator of record to the agency notifying it of this practice along with a copy of the policies and procedures of the facility. The agency is directed to provide assistance to the Florida Building Commission in updating the construction standards of the code relating ~~relative~~ to nursing homes.

(b) The number and qualifications of all personnel, including management, medical, nursing, and other professional personnel, and nursing assistants, orderlies, and support personnel, having responsibility for any part of the care given residents.

(c) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene which will ensure the health and comfort of residents.

(d) The equipment essential to the health and welfare of the residents.

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and measurement of the quality and adequacy thereof, based on rules developed under this chapter and the Omnibus Budget Reconciliation Act of 1987, ~~(~~Pub. L. No. 100-203~~) (December 22, 1987)~~, Title IV (Medicare, Medicaid, and Other Health-Related Programs), Subtitle C (Nursing Home Reform), as amended.

(g) The preparation and annual update of a comprehensive

emergency management plan. The agency shall establish ~~adopt rules establishing~~ minimum criteria for the plan after consultation with the Division of Emergency Management. At a minimum, the ~~rules must provide for~~ plan components must provide ~~that address~~ emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During the ~~its~~ review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management. ~~Also,~~ Appropriate volunteer organizations must also be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and ~~either~~ approve the plan or advise the facility of necessary revisions.

(h) The availability, distribution, and posting of reports and records pursuant to s. 400.191 and the Gold Seal Program pursuant to s. 400.235.

(3)(a)~~1.~~ The agency shall enforce ~~adopt rules providing~~ minimum staffing requirements for nursing home facilities.

1. These requirements must include, for each facility:

a. A combined minimum weekly average of certified nursing assistant and licensed nursing staffing ~~combined~~ of 3.6 hours of

direct care per resident per day. As used in this sub-subparagraph, a week is defined as Sunday through Saturday.

b. A minimum certified nursing assistant staffing of 2.5 hours of direct care per resident per day. A facility may not staff below one certified nursing assistant per 20 residents.

c. A minimum licensed nursing staffing of 1.0 hour of direct care per resident per day. A facility may not staff below one licensed nurse per 40 residents.

2. Nursing assistants employed under s. 400.211(2) may be included in computing the staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.

3. Each nursing home facility must document compliance with staffing standards ~~as~~ required under this paragraph and post daily the names of staff on duty for the benefit of facility residents and the public.

4. The agency shall recognize the use of licensed nurses for compliance with the minimum staffing requirements for certified nursing assistants if the nursing home facility otherwise meets the minimum staffing requirements for licensed nurses and the licensed nurses are performing the duties of ~~a~~ certified nursing assistants ~~assistant~~. Unless otherwise approved by the agency, licensed nurses counted toward the minimum staffing requirements for certified nursing assistants must exclusively perform the duties of ~~a~~ certified nursing assistants ~~assistant~~ for the entire shift and not also be counted toward the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified

nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of documenting compliance with minimum staffing requirements for certified and licensed nursing staff. The hours of a licensed nurse with dual job responsibilities may not be counted twice.

(b) Nonnursing staff providing eating assistance to residents does ~~shall~~ not count toward compliance with minimum staffing standards.

(c) Licensed practical nurses licensed under chapter 464 who are providing nursing services in nursing home facilities under this part may supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel providing services in such facilities in accordance with rules adopted by the Board of Nursing.

(4) ~~Rules developed pursuant to~~ This section does ~~shall~~ not restrict the use of shared staffing and shared programming in facilities that ~~which~~ are part of retirement communities that provide multiple levels of care and otherwise meet the requirement of law or rule.

(5) ~~The agency, in collaboration with the Division of Children's Medical Services of the Department of Health, must adopt rules for:~~

(a) Minimum standards of care for persons under 21 years of age who reside in nursing home facilities may be established by the agency, in collaboration with the Division of Children's Medical Services of the Department of Health. A facility may be exempted from these standards and the provisions of paragraph (b) for specified ~~specific~~ persons between 18 and 21 years of

age~~,~~ if the person's physician agrees that minimum standards of care based on age are not necessary.

(b) The following ~~Minimum~~ staffing requirements for persons under 21 years of age who reside in nursing home facilities~~,~~ ~~which~~ apply in lieu of the requirements contained in subsection (3)~~:~~.

1. For persons under 21 years of age who require skilled care:

a. A minimum combined average of 3.9 hours of direct care per resident per day must be provided by licensed nurses, respiratory therapists, respiratory care practitioners, and certified nursing assistants.

b. A minimum licensed nursing staffing of 1.0 hour of direct care per resident per day ~~must be provided~~.

c. Up to ~~No more than~~ 1.5 hours of certified nursing assistant care per resident per day may be counted in determining the minimum direct care hours required.

d. One registered nurse must be on duty on the site 24 hours per day on the unit where children reside.

2. For persons under 21 years of age who are medically fragile:

a. A minimum combined average of 5.0 hours of direct care per resident per day must be provided by licensed nurses, respiratory therapists, respiratory care practitioners, and certified nursing assistants.

b. A minimum licensed nursing staffing of 1.7 hours of direct care per resident per day must be provided.

c. Up to ~~No more than~~ 1.5 hours of certified nursing assistant care per resident per day may be counted in

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determining the minimum direct care hours required.

d. One registered nurse must be on duty on the site 24 hours per day on a ~~the~~ unit where children reside.

(6) Before ~~Prior to~~ conducting a survey of the facility, the survey team shall obtain a copy of the local long-term care ombudsman council report on the facility. Problems noted in the report shall be incorporated into and followed up through the agency's inspection process. This procedure does not preclude the local long-term care ombudsman council from requesting the agency to conduct a followup visit to the facility.

(7) The agency shall, at least every 15 months, evaluate all nursing home facilities and determine ~~make a determination as to~~ the degree of compliance by each licensee with the established rules adopted under this part as a basis for assigning a licensure status to a ~~that~~ facility. The agency shall base its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. In addition to license categories authorized under part II of chapter 408, the agency shall assign a ~~licensure status of~~ standard or conditional licensure status to each nursing home.

(a) A standard licensure status means that a facility has no class I or class II deficiencies and has corrected all class III deficiencies within the time established by the agency.

(b) A conditional licensure status means that a facility, due to the presence of one or more class I or class II deficiencies, or class III deficiencies not corrected within the time established by the agency, is not in substantial compliance at the time of the survey with criteria established under this

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part or with rules adopted by the agency. If the facility has no class I, class II, or class III deficiencies at the time of the followup survey, a standard licensure status may be assigned.

(c) In evaluating the overall quality of care and services and determining whether the facility will receive a conditional or standard license, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, ombudsman council members in the planning and service area in which the facility is located, guardians of residents, and staff of the nursing home facility.

(d) The current licensure status of each facility must be indicated in bold print on the face of the license. A list of the deficiencies of the facility shall be posted in a prominent place that is in clear and unobstructed public view at or near the place where residents are being admitted to that facility. Licensees receiving a conditional licensure status for a facility shall prepare, within 10 working days after receiving notice of deficiencies, a plan for correction of all deficiencies and ~~shall~~ submit the plan to the agency for approval.

(e) The agency shall ~~adopt rules that~~:

1. Establish uniform procedures for the evaluation of facilities.

2. Provide criteria in the areas referenced in paragraph (c).

3. Address other areas necessary for carrying out the intent of this section.

(8) The agency shall ensure ~~adopt rules pursuant to this~~

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~~part and part II of chapter 408 to provide~~ that, if ~~when~~ the criteria established under subsection (2) are not met, such deficiencies shall be classified according to the nature and the scope of the deficiency. The scope shall be cited as isolated, patterned, or widespread. An isolated deficiency is a deficiency affecting one or a very limited number of residents, or involving one or a very limited number of staff, or a situation that occurred only occasionally or in a very limited number of locations. A patterned deficiency is a deficiency in which ~~where~~ more than a very limited number of residents are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same resident or residents have been affected by repeated occurrences of the same deficient practice but the effect of the deficient practice is not found to be pervasive throughout the facility. A widespread deficiency is a deficiency in which the problems causing the deficiency are pervasive in the facility or represent systemic failure that has affected or has the potential to affect a large portion of the facility's residents. The agency shall indicate the classification on the face of the notice of deficiencies as follows:

(a) A class I deficiency is a deficiency that the agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. The condition or practice constituting a class I violation must ~~shall~~ be abated or eliminated immediately, unless a fixed period of time, as determined by the agency, is required for

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correction. A class I deficiency is subject to a civil penalty of $10,000 for an isolated deficiency, $12,500 for a patterned deficiency, and $15,000 for a widespread deficiency. The fine amount is ~~shall be~~ doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure inspection or during an ~~any~~ inspection or complaint investigation since the last licensure inspection. A fine must be levied notwithstanding the correction of the deficiency.

(b) A class II deficiency is a deficiency that the agency determines has compromised a ~~the~~ resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class II deficiency is subject to a civil penalty of $2,500 for an isolated deficiency, $5,000 for a patterned deficiency, and $7,500 for a widespread deficiency. The fine amount is ~~shall be~~ doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure inspection or an ~~any~~ inspection or complaint investigation since the last licensure inspection. A fine shall be levied notwithstanding the correction of the deficiency.

(c) A class III deficiency is a deficiency that the agency determines will result in no more than minimal physical, mental, or psychosocial discomfort to a ~~the~~ resident or has the potential to compromise a ~~the~~ resident's ability to maintain or reach his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and

comprehensive resident assessment, plan of care, and provision of services. A class III deficiency is subject to a civil penalty of $1,000 for an isolated deficiency, $2,000 for a patterned deficiency, and $3,000 for a widespread deficiency. The fine amount is ~~shall be~~ doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure inspection or an ~~any~~ inspection or complaint investigation since the last licensure inspection. A citation for a class III deficiency must specify the time within which the deficiency is required to be corrected. If a class III deficiency is corrected within the time specified, a civil penalty may not be imposed.

(d) A class IV deficiency is a deficiency that the agency determines has the potential for causing no more than a minor negative impact on a ~~the~~ resident. If the class IV deficiency is isolated, no plan of correction is required.

(9) Civil penalties paid by a ~~any~~ licensee under subsection (8) shall be deposited in the Health Care Trust Fund and expended as provided in s. 400.063.

(10) Agency records, reports, ranking systems, Internet information, and publications must be promptly updated to reflect the most current agency actions.

Section 6. Subsection (7) of section 400.474, Florida Statutes, is amended to read:

400.474 Administrative penalties.—

(7) A home health agency shall electronically submit to the agency~~, within 15 days after the end of each calendar quarter,~~ a ~~written~~ report for each 6-month period ending March 31 and September 30.

(a) Each report must include ~~that includes~~ the following data as it ~~they~~ existed on the last day of the reporting period ~~quarter~~:

1.~~(a)~~ The number of insulin-dependent diabetic patients who receive insulin-injection services from the home health agency.

2.~~(b)~~ The number of patients who receive both home health services from the home health agency and hospice services.

3.~~(c)~~ The number of patients who receive home health services from the home health agency.

4.~~(d)~~ The name and license number of each nurse whose primary job responsibility is to provide home health services to patients and who received remuneration from the home health agency in excess of $50,000 ~~$25,000~~ during the reporting period ~~calendar quarter~~.

(b) If the home health agency fails to submit the ~~written quarterly~~ report within 15 days after the end of the applicable reporting period ~~each calendar quarter~~, the agency ~~for Health Care Administration~~ shall impose a fine of $200 per day against the home health agency ~~in the amount of $200 per day~~ until the agency ~~for Health Care Administration~~ receives the report, except that the total fine imposed pursuant to this subsection may not exceed $5,000 per reporting period ~~quarter~~. A home health agency is exempt from submission of the report and the imposition of the fine if it is not a Medicaid or Medicare provider ~~or if it does not share a controlling interest with a licensee, as defined in s. 408.803, which bills the Florida Medicaid program or the Medicare program~~.

Section 7. Subsection (7) of section 400.487, Florida Statutes, is amended to read:

400.487 Home health service agreements; physician's, physician assistant's, and advanced registered nurse practitioner's treatment orders; patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate.—

(7) Home health agency personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. ~~The agency shall adopt rules providing for the implementation of such orders.~~ Home health personnel and agencies are ~~shall~~ not ~~be~~ subject to criminal prosecution or civil liability and are not~~, nor be~~ considered to have engaged in negligent or unprofessional conduct~~,~~ for withholding or withdrawing cardiopulmonary resuscitation pursuant to such ~~an~~ order ~~and rules adopted by the agency~~.

Section 8. Section 400.497, Florida Statutes, is amended to read:

400.497 Rules establishing minimum standards.—The agency may ~~shall~~ adopt~~, publish, and enforce~~ rules to administer ~~implement~~ part II of chapter 408 and this part, including the provider's duties and responsibilities under~~, as applicable,~~ ss. 400.506 and 400.509. Rules shall specify, but are not limited to, ~~which must provide~~ reasonable and fair minimum standards relating to:

(1) The home health aide competency test and home health aide training. The agency shall create the home health aide competency test and establish the curriculum and instructor qualifications for home health aide training. Licensed home health agencies may provide this training and shall furnish

documentation of such training to other licensed home health agencies upon request. Successful passage of the competency test by home health aides may be substituted for the training required under this section and agency ~~any~~ rule ~~adopted pursuant thereto~~.

(2) Shared staffing. ~~The agency shall allow~~ Shared staffing is allowed if the home health agency is part of a retirement community that provides multiple levels of care, is located on one campus, is licensed under this chapter or chapter 429, and otherwise meets the requirements of law and rule.

(3) The criteria for the frequency of onsite licensure surveys.

(4) Licensure application and renewal.

(5) Oversight by the director of nursing, including~~. The agency shall develop rules related to~~:

(a) Standards that address oversight responsibilities by the director of nursing for ~~of~~ skilled nursing and personal care services provided by the home health agency's staff;

(b) Requirements for a director of nursing to provide to the agency, upon request, a certified daily report of the home health services provided by a specified direct employee or contracted staff member on behalf of the home health agency. The agency may request a certified daily report for up to ~~only for a period not to exceed~~ 2 years before ~~prior to~~ the date of the request; and

(c) A quality assurance program for home health services provided by the home health agency.

(6) Conditions for using a recent unannounced licensure inspection for the inspection required under ~~in~~ s. 408.806

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related to a licensure application associated with a change in ownership of a licensed home health agency.

(7) The requirements for onsite and electronic accessibility of supervisory personnel of home health agencies.

(8) Information to be included in patients' records.

(9) Geographic service areas.

(10) Preparation of a comprehensive emergency management plan pursuant to s. 400.492.

~~(a) The Agency for Health Care Administration shall adopt rules establishing minimum criteria for the plan and plan updates, with the concurrence of the Department of Health and in consultation with the Division of Emergency Management.~~

(a) ~~(b)~~ An emergency plan ~~The rules~~ must ~~address the requirements in s. 400.492. In addition, the rules shall~~ provide for the maintenance of patient-specific medication lists that can accompany patients who are transported from their homes.

(b) ~~(c)~~ The plan is subject to review and approval by the county health department. During its review, the county health department shall contact state and local health and medical stakeholders when necessary. The county health department shall complete its review to ensure that the plan is in accordance with the requirements of law ~~criteria in the Agency for Health Care Administration rules~~ within 90 days after receipt of the plan and shall approve the plan or advise the home health agency of necessary revisions. If the home health agency fails to submit a plan or fails to submit the requested information or revisions to the county health department within 30 days after written notification from the county health department, the county health department shall notify the Agency for Health Care

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Administration. The agency shall notify the home health agency that its failure constitutes a deficiency, subject to a fine of $5,000 per occurrence. If the plan is not submitted, information is not provided, or revisions are not made as requested, the agency may impose the fine.

(c) ~~(d)~~ For a ~~any~~ home health agency that operates in more than one county, the Department of Health shall review the plan, after consulting with state and local health and medical stakeholders when necessary. The department shall complete its review within 90 days after receipt of the plan and shall approve the plan or advise the home health agency of necessary revisions. The department shall make every effort to avoid imposing differing requirements on a home health agency that operates in more than one county as a result of differing or conflicting comprehensive plan requirements of the counties in which the home health agency operates.

(d) ~~(c)~~ The requirements in this subsection do not apply to:

1. A facility that is certified under chapter 651 and has a licensed home health agency used exclusively by residents of the facility; or

2. A retirement community that consists of both residential units for independent living and ~~either~~ a licensed nursing home or an assisted living facility~~,~~ and has a licensed home health agency used exclusively by ~~the~~ residents of the retirement community, if~~, provided~~ the comprehensive emergency management plan for the facility or retirement community provides for continuous care of all residents with special needs during an emergency.

Section 9. Paragraph (f) of subsection (12) and subsection

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(17) of section 400.506, Florida Statutes, are amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(12) Each nurse registry shall prepare and maintain a comprehensive emergency management plan that is consistent with the criteria in this subsection and with the local special needs plan. The plan shall be updated annually. The plan shall include the means by which the nurse registry will continue to provide the same type and quantity of services to its patients who evacuate to special needs shelters which were being provided to those patients prior to evacuation. The plan shall specify how the nurse registry shall facilitate the provision of continuous care by persons referred for contract to persons who are registered pursuant to s. 252.355 during an emergency that interrupts the provision of care or services in private residences. Nurse registries may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for a provider to reach its clients. Nurse registries shall demonstrate a good faith effort to comply with the requirements of this subsection by documenting attempts of staff to follow procedures outlined in the nurse registry's comprehensive emergency management plan which support a finding that the provision of continuing care has been attempted for patients identified as needing care by the nurse registry and registered under s. 252.355 in the event of an emergency under this subsection.

~~(f) The Agency for Health Care Administration shall adopt rules establishing minimum criteria for the comprehensive~~

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~~emergency management plan and plan updates required by this subsection, with the concurrence of the Department of Health and in consultation with the Division of Emergency Management.~~

~~(17) The Agency for Health Care Administration shall adopt rules to implement this section and part II of chapter 408.~~

Section 10. Subsection (7) of section 400.509, Florida Statutes, is amended to read:

400.509 Registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.—

~~(7) The Agency for Health Care Administration shall adopt rules to administer this section and part II of chapter 408.~~

Section 11. Subsection (8) of section 400.6095, Florida Statutes, is amended to read:

400.6095 Patient admission; assessment; plan of care; discharge; death.—

(8) The hospice care team may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. ~~The department shall adopt rules providing for the implementation of such orders.~~ Hospice staff are ~~shall~~ not ~~be~~ subject to criminal prosecution or civil liability, nor ~~be~~ considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and applicable rules. The absence of an order to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 12. Section 400.914, Florida Statutes, is amended

to read:

400.914 Rulemaking; ~~Rules establishing~~ standards.—

(1) Pursuant to the intention of the Legislature to provide safe and sanitary facilities and healthful programs, the agency in conjunction with the Division of Children's Medical Services of the Department of Health may ~~shall~~ adopt ~~and publish~~ rules to administer ~~implement the provisions of~~ this part and part II of chapter 408~~, which shall include reasonable and fair standards~~. Any conflict between these rules ~~standards~~ and those established ~~that may be set forth~~ in local, county, or city ordinances shall be resolved in favor of those having statewide effect.

(2) The rules must specify, but are not limited to, reasonable and fair standards relating ~~Such standards shall relate~~ to:

(a) The assurance that PPEC services are family centered and provide individualized medical, developmental, and family training services.

(b) The maintenance of PPEC centers, not in conflict with ~~the provisions of~~ chapter 553 and based upon the size of the structure and number of children, relating to plumbing, heating, lighting, ventilation, and other building conditions, including adequate space, which will ensure the health, safety, comfort, and protection from fire of the children served.

(c) The application of the appropriate provisions of the most recent edition of the "Life Safety Code" (NFPA-101) ~~shall be applied~~.

(d) The number and qualifications of all personnel who have responsibility for the care of the children served.

(e) All sanitary conditions within the PPEC center and its

surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance thereof, which will ensure the health and comfort of children served.

(f) Programs and basic services promoting and maintaining the health and development of the children served and meeting the training needs of the children's legal guardians.

(g) Supportive, contracted, other operational, and transportation services.

(h) Maintenance of appropriate medical records, data, and information relative to the children and programs. Such records shall be maintained in the facility for inspection by the agency.

~~(2) The agency shall adopt rules to ensure that:~~

~~(a) No child attends a PPEC center for more than 12 hours within a 24-hour period.~~

~~(b) No PPEC center provides services other than those provided to medically or technologically dependent children.~~

Section 13. Section 400.9141, Florida Statutes, is created to read:

400.9141 Limitations.—

(1) A child may not attend a PPEC center for more than 12 hours within a 24-hour period.

(2) A PPEC center may provide services only to medically or technologically dependent children.

Section 14. Paragraph (a) of subsection (20) of section 400.934, Florida Statutes, is amended to read:

400.934 Minimum standards.—As a requirement of licensure, home medical equipment providers shall:

(20)(a) Prepare and maintain a comprehensive emergency

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management plan that meets minimum criteria established by agency rule, including criteria for the maintenance of patient equipment and supply lists that accompany patients who are transported from their homes. Such rules shall be formulated in consultation with the Department of Health and the Division of Emergency Management ~~under s. 400.935~~. The plan shall be updated annually and shall provide for continuing home medical equipment services for life-supporting or life-sustaining equipment, as defined in s. 400.925, during an emergency that interrupts home medical equipment services in a patient's home. The plan must ~~shall~~ include:

1. The means by which the home medical equipment provider will continue to provide equipment to perform the same type and quantity of services to its patients who evacuate to special needs shelters which were being provided to those patients before ~~prior to~~ evacuation.

2. The means by which the home medical equipment provider establishes and maintains an effective response to emergencies and disasters, including plans for:

a. Notification of staff when emergency response measures are initiated.

b. Communication between staff members, county health departments, and local emergency management agencies, which includes provisions for a backup communications system.

c. Identification of resources necessary to continue essential care or services or referrals to other organizations subject to written agreement.

d. Contacting and prioritizing patients in need of continued medical equipment services and supplies.

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Section 15. Section 400.935, Florida Statutes, is amended to read:

400.935 Rule authority ~~Rules establishing minimum standards~~.—The agency shall adopt~~, publish, and enforce~~ rules as necessary to implement this part and part II of chapter 408. The rules must specify, but not be limited to, ~~which must provide~~ reasonable and fair minimum standards relating to:

(1) The qualifications and minimum training requirements of all home medical equipment provider personnel.

~~(2) Financial ability to operate.~~

(2)~~(3)~~ The administration of the home medical equipment provider.

~~(4) Procedures for maintaining patient records.~~

(3)~~(5)~~ Ensuring that the home medical equipment and services provided by a home medical equipment provider are in accordance with the plan of treatment established for each patient, when provided as a part of a plan of treatment.

(4)~~(6)~~ Contractual arrangements for the provision of home medical equipment and services by providers not employed by the home medical equipment provider providing for the consumer's needs.

(5)~~(7)~~ Physical location and zoning requirements.

(6)~~(8)~~ Home medical equipment requiring home medical equipment services.

~~(9) Preparation of the comprehensive emergency management plan under s. 400.934 and the establishment of minimum criteria for the plan, including the maintenance of patient equipment and supply lists that can accompany patients who are transported from their homes. Such rules shall be formulated in consultation~~

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~~with the Department of Health and the Division of Emergency Management.~~

Section 16. Subsection (5) of section 400.962, Florida Statutes, is amended to read:

400.962 License required; license application.—

(5) The applicant must agree to provide or arrange for active treatment services by an interdisciplinary team in order to maximize individual independence or prevent regression or loss of functional status. ~~Standards for active treatment shall be adopted by the Agency for Health Care Administration by rule pursuant to ss. 120.536(1) and 120.54.~~ Active treatment services shall be provided in accordance with the individual support plan and shall be reimbursed as part of the per diem rate as paid under the Medicaid program.

Section 17. Subsections (2) and (3) of section 400.967, Florida Statutes, are amended to read:

400.967 Rules and classification of deficiencies.—

(2) ~~Pursuant to the intention of the Legislature,~~ The agency, in consultation with the Agency for Persons with Disabilities and the Department of Elderly Affairs, may ~~shall~~ adopt and enforce rules as necessary to administer this part and part II of chapter 408, which ~~shall~~ include ~~reasonable and fair~~ criteria governing:

(a) The location and construction of the facility; including fire and life safety, plumbing, heating, cooling, lighting, ventilation, and other housing conditions that ensure the health, safety, and comfort of residents. The agency shall establish standards for facilities and equipment to increase the extent to which new facilities, and a new wing or floor added to

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an existing facility after July 1, 2000, are structurally capable of serving as shelters only for residents, staff, and families of residents and staff, and equipped to be self-supporting during and immediately following disasters. The agency shall update or revise the criteria as the need arises. ~~All~~ Facilities must comply with the ~~those~~ lifesafety code requirements and building code standards applicable when ~~at the time of approval of~~ their construction plans are approved. The agency may require alterations to a building if it determines that an existing condition constitutes a ~~distinct~~ hazard to life, health, or safety. The agency may state the ~~shall adopt fair and reasonable rules setting forth~~ conditions under which existing facilities undergoing additions, alterations, conversions, renovations, or repairs are required to comply with the most recent updated or revised standards.

(b) The number and qualifications of all personnel, including management, medical, nursing, and other personnel, having responsibility for any part of the care given to residents.

(c) ~~All~~ Sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, which ~~will~~ ensure the health and comfort of residents.

(d) ~~The~~ Equipment essential to the health and welfare of the residents.

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and the assessment ~~measurement~~ of the quality and adequacy thereof.

(g) The preparation and annual update of a comprehensive

emergency management plan. After consultation with the Division of Emergency Management, the agency may establish ~~shall adopt rules establishing~~ minimum criteria for ~~the plan after consultation with the Division of Emergency Management. At a minimum, the rules must provide for~~ plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During the ~~its~~ review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Agency for Health Care Administration, and the Division of Emergency Management. ~~Also,~~ Appropriate volunteer organizations must also be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and ~~either~~ approve the plan or advise the facility of necessary revisions.

(h) The use of restraint and seclusion. Such criteria ~~rules~~ must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and

after incidents of restraint or seclusion, including individualized plans for the use of restraints or seclusion in emergency situations; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; establish requirements for facility data collection and reporting relating to the use of restraint and seclusion; and establish procedures relating to the documentation of the use of restraint or seclusion in the client's facility or program record.

(3) If ~~The agency shall adopt rules to provide that, when~~ the criteria established under this part and part II of chapter 408 are not met, such deficiencies shall be classified according to the nature of the deficiency. The agency shall indicate the classification on the face of the notice of deficiencies as follows:

(a) Class I deficiencies are those which the agency determines present an imminent danger to ~~the~~ residents or guests of the facility or a substantial probability that death or serious physical harm will ~~would~~ result therefrom. The condition or practice constituting a class I violation must be abated or eliminated immediately, unless the agency determines that a fixed period of time~~, as determined by the agency,~~ is required for correction. A class I deficiency is subject to a civil penalty in an amount of at least ~~not less than~~ $5,000 but not more than ~~and not exceeding~~ $10,000 for each deficiency. A fine may be levied notwithstanding the correction of the deficiency.

(b) Class II deficiencies are those which the agency determines have a direct or immediate relationship to the health, safety, or security of ~~the~~ facility residents but do not

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meet the criteria established for~~, other than~~ class I deficiencies. A class II deficiency is subject to a civil penalty in an amount of at least ~~not less than~~ $1,000 and not more than ~~not exceeding~~ $5,000 for each deficiency. A citation for a class II deficiency must ~~shall~~ specify the time within which the deficiency must be corrected. If a class II deficiency is corrected within the time specified, a ~~no~~ civil penalty may not ~~shall~~ be imposed, unless it is a repeated offense.

(c) Class III deficiencies are those which the agency determines to have an indirect or potential relationship to the health, safety, or security of ~~the~~ facility residents but do not meet the criteria for~~, other than~~ class I or class II deficiencies. A class III deficiency is subject to a civil penalty of at least ~~not less than~~ $500 and not more than ~~exceeding~~ $1,000 for each deficiency. A citation for a class III deficiency must ~~shall~~ specify the time within which the deficiency must be corrected. If a class III deficiency is corrected within the time specified, a ~~no~~ civil penalty may not ~~shall~~ be imposed, unless it is a repeated offense.

Section 18. Subsection (2) of section 400.980, Florida Statutes, is amended to read:

400.980 Health care services pools.—

(2) The requirements of part II of chapter 408 apply to the provision of services that require licensure or registration pursuant to this part and part II of chapter 408 and to entities registered by or applying for such registration from the agency pursuant to this part. Registration or a license issued by the agency is required for the operation of a health care services pool in this state. In accordance with s. 408.805, an applicant

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or licensee shall pay a fee for each license application submitted using this part, part II of chapter 408, and applicable rules. The agency shall ~~adopt rules and~~ provide forms required for such registration and shall impose a registration fee in an amount sufficient to cover the cost of administering this part and part II of chapter 408. In addition to the requirements in part II of chapter 408, the registrant must provide the agency with any change of information contained on the original registration application within 14 days before ~~prior to~~ the change.

Section 19. Subsection (43) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. part 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to

minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the

provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(43) Subject to the availability of funds, the agency shall mandate a recipient's participation in a provider lock-in program, when appropriate, if a recipient is found by the agency to have used Medicaid goods or services at a frequency or amount not medically necessary, limiting the receipt of goods or services to medically necessary providers after the 21-day appeal process has ended, for at least ~~a period of not less than~~ 1 year. The lock-in programs must ~~shall~~ include, but are not limited to, pharmacies, medical doctors, and infusion clinics. The limitation does not apply to emergency services and care provided to the recipient in a hospital emergency department. The agency shall seek any federal waivers necessary to implement this subsection. ~~The agency shall adopt any rules necessary to~~

~~comply with or administer this subsection.~~ This subsection expires October 1, 2014.

Section 20. Subsection (13) of section 409.962, Florida Statutes, is amended to read:

409.962 Definitions.—As used in this part, except as otherwise specifically provided, the term:

(13) "Provider service network" means an entity qualified pursuant to s. 409.912(4)(d) of which a controlling interest is owned by a health care provider, or group of ~~affiliated~~ providers affiliated for the purpose of providing health care, or a public agency or entity that delivers health services. Health care providers include Florida-licensed health care practitioners ~~professionals~~ or licensed health care facilities, federally qualified health care centers, and home health care agencies.

Section 21. Paragraph (e) of subsection (2) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(2) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(e) Medicaid recipients enrolled in the home and community based services waiver pursuant to chapter 393, ~~and~~ Medicaid recipients waiting for waiver services, and Medicaid recipients under the age of 21 who are not receiving waiver services but are authorized by the Agency for Persons with Disabilities or the Department of Children and Families to reside in a group home facility licensed pursuant to chapter 393.

Section 22. Subsection (1) of section 409.974, Florida Statutes, is amended to read:

409.974 Eligible plans.—

(1) ELIGIBLE PLAN SELECTION.—The agency shall select and contract with eligible plans through the procurement process described in s. 409.966. The agency shall notice invitations to negotiate by ~~no later than~~ January 1, 2013.

(a) The agency shall procure and contract with two plans for Region 1. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.

(b) The agency shall procure and contract with two plans for Region 2. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.

(c) The agency shall procure and contract with at least three plans and up to five plans for Region 3. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(d) The agency shall procure and contract with at least three plans and up to five plans for Region 4. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(e) The agency shall procure and contract with at least two plans and up to four plans for Region 5. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(f) The agency shall procure and contract with at least four plans and up to seven plans for Region 6. At least one plan

must be a provider service network if any provider service networks submit a responsive bid.

(g) The agency shall procure and contract with at least three plans and up to six plans for Region 7. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(h) The agency shall procure and contract with at least two plans and up to four plans for Region 8. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(i) The agency shall procure and contract with at least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(j) The agency shall procure and contract with at least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(k) The agency shall procure and contract with at least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

If no provider service network submits a responsive bid, the agency shall procure up to ~~no more than~~ one less than the maximum number of eligible plans permitted in that region and, ~~.~~ within the next 12 months after the initial invitation to negotiate, shall issue an invitation to negotiate in order ~~the agency shall attempt~~ to procure and contract with a provider

service network. In a region in which the agency has contracted with only one provider service network and changes in the ownership or business structure of the network result in the network no longer meeting the definition of a provider service network under s. 409.962, the agency must, within the next 12 months, terminate the contract, provide ~~shall~~ notice of another invitation to negotiate, and procure and contract ~~only~~ with a provider service network in that region ~~networks in those regions where no provider service network has been selected~~.

Section 23. Subsection (4) of section 429.255, Florida Statutes, is amended to read:

429.255 Use of personnel; emergency care.—

(4) Facility staff may withhold or withdraw cardiopulmonary resuscitation or the use of an automated external defibrillator if presented with an order not to resuscitate executed pursuant to s. 401.45. ~~The department shall adopt rules providing for the implementation of such orders.~~ Facility staff and facilities are ~~shall~~ not ~~be~~ subject to criminal prosecution or civil liability, nor ~~be~~ considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation or use of an automated external defibrillator pursuant to such an order ~~and rules adopted by the department~~. The absence of an order to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation or use of an automated external defibrillator as otherwise permitted by law.

Section 24. Subsection (3) of section 429.73, Florida Statutes, is amended to read:

429.73 Rules and standards relating to adult family-care

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

homes.—

(3) ~~The department shall adopt rules providing for the implementation of orders not to resuscitate.~~ The provider may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The provider is ~~shall~~ not ~~be~~ subject to criminal prosecution or civil liability, nor ~~be~~ considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order ~~and applicable rules~~.

Section 25. Subsection (10) of section 440.102, Florida Statutes, is amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(10) RULES.—~~The Agency for Health Care Administration shall adopt rules~~ Pursuant to s. 112.0455, part II of chapter 408, and using criteria established by the United States Department of Health and Human Services, the agency shall adopt rules ~~as general guidelines~~ for ~~modeling~~ drug-free workplace laboratories, including ~~concerning~~, but not limited to:

(a) Standards for licensing drug-testing laboratories and suspension and revocation of such licenses.

(b) Urine, hair, blood, and other body specimens and minimum specimen amounts that are appropriate for drug testing.

(c) Methods of analysis and procedures to ensure reliable drug-testing results, including standards for initial tests and confirmation tests.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(d) Minimum cutoff detection levels for each drug or metabolites of such drug for the purposes of determining a positive test result.

(e) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested.

(f) Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

Section 26. Subsection (2) of section 483.245, Florida Statutes, is amended to read:

483.245 Rebates prohibited; penalties.—

(2) The agency may establish and ~~shall adopt rules that~~ assess administrative penalties for acts prohibited by subsection (1). If ~~In the case of~~ an entity is licensed by the agency, such penalties may include any disciplinary action available to the agency under the appropriate licensing laws. If ~~In the case of~~ an entity is not licensed by the agency, such penalties may include:

(a) A fine not to exceed $1,000;

(b) If applicable, a recommendation by the agency to the appropriate licensing board that disciplinary action be taken.

Section 27. Subsections (1) and (2) of section 765.541, Florida Statutes, are amended to read:

765.541 Licensure ~~Certification~~ of procurement organizations; agency responsibilities.—The agency shall:

(1) Establish a program for the licensure ~~certification~~ of organizations, corporations, or other entities engaged in the procurement of organs, tissues, and eyes within the state for transplantation.

(2) Adopt rules as necessary to implement ~~that set forth~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~appropriate standards and guidelines for the program in accordance with~~ ss. 765.541-765.546 and part II of chapter 408. ~~These~~ Standards and guidelines for the program adopted by the agency must be substantially based on the ~~existing~~ laws of the Federal Government and this state, and the ~~existing~~ standards and guidelines of the Organ Procurement and Transplantation Network (OPTN), the Association of Organ Procurement Organizations (AOPO)~~United Network for Organ Sharing (UNOS), the American Association of Tissue Banks (AATB), the South-Eastern Organ Procurement Foundation (SEOPF), the North American Transplant Coordinators Organization (NATCO)~~, and the Eye Bank Association of America (EBAA). ~~In addition, the agency shall, before adopting these standards and guidelines, seek input from all procurement organizations based in this state.~~

Section 28. Subsection (2) of section 765.544, Florida Statutes, is amended to read:

765.544 Fees; organ and tissue donor education and procurement.—

~~(2) The agency shall specify by rule the administrative penalties for the purpose of ensuring adherence to the standards of quality and practice required by this chapter, part II of chapter 408, and applicable rules of the agency for continued certification.~~

Section 29. This act shall take effect July 1, 2014.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 15, 2014

I respectfully request that **Senate Bill # 1354, 1254 and 1066** be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22
Meeting Date

Topic Home Health accreditation Bill Number 1254 *(if applicable)*

Name Drew Smith Amendment Barcode 119536 *(if applicable)*

Job Title

Address 200 W College Ave *Street*
Tall FL 32301 *City State Zip*

Phone 850 251 2680

E-mail Drew@Smith Smith.net

Speaking: [X] For [ ] Against [ ] Information

Representing Home Care Association of America

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1260 (722116)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Brandes and Soto
SUBJECT:	Insurance
DATE:	April 21, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1260 enacts the following changes related to insurance:

- Revises insurance agency licensure application requirements;
- Revises the criteria for establishing a not-for-profit self-insurance fund;
- Allows an insurance agency license to continue in force until cancelled, suspended, revoked or terminated;
- Creates a license for unaffiliated insurance agents;
- Expands the scope limited licenses to transact motor vehicle rental insurance issued to a business entity that offers motor vehicles for rent or lease;
- Provides the Department of Financial Services (DFS) with additional authority to regulate mediators, navigators, and sinkhole neutral evaluators;
- Provides the DFS with an additional ground to deny, suspend, revoke, or refuse to renew a license for an insurance agent, adjuster, customer or service representative, or managing general agent;
- Revises the application for a certificate of authority to be an insurance administrator;
- Allows an insurer to use a qualified third party to conduct required reviews of an insurance administrator;
- Allows annual financial statements of insurance administrators to cover the prior fiscal year;
- Repeals the requirement that surplus lines agents file an affidavit with the Florida Surplus Lines Service Office (FSLSO);

- Includes using a straight average of hurricane model results or output ranges as factors the Office of Insurance Regulation (OIR) must consider in a rate filing;
- Permits the OIR to approve a premium discount to rates for liability, personal injury protection, and collision coverages for motor vehicle policies for vehicles with electronic vehicle crash avoidance technology;
- Increases from 60 days to 180 days the time an insurer is not required to use the newest version of an approved hurricane model;
- Allows motor vehicle insurance rating territories to encompass a single zip code;
- Allows workers' compensation insurance retrospective rating plans that provide for negotiation of rating factors between the insurer and employer in specified instances;
- Allows the Florida Workers' Compensation Joint Underwriting Association to retain dividends that are not paid to former insureds;
- Prohibits insurers from denying residential property insurance claims on the basis of credit information that is publicly available if the insurance policy has been effective for more than 90 days;
- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal and commercial lines residential property insurance policies;
- Authorizes a licensed company adjuster to provide the sworn statement of liability insurance coverage required by current law;
- Deletes the requirement that representatives of an insurer must provide at least 48 hours' notice to the insured before scheduling a meeting or conducting an onsite inspection of the insured property;
- Allows motor vehicle insurers to electronically transfer unearned premium to a policyholder who cancels a motor vehicle insurance policy;
- Allows a policyholder to elect electronic delivery of policy documents;
- Allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium;
- Requires an insurance agent recommending the surrender of an annuity or life insurance policy with a cash value, but is not recommending the proceeds be used to fund another life insurance or annuity product, to provide specified disclosures;
- Creates conflict of interest standards for appraisers in residential property insurance claims;
- Specifies instances when an insurer need not provide notice of the availability of sinkhole neutral evaluation;
- Clarifies that the annual update to the Personal Injury Protection medical fee schedule applies until the last day of February in the following year;
- Creates exemptions to the required preinsurance inspection of private passenger motor vehicles;
- Changes the date by which title insurers and title insurance agencies must annually submit financial data to the Office of Insurance Regulation (OIR);
- Expands the risks industrial insured captive insurance companies may insure;
- Revises requirements related to the acquisition of controlling stock in an insurer; and
- Provides exceptions to certain financial requirements applicable to service warranty associations.

II. Present Situation:

Not-For-Profit Self-Insurance Funds

Section 624.4625, F.S., provides that two or more not-for-profit corporations located and organized under Florida law may form a self-insurance fund. The purpose of the self-insurance fund must be to pool and spread the property and casualty liabilities of group members. The fund must meet a number of requirements including:

- Annual normal premiums in excess of $5 million;
- Each participating member receiving at least 75 percent of its revenues from local, state, and federal governmental sources;
- Use of a qualified actuary to determine actuarially sound rates and adequate reserves;
- Maintaining excess insurance coverage;
- Submitting annually audited financial statements; and
- Other requirements set forth under the statute.

Licensing of Insurance Agents Selling Motor Vehicle Rental Insurance

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the DFS to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.[1]

Limited lines insurance agents are individuals, or in some cases entities, licensed as insurance agents but limited to selling one or more of the following forms of insurance (each requiring a separate license):

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit insurance;
- Crop hail and multiple-peril crop insurance;
- In-transit and storage personal property insurance; and
- Portable electronics insurance.[2]

A limited lines insurance agent license generally has fewer requirements for licensing than other insurance agents. These licensees must, however, file an application with the DFS and be appointed by an insurance company.

Department of Financial Services

The DFS licenses insurance agencies and agents. The DFS Division of Agent and Agency Services receives licensing applications, issues licenses, and investigates violations of the

[1] s. 626.112, F.S.
[2] s. 626.321, F.S.

Insurance Code.[3] In order to transact insurance, a person must be licensed by the DFS and appointed by an insurer to transact insurance on its behalf.[4] If an agent fails to maintain an appointment during a four-year period, the agent's license expires and the agent must qualify as a first time applicant before transacting insurance.[5]

Section 624.310, F.S., gives the DFS the authority to initiate administrative proceedings to seek cease and desist orders, to seek the removal of affiliated parties, to impose administrative fines, and to suspend or revoke licenses. Any service of documents authorized or required by s. 624.310, F.S., must be made by certified mail, personal delivery, or by service of process in accordance with ch. 48, F.S. Section 624.310, F.S., does not allow for service by electronic mail.

Insurance Agency Licensure and Registration

The DFS is responsible for licensing insurance agencies in accordance with s. 626.172, F.S. An application for licensure must be signed by the owner of the agency.[6] Insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.[7]

Each place of business where an agent transacts insurance must have an agency license.[8] Section 626.747, F.S., requires a licensed insurance agent to be at each branch location where activities requiring licensure as an insurance agent occur. Such an agent is commonly referred to as the "agent in charge."

Section 626.112(7), F.S., provides that agencies existing prior to January 1, 2003, are allowed to file an application for registration in lieu of applying for licensure. A benefit of registration over licensing is that registrations do not expire, whereas licenses expire every three years.[9] The DFS staff indicates that Florida is the only state that registers insurance agencies in lieu of licensing them and that many registered agencies are seeking licensure.[10]

Insurance Agents

A "general lines agent" is an agent who transacts property insurance, casualty insurance, surety insurance, certain types of health insurance, and marine insurance.[11] A "customer representative" means an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.[12] A "limited customer representative" is a customer representative appointed by a general lines agent or

[3] The Division of Agent and Agency Services website is found at http://www.myfloridacfo.com/Division/Agents/#.UxnmwPldUeG (last accessed March 7, 2013).
[4] *See* ss. 626.015(3) and 626.112 F.S.
[5] *See* s. 626.431, F.S.
[6] *See* s. 626.172(2), F.S.
[7] *See* s. 626.112(7), F.S.
[8] *See* s. 626.112(7), F.S.
[9] *See* s. 626.382, F.S.
[10] Interview with DFS staff, March 7, 2014.
[11] *See* s. 626.015(5), F.S.
[12] *See* s. 626.015(4), F.S.

agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency.[13]

Regulation of Navigators

In 2010, the federal Patient Protection and Affordable Care Act became law. The act created "navigators" to aid consumers in selecting a health plan. Part XIII of ch. 626, F.S., requires navigators to register with the DFS and provides a registration process for navigators.[14] Section 626.9957, F.S., provides disciplinary rules for navigators and grounds for the denial of registration.

Alternative Dispute Resolution Programs

The DFS administers alternative dispute programs for various types of insurance and has mediation programs for property insurance[15] and automobile insurance[16] claims. The DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[17] The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.[18]

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.[19] In addition, an applicant must complete a training program approved by the DFS.[20]

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by the DFS and who is determined by the DFS to be fair and impartial.[21] According to an analysis provided by the DFS,[22] the number of reported mediations and neutral evaluations is:

	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013
Mediations	3,489	3,323	3,966
Neutral Evaluations	2,245	2,681	1,867

[13] *See*. s. 626.015(11), F.S.
[14] http://www.myfloridacfo.com/Division/Agents/Industry/News/Navigators.htm#.UxsW4vldUeE (last accessed March 8, 2014).
[15] *See* s. 627.7015, F.S.
[16] *See* s. 626.745, F.S.
[17] *See* s. 627.7074, F.S.
[18] *See* ss. 627.7015, 627.7074, and 627.745, F.S.
[19] *See* ss. 627.7015, 627.745(3), F.S.
[20] *See* ss. 627.7015, 627.745(3), F.S.
[21] *See* s. 627.706, F.S.
[22] *See* Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014) (on file with the Committee on Banking and Insurance).

The DFS does not have the explicit authority to investigate, remove, or discipline mediators and neutral evaluators.

Public Adjuster and Insurance Adjuster Notice Requirements for Residential Property Insurance Claims

Section 626.854, F.S., defines a public adjuster as any person[23] who is compensated for aiding an insured or third-party claimant to file an insurance claim or negotiate the settlement of an insurance claim.[24] Section 626.854(6), F.S., prohibits public adjusters from initiating contact or contracting with an insured or claimant regarding a residential property insurance claim until at least 48 hours after the event that is the basis of the claim occurs. The Florida Supreme Court, however, ruled the 48 hour prohibition an unconstitutional regulation of commercial speech in a 2012 decision.[25] Section 626.854(14), F.S., contains a corresponding requirement that adjusters, investigators and attorneys representing insurers must provide the claimant or claimant's representative at least 48 hours' notice prior to scheduling a meeting with the claimant or inspecting the insured property. This requirement remains effective under Florida law.

Insurance Administrators

An insurance administrator is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with an insurance policy. To operate as an insurance administrator, a person must obtain a certificate of authority to act as an administrator from the Office of Insurance Regulation.[26] An insurer who utilizes an insurance administrator must at least semiannually conduct a review of the operations of an administrator that administers more than 100 certificateholders of that insurer.[27] An administrator must have a written agreement between itself and each insurer for which it performs administrative functions.[28] Administrators must also file an annual financial statement with the OIR containing the administrator's financial condition, transactions, and affairs no later than March 1 of each year.[29]

Surplus Lines Agent Affidavit

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents. Before a surplus lines insurance agent can place insurance in the surplus lines market, s. 626.916, F.S., requires the insurance agent to make a diligent effort to procure the desired coverage from admitted insurers. Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace

[23] Other than an attorney at law.
[24] Licensed health care providers or their employees who prepare or file health insurance claims on behalf of patients are excluded from the definition, as are any person who files a health insurance claim on behalf of another and does so without compensation.
[25] *Atwater v. Kortum*, 95 So.3d 85 (Fla. 2012).
[26] S. 626.8805, F.S.
[27] S. 626.8817, F.S.
[28] S. 626.882, F.S.
[29] S. 626.89, F.S.

the property insured is $1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or Office) within 30 days of the effective date of the transaction. They must also transmit service fees to the Office each month, and must transmit assessment and tax payments to the Office quarterly.

Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FSLSO. The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.

Hurricane Loss Projection Models

The Florida Commission on Hurricane Loss Projection Methodology (Commission) was established by the Legislature to serve as an independent body to provide expert evaluation of computer models that project hurricane losses.[30] The Commission is assigned to the State Board of Administration. The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include:[31]

- The Insurance Consumer Advocate;
- The person responsible for FHCF operations;
- The Executive Director of Citizens Property Insurance Corporation;
- The Director of Emergency Management;
- An actuary member from the FHCF Advisory Council;
- An actuary employed by the OIR;
- An appointment by the state Chief Financial Officer who is an actuary employed with a property and casualty insurer;
- An appointment by the state Chief Financial Officer who is an insurance finance expert and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is a statistics expert in meteorology and who is a full-time faculty member in the State University System; and
- An appointment by the state Chief Financial Officer who is an expert in computer system design and who is a full-time faculty member in the State University System.

The Commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. Only hurricane loss models or methods that the Commission has found to be accurate can be used by insurers to estimate the hurricane losses that are used to set property insurance rates. After the Commission finds a model to be accurate, an insurer has 60 days to use the model to predict the insurer's probable maximum loss "with respect to a rate filing."[32]

[30] See s. 627.0628, F.S.
[31] S. 627.0628(2) (b), F.S.
[32] S. 627.0628(3) (d), F.S.

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.062, F.S., is Florida's rating law. Among other requirements, it provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory. Insurer rate filings that comply with the law and are adequately supported by actuarial justification must be accepted by the OIR. Pursuant to s. 627.0651, F.S., the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited.

Premium Discounts for Motor Vehicle Insurance

Section 627.0653, F.S., sets forth motor vehicle insurance discounts that insurers must offer for specified motor vehicle equipment. Insurers are required to provide a premium discount for liability, personal injury protection (PIP), and collision coverages if the insured vehicle is equipped with factory-installed, four-wheel antilock brakes. A premium discount on comprehensive coverage must be provided for an antitheft device or vehicle recovery system that is factory installed or approved by the OIR. Discounts must be provided on PIP and medical payments coverage if a vehicle has one or more factory installed airbags. The statute also allows, but does not require, insurers to provide a discount on comprehensive coverage for permanent etching of the vehicle identification number on all windows of the vehicle. Section 627.0652, F.S., requires insurers to provide a discount to insureds age 55 years or older who successfully complete a motor vehicle accident prevention course approved by the Department of Highway Safety and Motor Vehicles.

Workers' Compensation Retrospective Rating Plans

Florida law requires every workers' compensation insurer to file with the OIR its rates and classifications that the insurer proposes to use.[33] Section 627.072, F.S., prescribes factors used in the determination of rates. Section 627.091(1), F.S., requires every insurer to file with the OIR every manual of classifications, rules, and rates, and every rating plan, which it proposes to use. Rate filings for workers' compensation are subject to approval by the OIR before they become effective. The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.[34]

Current Florida law and the rating plans approved by OIR allow for various ways for insurers to compete in the market by varying or adjusting premiums, including retrospective (retro) rating plans that adjust the premium at the end of the policy period to reflect the actual loss experience of the employer. In a retro rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred in the policy period. The insurer and employer negotiate on certain expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation

[33] Section 627. 091(4), F.S., allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf. The law expressly provides that an insurer is not required to be a member of any rating organization, but all workers' compensation insurers in Florida have chosen to do so. Currently, all workers' compensation insurers are members of the National Council on Compensation Insurance.
[34] Section 627.062, F.S.

rating for over 50 years in Florida and nationwide. The National Council on Compensation Insurance (NCCI) has filed actuarially sound rating plans.

In 1991, the NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida. The LRARO was described as providing greater flexibility of negotiation between an insurer and employer for risks with over $1,000,000 in standard premium." In 1991, the Department of Insurance (predecessor of the Office of Insurance Regulation) disapproved the use of the LRARO on the basis that it did not comply with s. 627.091(1), F.S., and that the LRARO was not a rating plan but an agreement to use any factors acceptable to both parties.[35] Subsequently, in 1993, an insurer filed its own version of the LRARO and the Department of Insurance disapproved it. The rejection of the plan was primarily on the basis that the use of the LRARO would not allow agency oversight as to the determination of premiums since it proposed to allow the insurer and prospective insureds to agree unilaterally on the components to be used in the rating process.[36] The insurer appealed the disapproval to the Division of Administrative Hearings (DOAH) and DOAH found that the Department of Insurance was justified in disapproving the plan.

Currently, the LRARO plans are available in the majority of the states. However, Alaska, Arkansas, Florida, and Nebraska do not allow its use.[37] The NCCI retro plan rule, which does not apply in Florida, provides that an insured is eligible for the LRARO if the estimated standard premium individually or in any combination with any other commercial casualty lines of insurance exceeds an annual standard premium eligibility threshold of $500,000 for the term of a retrospective rating plan. The following table provides examples of states with different annual standard premium eligibility thresholds for LRARO.[38]

LRARO Premium Eligibility Threshold	
State	**Annual Standard Premium**
Arizona	$250,000
Kansas	$1,000,000
Minnesota	$250,000
Nevada	$250,000
New Hampshire	$250,000
North Carolina	$250,000

[35] *See Liberty Mutual Insurance Company, et. al., v. State of Florida, Department of Insurance, Case No. 94-0892 (Fla. DOAH 1994).*
[36] *Id.*
[37] E-mail from Lori Lovgren, NCCI (Mar. 4, 2014) (on file with Senate Committee on Banking and Insurance).
[38] *Id.*

Refunds to Insureds from the Workers' Compensation Joint Underwriting Association

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA)[39] is the market of last resort for workers' compensation and employers' liability coverage. Only employers that cannot find coverage in the voluntary market are eligible for coverage in the FWCJUA. At the end of October 2013, the FWCJUA had 1,636 policies with corresponding premiums of $29.4 million.[40]

The FWCJUA has a three-tier rating plan. As a brief overview, Tier 1 is for employers with good loss experience; Tier 2 is for employers with moderate loss experience and non-rated new employers; and Tier 3 is for employers not eligible for Tiers 1 or 2.[41] As of January 1, 2014, the premium for Tier 1 is five percent above voluntary rates, Tier 2 is 20 percent above voluntary rates, and Tier 3[42] is 75 percent above voluntary rates. Additionally, all three tiers have a flat surcharge of $475. Tier 3 policies are also subject to assessment if premiums are not sufficient to cover losses and expenses.

Misrepresentations on Insurance Applications and Cancellation of Insurance Policies

Section 627.409, F.S., provides recovery under an insurance policy may be prevented if a misrepresentation, omission, concealment of fact, or incorrect statement on an application for insurance (1) is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer or (2) if the true facts had been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss. If an insurer discovers a misrepresentation or omission after issuing the policy, it may deny coverage after a claim is made. In *Nationwide Mutual Fire Insurance Company v. Kramer*,[43] an insurer refused to pay a claim for a stolen automobile because the insureds did not disclose a previous bankruptcy filing. In *Kieser v. Old Line Insurance Company of America*,[44] an insurance company refused to pay a life insurance policy because the insured failed to disclose certain health conditions and failed to disclose that he was shopping for other life insurance policies. In *Universal Property and Casualty Insurance Company v. Johnson*,[45] an insurance company refused to pay a property insurance claim because the insureds failed to disclose prior criminal history. A misrepresentation from or an omission in an insurance application need not be intentional in order for the insurance company to deny recovery.[46]

Section 627.4133(2), F.S., requires notice to the insured before an insurer can cancel, nonrenew, or terminate any personal lines or commercial residential property insurance policy. The timing

[39] The Florida Workers' Compensation Insurance Plan (FWCIP) was the residual market for Florida until the FWCJUA was created on January 1, 1994.
[40] *See* "2013 Workers' Compensation Annual Report," Florida Office of Insurance Regulation (December 31, 2013). Available at: http://www.floir.com/search/search.aspx#2013 workers compensation annual report (Last accessed March 21, 2014).
[41] For further specifics, see the FWCJUA's website: http://www.fwcjua.com/.
[42] In addition, an Assigned Risk Adjustment Program (ARAP) surcharge applies for Tier 3.
[43] 725 So.2d 1141 (Fla. 2d DCA 1998).
[44] 712 So.2d 1261 (Fla. 1st DCA 1998).
[45] 114 So.3d 1031 (Fla. 1st DCA 2013).
[46] *Universal Property and Casualty Insurance Company*, 114 So.3d at 1035.

of the notice ranges from ten days for nonpayment of premium to 120 days for certain policyholders.[47] After the policy has been in effect for 90 days, such a policy cannot be canceled unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy.[48] According to the DFS, there are instances of insurance companies reviewing a policyholder's application for insurance after a claim has been filed and denying coverage based on misrepresentations about credit history.[49]

Notice of Cancellation or Nonrenewal

The requirements for an insurer to give notice of cancelling or nonrenewing a residential property insurance policy are contained in s. 627.4133(2), F.S. The specific notice depends on the particular circumstances of the policy being nonrenewed, as follows:

- Generally, an insurer must give the insured 100 days written notice of nonrenewal or cancellation;
- For any nonrenewal or cancellation that would be effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days, whichever is earlier;
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;
- If the insured structure has been insured by the insurer or an affiliate for at least five years, the insurer must give 120 days' notice of nonrenewal or cancellation;
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;
- If the OIR finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days' written notice of cancellation or nonrenewal;
- If a policy covers both home and motor vehicle, the insurer must give the insured 100 days written notice of nonrenewal.

Required Disclosures by Liability Insurers

Under current law, a liability insurer must provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to the such insurer at the time of filing such statement; and

[47] *See* s. 627.4133(2), F.S.
[48] *Id*.
[49] *See* Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014)(on file with the Committee on Banking and Insurance).

- A copy of the policy.

Further, the above statement must be under oath by a corporate officer or the insurer's claims manager or superintendent.

Delivery of Insurance Policies Electronically

Section 627.421, F.S., requires every insurance policy[50] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed. The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[51] Insurance is specifically included in E-SIGN.[52] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. The UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

In 2013, legislation[53] was enacted allowing all insurance policies to be electronically transmitted to the policyholder. The legislation also contained specific electronic delivery parameters for insurance covering commercial risks.

Change of Policy Terms in Insurance Policies

An insurer must give the policyholder written Notice of Change in Policy Terms with the policy renewal notice to make a change in the terms of a property and casualty insurance contract. Additionally, the notice must comply with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date.[54] A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

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[50] s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)
[51] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.
[52] *Id.*
[53] Ch. 2013-190, L.O.F.
[54] s. 627.43141, F.S.

Mitigation Discount Verification for Citizens Property Insurance Corporation

Since 2003, insurers have been required to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.[55] Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed.

Typically, policyholders are responsible for substantiating to their insurers that the insured property has mitigation features. Policyholders submit a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form.

Insurers can require mitigation forms provided to the insurer by mitigation inspectors or mitigation inspection companies be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.[56] At their expense, insurers can also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents.

Personal Injury Protection Insurance (PIP)

In 2012, the Legislature enacted HB 119,[57] making substantial changes to laws applying to Florida's PIP requirements. Among numerous other changes, the bill amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The new provision states, in part:

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered…and the applicable fee schedule or payment limitation applies throughout the remainder of that year….

The above language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied just to the end of the calendar year or applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[58] stating that the plain language of the section requires the fee schedule in place on March 1, to apply throughout the following 365 days, or until March 1, of the following year.

[55] s. 627.0629(1)(a), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).
[56] s. 627.711(8), F.S.
[57] Ch. 2012-151, L.O.F.
[58] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx. Last visited March 16, 2013.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, used motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title and certain other documentation. Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

Title Insurance

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance. Pursuant to s. 627.782, F.S., the Financial Services Commission (FSC) is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years. Title insurers and title insurance agencies are required to submit to the Office of Insurance Regulation (OIR), on or before March 31st of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

Model Holding Company Act and Regulations

For years, the OIR's financial oversight authority has included a review of transactions among affiliates and members of insurance holding companies by adopting the National Association of Insurance Commissioners' (NAIC) Model Insurance Holding Company Act.

In response to the recent financial crisis, the NAIC's Solvency Modernization Initiative (SMI)[59] studied key group supervision issues for insurance holding company systems. In light of the 2008 liquidity crisis and collapse of American International Group, Inc., the SMI's efforts focused on the risks and activities of non-insurance entities within insurance holding companies, concluded there was a corresponding regulatory need to obtain affiliates' financial information, such as enterprise risk. The NAIC model act defines "enterprise risk" as:

> [A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.[60]

[59] NAIC Solvency Modernization Initiative (last viewed February 3, 2014), at http://www.naic.org/index_smi.htm
[60] Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

As a result, the NAIC adopted revisions to its *Model Insurance Holding Company System Regulatory Act and Regulations* in December 2010**,** which states must adopt as an accreditation component. These revisions include:

- Expansions to regulators' ability to evaluate any entity within an insurance holding company system;
- Enhancements to the regulator's rights to access books and records and to compel production of information;
- Establishment of expectation of funding with regard to regulator participation in supervisory colleges;
- Enhancements in corporate governance, such as board of directors and senior management responsibilities;
- The inclusion of financial statements as part of an affiliate's registration requirements; and
- Enterprise risk reporting requirements.

Currently, s. 628.461, F.S., provides that a person or affiliated person[61] must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire five percent or more of a domestic stock insurer or of a controlling company. The statute also sets forth the information required to be disclosed in the statement, which includes criminal and regulatory history information. Alternatively, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent).

During the pendency of the OIR's review of an acquisition filing, the insurer is not permitted to make a "material change" to its operation or management, unless the OIR has approved or been notified, respectively. A "material change" consists of a disposal or obligation of five percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate five percent of the insurer's capital and surplus.

Service Warranty Associations

A service warranty is generally defined as a contract to perform the repair or replacement of a consumer product for failure due to a defect.[62] A service warranty association is defined as any person, other than an authorized insurer, issuing service warranties.[63]

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. A service warranty association can allow its premiums to exceed the ratio to net assets limitations of s. 634.406, F.S., only if the association meets all of the following:

- Maintains net assets of at least $750,000.
- Utilizes a contractual liability insurance policy approved by the office which:

[61] Currently, "affiliated person" is defined in s. 628.461(12)(a), F.S., to include spouses, parents and lineal descendants, and persons affiliated through 5 percent ownership, common control, or management.
[62] S. 634.401(13), F.S.
[63] S. 634.401(14), F.S.

- Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or
- Complies with the requirements of subsection (3)[64] and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

- The insurer issuing the contractual liability insurance policy:
  - Maintains a policyholder surplus of at least $100 million.
  - Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Is in no way affiliated with the warranty association.
  - Provides a statement certifying the gross written premiums is covered under the contractual liability policy, whether or not it has been reported.

The statute further requires that a contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, unless numerous specified conditions are met.

III. Effect of Proposed Changes:

Unaffiliated Agents (Sections 2, 3, 8, and 42)

According to the DFS, some insurance agents act as advisors to clients for a fee. These agents provide advice and recommendations regarding, among other things, insurance products but do not sell the products. **Section 3** defines in s. 626.015(18), F.S., a new type of insurance agent, an unaffiliated insurance agent, and **Section 8** specifies the scope of the license in s. 626.311, F.S. This agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. This bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This bill prohibits an unaffiliated insurance agent from holding an appointment from an insurer, from transacting an insurance contract for an insurer, and from interfering with commissions from an appointed insurance agent. Unaffiliated insurance agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received.

[64] Subsection (3) of s. 634.406, F.S., states that a warranty association need not establish an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claims liability from an authorized insurer. The terms of the policy must contain the following (a) state the insurer will pay losses and unearned premium refunds directly to a person making a claim under the warranty association contract in the event the services warranty association does not do so; (b) the insurer must assume full responsibility for administering claims if the warranty association cannot do so; (c) 60 days written notice must be given to the OIR prior to policy cancellation; (d) the policy must insure all service warranty contracts issued while the policy was in effect whether or not the premium has been remitted to the insurer; (e) If the insurer is fulfilling the service warranty covered by the policy and the service warranty holder cancels the warranty, the insurer must fully refund unearned premium, subject to a cancellation fee under s. 634.414, F.S.; and (f) a warranty association may not use an unearned premium reserve and contractual liability insurance policy simultaneously. However, the warranty association may have contractual liability coverage on service warranties previously sold and sell new service warranties covered by the unearned premium reserve, and the converse. The warranty association must be able to distinguish how each individual service warranty is covered.

The unaffiliated agent is not appointed by an insurer to sell insurance products. This can lead to a situation where an agent's license expires because the agent is not appointed during a four-year period.[65] This bill allows an unaffiliated agent to appoint himself or herself. S**ection 2** amends s. 624.501, F.S., to require unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

Section 42 creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

Agent in Charge and Branch Agencies (Sections 4, 13, and 14)

Effective January 1, 2015, **Section 4** creates s. 626.0428(4), F.S., which defines an agent in charge as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency location. Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the locations when an agent is not physically present, and (2) unlicensed employees at the locations do not engage in insurance activities that require licensure as an insurance agent or customer representative.

This bill requires each insurance agency and branch office to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with the DFS at the DFS website. A change of the designated agent in charge must be reported to the DFS within 30 days, and becomes effective upon notification to the DFS.

This bill provides that an insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by and providing services to the agency at all times. When the agent in charge ends his or her affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended his or her affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended his or her affiliation with the agency.

This bill provides that an agent in charge of an insurance agency is accountable for the wrongful acts, misconduct or violations committed by the licensee or agent or by any person under her or

[65] Phone interview with DFS staff.

his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

Section 13 repeals s. 626.747, F.S., relating to branch agencies, effective January 1, 2015. The section is incorporated and expanded in the new s. 624.0428(4), F.S.

Section 14 amends, s. 626.8411(1)(b), F.S., correcting a cross reference to properly cite the new branch agency requirements created by Section 7.

Not-For-Profit Self-Insurance Funds

Section 1 amends s. 624.4625(1)(b), F.S., to permit a publicly supported organization, as evidenced by the participating member's most recently filed Internal Revenue Service Form 990 or 990-EZ, Schedule A, to participate as a member of a not-for-profit self-insurance fund. This option is in addition to current law which provides that each member receive at least 75 percent of its revenues from local, state, or federal government sources.

Insurance Agency Licensing and Registration (Sections 5 and 6)

Section 5 amends s. 626.112, F.S., prohibiting the DFS from issuing limited customer service licenses, effective October 1, 2014.

Section 6 also amends s. 626.112, F.S., eliminating the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her or his own name and does not employ or use other insurance licensees, effective January 1, 2015.

The bill provides that a branch place of business established by a licensed agency is considered a branch agency.[66] A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with the DFS a licensed agent in charge of the branch location; and (2) has submitted to the DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

This bill no longer allows certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. This bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also eliminates the three-year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law.

Section 7 amends s. 626.172, F.S., allowing an owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, to complete and sign an insurance

[66] This bill further provides that a license issued to a business entity that offers motor vehicles for rent encompasses each employee or authorized representative at a designated branch.

agency application. This bill also allows a third party to complete, submit, and sign an agency license application on the agency's behalf. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or misrepresentations.

This bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf, the physical address of the branch location, including its name, e-mail address, and telephone number, the date that the branch office began transacting insurance, and the fingerprints of each individual required to be listed in the agency application.

Motor Vehicle Retail Insurance License

Section 9 amends s. 626.321(1), F.S., changing the limited license statute for motor vehicle rental insurance. Under current law, a limited license to sell motor vehicle rental insurance can be issued to a business that offers motor vehicles for rent or lease. A license issued to a rental business covers each office, branch office, or place of business associated with the rental business. The bill expands this coverage to include each employee working at the rental business. Thus, all employees would be covered by the rental business' license to sell rental insurance. According to DFS, the agency interprets the current law relating to rental insurance licensing to mean the license for the rental company business covers each branch office and each employee working at the rental business. Thus, the change made by the bill is clarifying and is consistent with the application of the current law by the DFS.

Continuation of Insurance Agency Licensure

Section 10 amends s. 626.382, F.S., to allow an insurance agency license to continue in force until it is cancelled, suspended, revoked, terminated, or expires by operation of law. Under current law, the license is issued for a three-year period and may be renewed.

Mediators, Navigators, and Neutral Evaluators (Sections 11, 43, 45, 46, 47, and 51)

Section 11 amends s. 626.601, F.S., to authorize the Department of Financial Services to inquire into alleged improper conduct of mediators, neutral evaluators, and navigators and subsequently initiate and conduct an investigation if reasonable cause exists of an insurance code violation.

Section 43 amends s. 627.7015(4)(b), F.S., to specify that the requirements for qualification as a mediator of liability claims under s. 627.745, F.S., are also the standards that the DFS applies for denial of application, suspension, revocation, and other penalties for mediators who participate in the DFS property insurance mediation program.

Section 45 amends s. 627.706(2)(c), F.S., to specify that a sinkhole neutral evaluator is a person who is not otherwise ineligible for certification as a neutral evaluator under s. 627.7074, F.S.

Sections 46 and 51 amend s. 627.7074, F.S., and s. 627.745, F.S., to require the DFS to deny an application or revoke its approval of a mediator or neutral evaluator for any of the following:

- Lack of one or more of the qualifications required for approval or certification.
- Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain approval or certification.
- Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.
- Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in conducting business in the financial services industry.
- Violation of any provision of the Florida Insurance Code; a lawful order or rule of the DFS; or aiding, instructing, or encouraging another party to commit such a violation.

The bill grants rulemaking authority to administer these requirements.

Section 51 also changes the requirements for qualifying as a mediator under the motor vehicle insurance claim mediation program for personal injury claims of $10,000 or less, or for property damage claims of any amount. Under the bill, a mediator must possess an active certification as a Florida Circuit Court Mediator or be an appointed department mediator as of July 1, 2014, who has conducted at least one mediation on behalf of the DFS within four years prior to that date. This provision essentially grandfathers in current and active mediators so they can continue, even if they are not certified as a Florida Circuit Court Mediator. The bill eliminates the 40-hour mediation training program and test that all mediators currently must complete in order to be approved as a mediator under the program. In order to become certified as a Florida Circuit Court Mediator, one must fulfil education requirements set by the Florida Supreme Court, complete a mediation training program certified by the Florida Supreme Court, and observe and conduct mediations under the supervision of a certified mediator.[67]

Section 12 amends s. 626.621, F.S., to allow the DFS to deny an application for, suspend, revoke, or refuse to renew or continue a license or appointment of an agent, adjuster, customer representative, service representative, or managing general agent who directly or indirectly accepts any compensation, inducement, or reward from an inspector or inspection company for referring the owner of the property to the inspector or inspection company.

Insurance Company Adjusters – Notice Requirement

Section 15 repeals s. 626.854(16), F.S., which currently requires insurance company employee adjusters, independent adjusters, attorneys, investigators, or other persons acting on behalf of an insurer to provide at least 48 hours' notice to the insured, claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. A prohibition on public adjusters contacting or contracting with insureds and claimants within 48 hours of a loss in s. 626.854(6), F.S., was ruled unconstitutional by the Florida Supreme Court in 2012.

Insurance Administrators – Certificate of Authority Requirements

Section 16 amends s. 626.8805, F.S., changing the information that must be filed with the OIR or made available for OIR inspection as part of an application for a certificate of authority to act as an insurance administrator. The bill requires the applicant to provide the names, addresses,

[67] *See* http://www.flcourts.org/core/fileparse.php/283/urlt/HowToBecomeMediator.pdf (last accessed February 7, 2014).

official positions, and professional qualifications of individuals who are employed or retained by the administrator and who are responsible for the conduct of the affairs of the administrator. Current law contains a broader standard, requiring information of any person who exercises control or influence over the affairs of the administrator.

Insurance Administrators – Oversight Responsibilities of Insurers

Sections 17-20 amend ss. 626.8817, 626.882, 626.883, and 626.884, F.S., to allow an insurer who uses the services of an administrator to contract with a qualified third party to conduct the required semiannual review of an administrator that administers benefits for more than 100 certificateholders on behalf of the insurer.

The bill also specifies that the written agreement between an insurer and an administrator that details the responsibilities of the insurer and administrator specifies the rights, duties, and obligations of the administrator and insurer. Any restrictions regarding the proprietary rights of the insurer and administrator related to continuing access to books and records maintained by the administrator are governed by the written agreement between the parties required under s. 626.8817, F.S.

Insurance Administrators – Annual Financial Statement

Section 21 amends s. 626.89, F.S., to change to April 1 date by which an administrator must file an annual financial statement with the OIR. The bill also allows the financial statement to cover the previous fiscal year, rather than a calendar year, if the administrator's accounting is on a fiscal year basis.

Repeal of Surplus Lines Agent Affidavit Requirement

Section 22 amends s. 626.931, F.S., to eliminate the requirement that each surplus lines agent must, on or before the 45th day following each calendar quarter, file with the Florida Surplus Lines Service Office (FSLSO) an affidavit stating that all surplus lines insurance he or she transacted during that calendar year has been submitted to the FSLSO and that includes efforts made to place coverage with authorized insurers and the results of those efforts. However, surplus lines agents must still file a copy of information on each surplus lines transaction with the FSLSO in accordance with the FSLSO's plan of operation.

Sections 23-25 amend ss. 626.932, 626.935, and 626.936, F.S., to conform to the elimination of the affidavit requirement in s. 626.89, F.S.

Insurance Discounts for Motor Vehicle Equipment

Section 30 amends s. 627.0653, F.S., to specify that the OIR, when reviewing a rate filing for liability, personal injury protection, and collision coverages for motor vehicle insurance policies, may approve a premium discount applicable to the rates for vehicles equipped with electronic vehicle crash avoidance technology that is factory installed or a retrofitted system that complies with the National Highway Traffic Safety Administration standards.

Use of Hurricane Models in Rate Filings

Section 27 amends s. 627.062, F.S., to specify that the Office of Insurance Regulation, when reviewing a rate filing, must consider projections of hurricane losses estimated using a straight average of model results or output ranges independently found acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628, F.S.[68]

Section 28 amends s. 627.0628, F.S., to increase from 60 days to 180 days the time an insurer is not required to use the newest version of a model approved by the Commission on Hurricane Loss Projection Methodology. This section also specifies that an insurer is not prohibited from using a straight average of model results or output ranges or using straight averages in a rate filing.

Motor Vehicle Insurance Rating

Section 31 amends s. 627.072, F.S., to permit new motor vehicle insurance rating programs or changes to existing programs that result in at least a single zip code as a rating territory for motor vehicle insurance rates. The bill will allow the use of such territories that are filed with the OIR if the territory incorporates sufficient loss data to be actuarially measurable and credible. The OIR would determine if the rates for such territories are excessive, inadequate, or unfairly discriminatory. Current law prohibits the use of a single zip code as a rating territory as being unfairly discriminatory.

Workers' Compensation Retrospective Rating Plans

Section 31 amends s. 627.0651, F.S., allowing an insurer and employer to negotiate the retrospective plan rating factors that can be used for calculating the premium when the employer has multistate exposure and an annual estimated countrywide standard premium of $750,000 or more for workers' compensation.

Section 32 requires the OIR, in consultation with the National Council on Compensation Insurance, to prepare a report analyzing the use of the negotiated workers' compensation premium provisions within retrospective rating plans. The report must be delivered by November 1, 2014, to the President of the Senate and the Speaker of the House of Representatives.

Section 33 provides a technical conforming cross reference in s. 627.281, F.S.

[68] Section 627.0628, F.S., tasks the Florida Commission on Hurricane Loss Projection Methodology with considering actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy or reliability of hurricane loss projections used in rate filing and probable maximum loss levels. Insurers are prohibited from using in a rate filing a modified or adjusted model, actuarial method, principle, standard, or output range that the commission has found accurate or reliable.

Florida Workers' Compensation Joint Underwriting Association (FWCJUA) Dividend and Premium Refunds

Section 34 amends s. 627.311(5)(h), F.S., authorizing the FWCJUA to retain for future use any dividends that cannot be paid to former insureds of the FWCJUA for reasons set forth in the declaration of the dividend. Currently, the FWCJUA reports the property[69] and owner's name, last known address, and other information to the Department of Financial Services, Bureau of Unclaimed Property. The owner can claim her or his property at no cost, any time, regardless of the amount.[70] The bill eliminates the ability of a person to recover unclaimed property that is left in possession of the FWCJUA at any time in the future. The FWCJUA will not report unclaimed property to the DFS and will ultimately use the unclaimed funds in its possession.

Repeal of Duplicative Citizens Property Insurance Corporation Report

Section 36 repeals 627.3519, F.S., because it requires a report that is duplicative of the report required under s. 627.35191, F.S.

Misrepresentations on Insurance Applications and Cancellation of Insurance Policies

Section 37 amends s. 627.409, F.S. The bill provides that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied based on credit information available in the public record. The bill does not change the law relating to other types of insurance or other types of misrepresentations (such as a misrepresentation regarding health or criminal history).

Section 38 amends s. 627.4133(2)(b), F.S., to provide that after a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

Residential Property Insurance Notice of Cancellation Requirements

Section 38 amends s. 627.4133(2)(b), F.S., to reduce to 120 days the advance written notice of nonrenewal, cancellation, or termination an insurer must give the first-named insured of a personal lines or commercial residential property insurance policy.

Section 35 provides a technical conforming cross reference in s. 627.3518, F.S.

Insurer Sworn Statement Detailing Liability Coverage and Alleged Defenses

Section 39 amends s. 627.4137, F.S., to authorize the licensed company adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by current law setting forth the name of the insurer, the name of each insured, the limits of liability coverage, a statement of each policy defense the insurer reasonably believes is available, and a copy of the

[69] Over the past 5 years, the FWCJUA has reported unclaimed property totaling $279,499.06 to the DFS. The amount for each year follows: $16,388.32 (2009); $87,813.27 (2010); $63,552.52 (2011); $73,631.27 (2012); $38,113.68 (2013).
[70] *See* chap. 717, F.S., (the Florida Disposition of Unclaimed Property Act) and information on unclaimed property on the website of the Florida Department of Financial Services: http://www.myfloridacfo.com.

policy. Current law allows the sworn statement to be provided by only the insurer's claims manager or superintendent, or a corporate officer of the insurer.

Electronic Delivery of Personal Lines Insurance Policies

Section 40 amends s. 627.421, F.S., allowing insurers to deliver insurance policies by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of insurance policy documents.

Notice of Change in Policy Terms Delivered Separately from Notice of Renewal Premium

Section 41 amends s. 627.43141(2), F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply with the nonrenewal mailing time requirement for that particular line of business. Insurers must also provide or make available electronically the Notice of Change in Policy Terms to the insured's insurance agent before or at the same time the notice is given to the insured.

Information Required With the Surrender of Life Insurance or Annuity

Section 42 creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

Conflict of Interest Standards for Residential Property Insurance Appraisal Umpires

Section 44 creates s. 627.70151, F.S., to only allow a residential property insurer or policyholder to challenge the impartiality of an appraisal umpire if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire previously professionally represented a party or party representative in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same claim or a substantially related claim whose interests are materially adverse to the interests of any party; or
- The umpire has been an employer or employee of a party within the preceding five years.

Notice to Policyholder of Availability of Sinkhole Neutral Evaluation

Section 46 amends s. 627.7074(3), F.S., to limit the circumstances when an insurer must notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim. The insurer must provide the notice only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period which is two years after the policyholder knew or reasonably should have known about the sinkhole loss. There are no parameters under current law about notification of neutral evaluation. Thus, insurers are required to notify a policyholder about neutral evaluation in cases where there is no sinkhole coverage or when the sinkhole claim is untimely filed.

Section 47 amends s. 627.711(8), F.S., to provide an exception to the mitigation form independent verification process for Citizens only. The bill does not allow independent verification of mitigation discount forms submitted to Citizens if a quality assurance program approved by Citizens reviewed and verified the form when it was submitted. In addition, Citizens is not allowed to reinspect a property to confirm mitigation features if the mitigation form was reviewed and verified by a quality assurance program approved by them.

Return of Motor Vehicle Insurance Premiums

Section 48 amends s. 627.7283, F.S., to allow the insurer to electronically transfer unearned premium to a policyholder who cancels a motor vehicle insurance policy. The insurer may also deliver the unearned premium by mail. Current law is retained requiring the insurer to refund the unearned premium within 30 days of the later of the policy cancellation date or the date the insurer receives notice of the cancellation.

Section 26 amends s. 626.9541(1)(q) , F.S., the unfair insurance practices act, to specify that insurers and agents that utilize a credit card facility or seek to insure credit card holders may provide refunds of unearned premium by mail or electronic transfer.

Personal Injury Protection Medical Fee Schedule Clarification

Section 49 amends s. 627.736(5)(a), F.S., to clarify that the Personal Injury Protection medical fee schedule that is effective on March 1 of each year applies until the last day of the following February.

Exemptions to the Preinsurance Inspection of Private Passenger Motor Vehicles

Section 50 amends s. 627.744, F.S., to exempt from preinsurance inspection new, unused motor vehicles that are leased from a licensed motor vehicle dealer or leasing company, if the insurer is provided with a lease agreement that contains a full description of the motor vehicle or a copy of the registration and a copy of the window sticker. In addition, this section deletes the preinsurance inspection exemption for new, unused motor vehicles purchased if the following conditions apply:

- If the bill of sale or buyer’s order contains a full description of all options and accessories, or
- If the dealer invoice showing the itemized options, equipment, and total retail price is submitted as documentation.

Title Insurance Data Submission to the OIR

Section 52 amends s. 627.782, F.S., to extend the date by which title insurers and title insurance agencies must annually submit data on the title insurance industry to the OIR for the most recently concluded year from March 31 to May 31.

Requirements Related to Acquisition of Controlling Stock

Section 53 amends s. 628.461, F.S., relating to acquisition of controlling stock of a domestic stock insurer or a controlling company. The bill increases from five percent to 10 percent the amount of stock that is considered "controlling stock" of an insurer or controlling company. Currently, s. 628.461, F.S., provides that a person or affiliated person must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire five percent or more of a domestic stock insurer or of a controlling company. The statement must contain certain criminal, employment, and regulatory history information.

The bill provides that a person may rebut a presumption of control by filing a disclaimer of control on a form prescribed by the OFR or by providing a copy of a Schedule 13G on file with the U.S. Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer. Under current law, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent).

The section deletes the definition of "affiliated person" from the statute.

Florida Life and Health Insurance Guaranty Association (FLHIGA) – Obligation to Pay Claims

Section 54 amends s. 631.717(11), F.S., deleting language stating that the FLHIGA not being subject to statutory bad faith claims under s. 624.155, F.S., does not affect its obligation to pay valid policy or contract claims.

Section 55 amends s. 631.737, F.S., stating that the FLHIGA is obligated to pay valid claims. The amendments to these sections do not affect the obligation of the FLHIGA to pay valid policy or contract claims and will continue to not be subject to the provisions of s. 631.717(11), F.S.

Service Warranty Association Financial Requirements

Section 56 amends s. 634.406, F.S., to revise the requirement that if a service warranty association's premiums exceed the statutorily required 7-to-1 ratio of gross written premium to net assets, it must maintain net assets of $750,000 and maintain a contractual liability insurance policy that reimburses the service warranty association for 100 percent of its claims liability and is approved by the OIR. Under the bill, the contractual liability policy may be issued by an affiliate of the warranty association. Additionally, the insurer issuing the policy must either

maintain at least a $100 million policyholder surplus or maintain a policyholder surplus of at least $200 million and issue a policy that complies with the provisions of subsection (3).[71]

Effective Date:

Section 57 provides that except as otherwise expressly provided, the bill is effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 1260 allows workers' compensation insurers and larger employers greater flexibility in negotiating retrospective rating plans by allowing the parties to determine the rating factors used to calculate premiums. This change may result in a reduction in premiums for such employers.

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA) declares dividends to its policyholders generally after the expiration of a seven-year look back

[71] Subsection (3) of s. 634.406, F.S., states that a warranty association need not establish an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claims liability from an authorized insurer. The terms of the policy must contain the following (a) state the insurer will pay losses and unearned premium refunds directly to a person making a claim under the warranty association contract in the event the services warranty association does not do so; (b) the insurer must assume full responsibility for administering claims if the warranty association cannot do so; (c) 60 days written notice must be given to the OIR prior to policy cancellation; (d) the policy must insure all service warranty contracts issued while the policy was in effect whether or not the premium has been remitted to the insurer; (e) If the insurer is fulfilling the service warranty covered by the policy and the service warranty holder cancels the warranty, the insurer must fully refund unearned premium, subject to a cancellation fee under s. 634.414, F.S.; and (f) a warranty association may not use an unearned premium reserve and contractual liability insurance policy simultaneously. However, the warranty association may have contractual liability coverage on service warranties previously sold and sell new service warranties covered by the unearned premium reserve, and the converse. The warranty association must be able to distinguish how each individual service warranty is covered.

period. Thus, the 2006 policyholder dividend would likely be declared in 2013. If FWCJUA is unable to pay a former policyholder, it must submit the funds to the Bureau of Unclaimed Property where they can be claimed by the policyholder. The bill will allow the FWCJUA to retain those funds pursuant to the terms set forth in the dividend.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 53 deletes the definition of "affiliated person" from s. 628.461, F.S. The definition helps determine when a person, in conjunction with an affiliated person, has acquired controlling stock. Deletion of this definition may create ambiguity within the statute.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.4625, 624.501, 626.015, 626.0428, 626.112, 626.172, 626.311, 626.321, 626.382, 626.601, 626.621, 626.8411, 626.854, 626.8805, 626.8817, 626.882, 626.883, 626.884, 626.89, 626.931, 626.932, 626.935, 626.936, 626.9541, 627.062, 627.0628, 627.0651, 627.0653, 627.072, 627.281, 627.311, 627.3518, 627.409, 627.4133, 627.4137, 627.421, 627.43141, 627.4553, 627.7015, 627.706, 627.7074, 627.711, 627.7283, 627.736, 627.744, 627.745, 627.782, 628.461, 631.717, 631.734, and 634.406.

This bill creates the following sections of the Florida Statutes: 627.4553 and 627.70151.

This bill creates an undesignated section of Florida law.

This bill repeals the following sections of the Florida Statutes: 626.747 and 627.3519.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on April 9, 2014:
The Committee Substitute:

- Permits the OIR to approve a premium discount for electronic vehicle crash avoidance technology.
- Permits publicly supported organizations that receive a substantial part of its support from a government entity or from the general public, as evidenced on the entities

most recent filing with the Internal Revenue Service, to join a not for profit self-insurance fund.

- Provides an agent, adjuster, customer or service representative, or managing general agency may not directly or indirectly receive compensation, inducement, or reward from an inspector or inspection company for referring the owner of a property to the inspector or an inspection company.
- Revises the conditions when an insurer and employer can negotiate the retrospective plan rating factors that can be used for calculating the premium to when the employer has multistate exposure and an annual estimated countrywide standard premium of $750,000 or more for workers' compensation.
- Requires the OIR to work with the National Council on Compensation Insurance to submit a report analyzing the use of negotiated workers' compensation premium provisions within the retrospective rating plans by November 1, 2014.

CS by Banking and Insurance on March 14, 2014:
The committee substitute:

- Deletes the boiler inspection provisions of the bill.
- Deletes the corporation not-for-profit self-insurance fund provision of the bill.
- Deletes the insurance premium finance provision of the bill.
- Deletes current law requiring company insurance adjusters, investigators, attorneys, or other persons acting on the insurer's behalf to provide at least 48 hours' notice to the insured or insured's representatives before scheduling a meeting with the insured or an onsite inspection of the insured property.
- Allows an insurer to electronically transfer unearned premium back to a motor vehicle insurance policyholder who cancels the policy.
- Revises a provision in the bill to allow the Florida Workers' Compensation Joint Underwriting Association to retain dividends payable to a former insured.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment

Delete line 223
and insert:
sources, or qualify as a publicly supported organization under s. 501(c)(3) or s. 4947(a)(1) of the United States Internal Revenue Code that

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1274 - 1298

and insert:

(2) A retrospective rating plan may contain a provision that allows for the negotiation of premium between the employer and the insurer for employers having exposure in more than one state, an estimated annual standard premium in this state of $100,000 or more for workers' compensation, and an estimated annual countrywide standard premium of $750,000 or more for

192956

workers' compensation. Provisions within a retrospective rating plan which authorize negotiated premiums are exempt from subsection (1). Such plans and associated forms must be filed by a rating organization and approved by the office. However, a premium negotiated between the employer and the insurer pursuant to an approved retrospective rating plan is not subject to this part. Only insurers having at least $500 million in surplus as to policyholders may engage in the negotiation of premium with eligible employers.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 113 - 117

and insert:

factors used to calculate premiums; amending s.

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576-04120-14

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to insurance; amending s. 624.4625, F.S.; revising requirements for corporations not for profit to qualify to form a self-insurance fund; amending s. 624.501, F.S.; revising original appointment and renewal fees related to certain insurance representatives; amending s. 626.015, F.S.; defining the term "unaffiliated insurance agent"; amending s. 626.0428, F.S.; requiring a branch place of business to have an agent in charge; authorizing an agent to be in charge of more than one branch office under certain circumstances; providing requirements relating to the designation of an agent in charge; prohibiting an insurance agency from conducting insurance business at a location without a designated agent in charge; providing that the agent in charge is accountable for misconduct and violations committed by the licensee and any person under his or her supervision; amending s. 626.112, F.S.; prohibiting limited customer representative licenses from being issued after a specified date; providing licensure exemptions that allow specified individuals or entities to conduct insurance business at specified locations under certain circumstances; revising licensure requirements and penalties with respect to registered insurance agencies; providing that the registration of an approved registered insurance

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agency automatically converts to an insurance agency license on a specified date; amending s. 626.172, F.S.; revising requirements relating to applications for insurance agency licenses; conforming provisions to changes made by the act; amending s. 626.311, F.S.; limiting the types of business that may be transacted by certain agents; amending s. 626.321, F.S.; providing that a limited license to offer motor vehicle rental insurance issued to a business that rents or leases motor vehicles encompasses the employees of such business; amending s. 626.382, F.S.; providing that an insurance agency license continues in force until canceled, suspended, revoked, terminated, or expired; amending s. 626.601, F.S.; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; revising a confidentiality provision; amending s. 626.621, F.S.; providing an additional ground for disciplinary action against the license or appointment of certain insurance-related personnel for accepting compensation for referring the owner of a property to an inspector or inspection company; repealing s. 626.747, F.S., relating to branch agencies, agents in charge, and the payment of additional county tax under certain circumstances; amending s. 626.8411, F.S.; conforming a cross-reference; amending s. 626.854, F.S.; deleting the

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requirement that a 48 hours' notice be provided before scheduling an onsite inspection of insured property; conforming a cross-reference; amending s. 626.8805, F.S.; revising insurance administrator application requirements; amending s. 626.8817, F.S.; authorizing an insurer's designee to provide certain coverage information to an insurance administrator; authorizing an insurer to subcontract the review of an insurance administrator; amending s. 626.882, F.S.; prohibiting a person from acting as an insurance administrator without a specific written agreement; amending s. 626.883, F.S.; requiring an insurance administrator to furnish fiduciary account records to an insurer; requiring administrator withdrawals from a fiduciary account to be made according to a specific written agreement; providing that an insurer's designee may authorize payment of claims; amending s. 626.884, F.S.; revising an insurer's right of access to certain administrator records; amending s. 626.89, F.S.; revising the deadline for filing certain financial statements; deleting provisions allowing an extension for administrator to submit certain financial statements; amending s. 626.931, F.S.; deleting provisions requiring a surplus lines agent to file a quarterly affidavit with the Florida Surplus Lines Service Office; amending s. 626.932, F.S.; revising the due date of surplus lines tax; amending ss. 626.935 and 626.936, F.S.; conforming provisions to changes made by the act; amending s. 626.9541, F.S.;

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revising provisions for unfair methods of competition and unfair or deceptive acts relating to conducting certain insurance transactions through credit card facilities; amending s. 627.062, F.S.; authorizing the Office of Insurance Regulation to use a straight average of model results or output ranges to estimate hurricane losses when determining whether the rates in a rate filing are excessive, inadequate, or unfairly discriminatory; amending s. 627.0628, F.S.; increasing the length of time during which an insurer must adhere to certain findings made by the Commission on Hurricane Loss Projection Methodology with respect to certain methods, principles, standards, models, or output ranges used in a rate filing; providing that the requirement to adhere to such findings does not limit an insurer from using straight averages of model results or output ranges under specified circumstances; amending s. 627.0651, F.S.; revising provisions for making and use of rates for motor vehicle insurance; amending s. 627.0653, F.S.; authorizing the office to approve motor vehicle premium discounts for vehicles equipped with electronic crash avoidance technology; amending s. 627.072, F.S.; authorizing retrospective rating plans relating to workers' compensation and employer's liability insurance to allow negotiations between certain employers and insurers with respect to rating factors used to calculate premiums; requiring the office to prepare and submit a report to the

Legislature by a specified date that analyzes the use of negotiated workers compensation premium provisions within retrospective rating plans; amending s. 627.281, F.S.; conforming a cross-reference; amending s. 627.311, F.S.; providing that certain dividends may be retained by the joint underwriting plan for future use; amending s. 627.3518, F.S.; conforming a cross-reference; repealing s. 627.3519, F.S., relating to an annual report on the aggregate report of maximum losses of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation; amending s. 627.409, F.S.; providing that a claim for residential property insurance may not be denied based on certain credit information; amending s. 627.4133, F.S.; extending the period for prior notice required with respect to the nonrenewal, cancellation, or termination of certain insurance policies; deleting certain provisions that require extended periods of prior notice with respect to the nonrenewal, cancellation, or termination of certain insurance policies; prohibiting the cancellation of certain policies that have been in effect for a specified amount of time, except under certain circumstances; prohibiting the cancellation of a policy or contract that has been in effect for a specified amount of time based on certain credit information; amending s. 627.4137, F.S.; adding licensed company adjusters to the list of persons who may respond to a claimant's written request for information relating to liability

insurance coverage; amending s. 627.421, F.S.; authorizing a policyholder of personal lines insurance to affirmatively elect delivery of policy documents by electronic means; amending s. 627.43141, F.S.; authorizing a notice of change in policy terms to be sent in a separate mailing to an insured under certain circumstances; requiring an insurer to provide such notice to the insured's insurance agent; creating s. 627.4553, F.S.; providing requirements for the recommendation to surrender an annuity or life insurance policy; amending s. 627.7015, F.S.; revising the rulemaking authority of the department with respect to qualifications and specified types of penalties covered under the property insurance mediation program; creating s. 627.70151, F.S.; providing criteria for an insurer or policyholder to challenge the impartiality of a loss appraisal umpire for purposes of disqualifying such umpire; amending s. 627.706, F.S.; revising the definition of the term "neutral evaluator"; amending s. 627.7074, F.S.; revising notification requirements for participation in the neutral evaluation program; providing grounds for the department to deny an application, or suspend or revoke certification, of a neutral evaluator; requiring the department to adopt rules relating to certification of neutral evaluators; amending s. 627.711, F.S.; revising verification requirements for uniform mitigation verification forms; amending s. 627.7283, F.S.; providing for the electronic transfer

of unearned premiums returned when a policy is canceled; amending s. 627.736, F.S.; revising the time period for applicability of certain Medicare fee schedules or payment limitations; amending s. 627.744, F.S.; revising preinsurance inspection requirements for private passenger motor vehicles; amending s. 627.745, F.S.; revising qualifications for approval as a mediator by the department; providing grounds for the department to deny an application, or suspend or revoke approval of a mediator or certification of a neutral evaluator; authorizing the department to adopt rules; amending s. 627.782, F.S.; revising the date by which title insurance agencies and certain insurers must annually submit specified information to the Office of Insurance Regulation; amending s. 628.461, F.S.; revising filing requirements relating to the acquisition of controlling stock; revising the amount of outstanding voting securities of a domestic stock insurer or a controlling company that a person is prohibited from acquiring unless certain requirements have been met; prohibiting persons acquiring a certain percentage of voting securities from acquiring certain securities; providing that a presumption of control may be rebutted by filing a disclaimer of control; deleting a definition; amending ss. 631.717 and 631.734, F.S.; transferring a provision relating to the obligations of the Florida Life and Health Insurance Guaranty Association; amending s. 634.406, F.S.; revising criteria authorizing premiums of

certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 624.4625, Florida Statutes, is amended to read:

624.4625 Corporation not for profit self-insurance funds.—

(1) Notwithstanding any other provision of law, any two or more corporations not for profit located in and organized under the laws of this state may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any one or combination of property or casualty risk, provided the corporation not for profit self-insurance fund that is created:

(b) Requires for qualification that each participating member receive at least 75 percent of its revenues from local, state, or federal governmental sources or a combination of such sources, or qualify as a publicly supported organization that normally receives a substantial part of its support from a governmental unit or from the general public as evidenced on the organization's most recently filed Internal Revenue Service Form 990 or 990-EZ, Schedule A.

Section 2. Paragraphs (a) and (c) of subsection (6) and subsections (7) and (8) of section 624.501, Florida Statutes, are amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(6) Insurance representatives, property, marine, casualty, and surety insurance.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(c) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

(7) Life insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

(8) Health insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

Section 3. Present subsection (18) of section 626.015, Florida Statutes, is renumbered as subsection (19), and a new subsection (18) is added to that section, to read:

626.015 Definitions.—As used in this part:

(18) "Unaffiliated insurance agent" means a licensed insurance agent, except a limited lines agent, who is self-appointed and who practices as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents.

Section 4. Effective January 1, 2015, section 626.0428, Florida Statutes, is amended to read:

626.0428 Agency personnel powers, duties, and limitations.—

(1) An individual employed by an agent or agency on salary

who devotes full time to clerical work, with incidental taking of insurance applications or quoting or receiving premiums on incoming inquiries in the office of the agent or agency, is not deemed to be an agent or customer representative if his or her compensation does not include in whole or in part any commissions on such business and is not related to the production of applications, insurance, or premiums.

(2) An employee or authorized representative located at a designated branch of an agent or agency may not bind insurance coverage unless licensed and appointed as an agent or customer representative.

(3) An employee or authorized representative of an agent or agency may not initiate contact with any person for the purpose of soliciting insurance unless licensed and appointed as an agent or customer representative. As to title insurance, an employee of an agent or agency may not initiate contact with any individual proposed insured for the purpose of soliciting title insurance unless licensed as a title insurance agent or exempt from such licensure pursuant to s. 626.8417(4).

(4)(a) Each place of business established by an agent or agency, firm, corporation, or association must be in the active full-time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location.

(b) Notwithstanding paragraph (a), the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when an agent is not physically present

and unlicensed employees at the location do not engage in insurance activities requiring licensure as an insurance agent or customer representative.

(c) An insurance agency and each branch place of business of an insurance agency shall designate an agent in charge and file the name and license number of the agent in charge and the physical address of the insurance agency location with the department and the department's website. The designation of the agent in charge may be changed at the option of the agency. A change of the designated agent in charge is effective upon notice to the department. Notice to the department must be provided within 30 days after such change.

(d) An insurance agency location may not conduct the business of insurance unless an agent in charge is designated by and providing services to the agency at all times. If the agent in charge designated with the department ends his or her affiliation with the agency for any reason and the agency fails to designate another agent in charge within 30 days as provided in paragraph (c) and such failure continues for 90 days, the agency license automatically expires on the 91st day after the date the designated agent in charge ended his or her affiliation with the agency.

(e) For purposes of this subsection, an "agent in charge" is the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency location, regardless of whether the agent in charge handles a specific transaction or deals with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of money.

(f) An agent in charge of an insurance agency is accountable for the wrongful acts, misconduct, or violations of this code committed by the licensee or by any person under his or her supervision while acting on behalf of the agency. However, an agent in charge is not criminally liable for any act unless the agent in charge personally committed the act or knew or should have known of the act and of the facts constituting a violation of this code.

Section 5. Paragraph (b) of subsection (1) and subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(1)

(b) Except as provided in subsection (6) or in applicable department rules, and in addition to other conduct described in this chapter with respect to particular types of agents, a license as an insurance agent, service representative, customer representative, or limited customer representative is required in order to engage in the solicitation of insurance. Effective October 1, 2014, limited customer representative licenses may not be issued. For purposes of this requirement, as applicable to ~~any of~~ the license types described in this section, the solicitation of insurance is the attempt to persuade any person to purchase an insurance product by:

1. Describing the benefits or terms of insurance coverage, including premiums or rates of return;

2. Distributing an invitation to contract to prospective purchasers;

3. Making general or specific recommendations as to insurance products;

4. Completing orders or applications for insurance products;

5. Comparing insurance products, advising as to insurance matters, or interpreting policies or coverages; or

6. Offering or attempting to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

However, an employee leasing company licensed under ~~pursuant to~~ chapter 468 which is seeking to enter into a contract with an employer that identifies products and services offered to employees may deliver proposals for the purchase of employee leasing services to prospective clients of the employee leasing company setting forth the terms and conditions of doing business; classify employees as permitted by s. 468.529; collect information from prospective clients and other sources as necessary to perform due diligence on the prospective client and to prepare a proposal for services; provide and receive enrollment forms, plans, and other documents; and discuss or explain in general terms the conditions, limitations, options, or exclusions of insurance benefit plans available to the client or employees of the employee leasing company were the client to contract with the employee leasing company. Any advertising materials or other documents describing specific insurance coverages must identify and be from a licensed insurer or its licensed agent or a licensed and appointed agent employed by the employee leasing company. The employee leasing company may not advise or inform the prospective business client or individual

employees of specific coverage provisions, exclusions, or limitations of particular plans. As to clients for which the employee leasing company is providing services pursuant to s. 468.525(4), the employee leasing company may engage in activities permitted by ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions specified in those sections. If a prospective client requests more specific information concerning the insurance provided by the employee leasing company, the employee leasing company must refer the prospective business client to the insurer or its licensed agent or to a licensed and appointed agent employed by the employee leasing company.

Section 6. Effective January 1, 2015, subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(7)(a) An ~~Effective October 1, 2006, no~~ individual, firm, partnership, corporation, association, or ~~any~~ other entity may not ~~shall~~ act in its own name or under a trade name, directly or indirectly, as an insurance agency~~,~~ unless it possesses ~~complies with s. 626.172 with respect to possessing~~ an insurance agency license issued pursuant to s. 626.172 for each place of business at which it engages in ~~any~~ activity that ~~which~~ may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the agency licensing requirements of this subsection.

(b) A branch place of business which is established by a licensed agency is considered a branch agency and is not required to be licensed if it transacts business under the same name and federal tax identification number as the licensed agency, has designated a licensed agent in charge of the location as required by s. 626.0428, and has submitted the address and telephone number of the location to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions begin at the location ~~Each agency engaged in business in this state before January 1, 2003, which is wholly owned by insurance agents currently licensed and appointed under this chapter, each incorporated agency whose voting shares are traded on a securities exchange, each agency designated and subject to supervision and inspection as a branch office under the rules of the National Association of Securities Dealers, and each agency whose primary function is offering insurance as a service or member benefit to members of a nonprofit corporation may file an application for registration in lieu of licensure in accordance with s. 626.172(3). Each agency engaged in business before October 1, 2006, shall file an application for licensure or registration on or before October 1, 2006~~.

(c)~~1.~~ If an agency is required to be licensed but fails to file an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty ~~in an amount~~ of up to $10,000.

~~2. If an agency is eligible for registration but fails to file an application for registration or an application for licensure in accordance with this section, the department shall~~

~~impose on the agency an administrative penalty in an amount of up to $5,000.~~

(d) ~~(b)~~ Effective October 1, 2015, the department must automatically convert the registration of an approved ~~a~~ registered insurance agency to ~~shall, as a condition precedent to continuing business, obtain~~ an insurance agency license ~~if the department finds that, with respect to any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, any person has:~~

~~1. Been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases.~~

~~2. Employed any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department. An insurance agency may request, on forms prescribed by the department, verification of any person's license status. If a request is mailed within 5 working days after an employee is hired, and the employee's license is currently suspended or revoked, the agency shall not be required to obtain a license, if the unlicensed person's employment is immediately terminated.~~

~~3. Operated the agency or permitted the agency to be operated in violation of s. 626.747.~~

~~4. With such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:~~

~~a. Solicited or handled controlled business. This~~

~~subparagraph shall not prohibit the licensing of any lending or financing institution or creditor, with respect to insurance only, under credit life or disability insurance policies of borrowers from the institutions, which policies are subject to part IX of chapter 627.~~

~~b. Misappropriated, converted, or unlawfully withheld moneys belonging to insurers, insureds, beneficiaries, or others and received in the conduct of business under the license.~~

~~c. Unlawfully rebated, attempted to unlawfully rebate, or unlawfully divided or offered to divide commissions with another.~~

~~d. Misrepresented any insurance policy or annuity contract, or used deception with regard to any policy or contract, done either in person or by any form of dissemination of information or advertising.~~

~~e. Violated any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license.~~

~~f. Violated any lawful order or rule of the department.~~

~~g. Failed or refused, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.~~

~~h. Violated the provision against twisting as defined in s. 626.9541(1)(l).~~

~~i. In the conduct of business, engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter.~~

~~j. Willfully overinsured any property insurance risk.~~

~~k. Engaged in fraudulent or dishonest practices in the~~

~~conduct of business arising out of activities related to insurance or the insurance agency.~~

~~1. Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance or the insurance agency.~~

~~m. Authorized or knowingly allowed individuals to transact insurance who were not then licensed as required by this code.~~

~~5. Knowingly employed any person who within the preceding 3 years has had his or her relationship with an agency terminated in accordance with paragraph (d).~~

~~6. Willfully circumvented the requirements or prohibitions of this code.~~

Section 7. Subsections (2), (3), and (4) of section 626.172, Florida Statutes, are amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must ~~shall~~ be signed by an individual required to be listed in the application under paragraph (a) ~~the owner or owners of the agency. If the agency is incorporated, the application shall be signed by the president and secretary of the corporation~~. An insurance agency may allow a third party to complete, submit, and sign an application on the insurance agency's behalf, but the insurance agency is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for an insurance agency license must ~~shall~~ include:

(a) The name of each ~~majority~~ owner, partner, officer, ~~and~~ director, president, senior vice president, secretary, treasurer, and limited liability company member, who directs or

participates in the management or control of the insurance agency, whether through ownership of voting securities, by contract, by ownership of an agency bank account, or otherwise.

(b) The residence address of each person required to be listed in the application under paragraph (a).

(c) The name, principal business street address, and e-mail address of the insurance agency and the name, address, and e-mail address of the agency's registered agent or person or company authorized to accept service on behalf of the agency ~~its principal business address~~.

(d) The name, physical address, e-mail address, and telephone number ~~location~~ of each branch agency and the date that the branch location begins transacting insurance ~~office and the name under which each agency office conducts or will conduct business~~.

(e) The name of each agent to be in full-time charge of an agency office and specification of which office, including branch locations.

(f) The fingerprints of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application under paragraph (a) ~~partner~~; and

~~3. Each owner of an unincorporated agency;~~

3.~~4.~~ Each individual owner who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange~~;~~

~~5. The president, senior vice presidents, treasurer, secretary, and directors of the agency; and~~

~~6. Any other person who directs or participates in the~~

~~management or control of the agency, whether through the ownership of voting securities, by contract, or otherwise~~.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must ~~shall~~ be processed in accordance with s. 624.34. However, fingerprints need not be filed for an ~~any~~ individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g) Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for persons required to be listed on the application.

(3) ~~(h) Beginning October 1, 2005,~~ The department must ~~shall~~ accept the uniform application for nonresident agency licensure. The department may adopt by rule revised versions of the uniform application.

~~(3) The department shall issue a registration as an insurance agency to any agency that files a written application with the department and qualifies for registration. The application for registration shall require the agency to provide the same information required for an agency licensed under subsection (2), the agent identification number for each owner who is a licensed agent, proof that the agency qualifies for~~

~~registration as provided in s. 626.112(7), and any other additional information that the department determines is necessary in order to demonstrate that the agency qualifies for registration. The application must be signed by the owner or owners of the agency. If the agency is incorporated, the application must be signed by the president and the secretary of the corporation. An agent who owns the agency need not file fingerprints with the department if the agent obtained a license under this chapter and the license is currently valid.~~

~~(a) If an application for registration is denied, the agency must file an application for licensure no later than 30 days after the date of the denial of registration.~~

~~(b) A registered insurance agency must file an application for licensure no later than 30 days after the date that any person who is not a licensed and appointed agent in this state acquires any ownership interest in the agency. If an agency fails to file an application for licensure in compliance with this paragraph, the department shall impose an administrative penalty in an amount of up to $5,000 on the agency.~~

~~(c) Sections 626.6115 and 626.6215 do not apply to agencies registered under this subsection.~~

(4) The department must ~~shall~~ issue a license ~~or registration~~ to each agency upon approval of the application, and each agency location must ~~shall~~ display the license ~~or registration~~ prominently in a manner that makes it clearly visible to any customer or potential customer who enters the agency location.

Section 8. Present subsection (6) of section 626.311, Florida Statutes, is redesignated as subsection (7), and a new

subsection (6) is added to that section, to read:

626.311 Scope of license.—

(6) An agent who appoints his or her license as an unaffiliated insurance agent may not hold an appointment from an insurer for any license he or she holds; transact, solicit, or service an insurance contract on behalf of an insurer; interfere with commissions received or to be received by an insurer-appointed insurance agent or an insurance agency contracted with or employing insurer-appointed insurance agents; or receive compensation or any other thing of value from an insurer, an insurer-appointed insurance agent, or an insurance agency contracted with or employing insurer-appointed insurance agents for any transaction or referral occurring after the date of appointment as an unaffiliated insurance agent. An unaffiliated insurance agent may continue to receive commissions on sales that occurred before the date of appointment as an unaffiliated insurance agent if the receipt of such commissions is disclosed when making recommendations or evaluating products for a client that involve products of the entity from which the commissions are received.

Section 9. Paragraph (d) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(d) *Motor vehicle rental insurance.*—

1. License covering only insurance of the risks set forth

in this paragraph when offered, sold, or solicited with and incidental to the rental or lease of a motor vehicle and which applies only to the motor vehicle that is the subject of the lease or rental agreement and the occupants of the motor vehicle:

a. Excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in the lessor's lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle.

b. Insurance covering the liability of the lessee to the lessor for damage to the leased or rented motor vehicle.

c. Insurance covering the loss of or damage to baggage, personal effects, or travel documents of a person renting or leasing a motor vehicle.

d. Insurance covering accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the leased or rented motor vehicle.

2. Insurance under a motor vehicle rental insurance license may be issued only if the lease or rental agreement is for up to ~~no more than~~ 60 days, the lessee is not provided coverage for more than 60 consecutive days per lease period, and the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide coverage of such risks and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. If the lease is extended beyond 60 days, the coverage may be extended ~~one time~~ only once for up to ~~a period not to~~

~~exceed an additional~~ 60 days. Insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. The license may be issued only to the full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.

a. A license issued to a business entity that offers motor vehicles for rent or lease encompasses each office, branch office, employee, authorized representative located at a designated branch, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.

b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business which ~~that~~ is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

Section 10. Effective January, 1, 2015, section 626.382,

Florida Statutes, is amended to read:

626.382 Continuation, expiration of license; insurance agencies.—The license of an ~~any~~ insurance agency ~~shall be issued for a period of 3 years and~~ shall continue in force until canceled, suspended, or revoked~~,~~ or until it is otherwise terminated or becomes expired by operation of law. ~~A license may be renewed by submitting a renewal request to the department on a form adopted by department rule.~~

Section 11. Section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; investigation ~~inquiry~~; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by an ~~any~~ interested person and filed with the department or office, inquire into the ~~any~~ alleged improper conduct of any licensed, approved, or certified licensee, insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, navigator, continuing education course provider, instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of ~~any~~ such individual or entity ~~licensee~~ if it has reasonable cause to believe that the individual or entity ~~licensee~~ has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the individual or entity ~~licensee~~ being investigated unless it determines that contacting such individual or entity ~~person~~ could jeopardize the successful

completion of the investigation or cause injury to the public.

(2) In the investigation by the department or office of the alleged misconduct, the individual or entity ~~licensee~~ shall, if ~~whenever so~~ required by the department or office, open the individual's or entity's ~~cause his or her~~ books and records ~~to be open~~ for inspection for the purpose of such investigation ~~inquiries~~.

(3) ~~The~~ Complaints against an individual or entity ~~any licensee~~ may be informally alleged and are not required to include ~~need not be in any such~~ language ~~as is~~ necessary to charge a crime on an indictment or information.

(4) The expense for any hearings or investigations conducted pursuant to this section ~~under this law~~, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

(5) If the department or office, after investigation, has reason to believe that an individual ~~a licensee~~ may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual ~~licensee~~ to file with the department or office a complete set of his or her fingerprints, ~~which shall be~~ accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

(6) The complaint and any information obtained pursuant to the investigation by the department or office are confidential and ~~are~~ exempt from ~~the provisions of~~ s. 119.07~~,~~ unless the department or office files a formal administrative complaint,

emergency order, or consent order against the individual or entity ~~licensee~~. ~~Nothing in~~ This subsection does not ~~shall be construed to~~ prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency or other regulatory body.

Section 12. Subsection (15) is added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(15) Directly or indirectly accepting any compensation, inducement, or reward from an inspector or inspection company for referring the owner of property requiring inspection to the inspector or inspection company. This prohibition applies to any inspection of property intended for submission to a carrier in order to obtain insurance coverage or to determine the

appropriate amount of the insurance premium.

Section 13. Effective January 1, 2015, section 626.747, Florida Statutes, is repealed.

Section 14. Effective January 1, 2015, subsection (1) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions ~~of part II~~ applicable to general lines agents or agencies also apply to title insurance agents or agencies:

(a) Section 626.734, relating to liability of certain agents.

(b) Section 626.0428(4)(a) and (b) ~~626.747~~, relating to branch agencies.

(c) Section 626.749, relating to place of business in residence.

(d) Section 626.753, relating to sharing of commissions.

(e) Section 626.754, relating to rights of agent following termination of appointment.

Section 15. Subsections (14) and (18) of section 626.854, Florida Statutes, are amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

~~(14) A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at~~

~~least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.~~

(17)~~(18) The provisions of~~ Subsections (5)-(16) ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as defined in s. 718.111(11).

Section 16. Paragraph (c) of subsection (2) and subsection (3) of section 626.8805, Florida Statutes, are amended to read:

626.8805 Certificate of authority to act as administrator.—

(2) The administrator shall file with the office an application for a certificate of authority upon a form to be adopted by the commission and furnished by the office, which application shall include or have attached the following information and documents:

(c) The names, addresses, official positions, and professional qualifications of the individuals employed or retained by the administrator who are responsible for the conduct of the affairs of the administrator, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, and the principal officers in the case of a corporation or~~,~~ the partners or members in the case of a partnership or association~~, and any other person who exercises control or influence over the affairs~~ of the administrator.

(3) The applicant shall make available for inspection by the office copies of all contracts relating to services provided

by the administrator to ~~with~~ insurers or other persons using ~~utilizing~~ the services of the administrator.

Section 17. Subsections (1) and (3) of section 626.8817, Florida Statutes, are amended to read:

626.8817 Responsibilities of insurance company with respect to administration of coverage insured.—

(1) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer or its designee to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in a ~~the~~ written agreement binding upon ~~between~~ the administrator and the insurer.

(3) If ~~In cases in which~~ an administrator administers benefits for more than 100 certificateholders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review must be an onsite audit of the operations of the administrator. The insurer may contract with a qualified third party to conduct such review.

Section 18. Subsections (1) and (4) of section 626.882, Florida Statutes, are amended to read:

626.882 Agreement between administrator and insurer; required provisions; maintenance of records.—

(1) A ~~No~~ person may not act as an administrator without a written agreement, as required under s. 626.8817, which specifies the rights, duties, and obligations of the ~~between~~

~~such person as~~ administrator and ~~an~~ insurer.

(4) If a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments to that agreement shall be furnished to the insurer or its designee by the administrator and shall be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

Section 19. Subsections (3), (4), and (5) of section 626.883, Florida Statutes, are amended to read:

626.883 Administrator as intermediary; collections held in fiduciary capacity; establishment of account; disbursement; payments on behalf of insurer.—

(3) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for more than one insurer, the administrator shall keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The administrator shall, upon request of an insurer or its designee, furnish such insurer or designee with copies of records pertaining to deposits and withdrawals on behalf of or for such insurer.

(4) The administrator may not pay any claim by withdrawals from a fiduciary account. Withdrawals from such account shall be made as provided in the written agreement required under ss. 626.8817 and 626.882 ~~between the administrator and the insurer~~ for any of the following:

(a) Remittance to an insurer entitled to such remittance.

(b) Deposit in an account maintained in the name of such insurer.

(c) Transfer to and deposit in a claims-paying account,

with claims to be paid as provided by such insurer.

(d) Payment to a group policyholder for remittance to the insurer entitled to such remittance.

(e) Payment to the administrator of the commission, fees, or charges of the administrator.

(f) Remittance of return premium to the person or persons entitled to such ~~return~~ premium.

(5) All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of, and as authorized by, such insurer or its designee.

Section 20. Subsection (3) of section 626.884, Florida Statutes, is amended to read:

626.884 Maintenance of records by administrator; access; confidentiality.—

(3) The insurer shall retain the right of continuing access to books and records maintained by the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement pertaining to ~~between the insurer and the administrator on~~ the proprietary rights of the parties in such books and records.

Section 21. Subsections (1) and (2) of section 626.89, Florida Statutes, are amended to read:

626.89 Annual financial statement and filing fee; notice of change of ownership.—

(1) Each authorized administrator shall annually file with the office a full and true statement of its financial condition, transactions, and affairs within 3 months after the end of the administrator's fiscal year~~. The statement shall be filed~~

~~annually on or before March 1~~ or within such extension of time ~~therefor~~ as the office for good cause may have granted. The statement must ~~and shall~~ be for the preceding fiscal ~~calendar~~ year and must~~. The statement shall~~ be in such form and contain such matters as the commission prescribes and must ~~shall~~ be verified by at least two officers of the ~~such~~ administrator. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's statement within 2 months after its fiscal year end.~~

(2) Each authorized administrator shall also file an audited financial statement performed by an independent certified public accountant. The audited financial statement shall be filed with the office within 5 months after the end of the administrator's fiscal year and be ~~on or before June 1~~ for the preceding fiscal ~~calendar~~ year ~~ending December 31~~. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's audited financial statement within 5 months after the end of its fiscal year.~~ An audited financial statement prepared on a consolidated basis must include a columnar consolidating or combining worksheet that must be filed with the statement and must comply with the following:

(a) Amounts shown on the consolidated audited financial

statement must be shown on the worksheet;

(b) Amounts for each entity must be stated separately; and

(c) Explanations of consolidating and eliminating entries must be included.

Section 22. Section 626.931, Florida Statutes, is amended to read:

626.931 ~~Agent affidavit and~~ Insurer reporting requirements.—

~~(1) Each surplus lines agent shall on or before the 45th day following each calendar quarter file with the Florida Surplus Lines Service Office an affidavit, on forms as prescribed and furnished by the Florida Surplus Lines Service Office, stating that all surplus lines insurance transacted by him or her during such calendar quarter has been submitted to the Florida Surplus Lines Service Office as required.~~

~~(2) The affidavit of the surplus lines agent shall include efforts made to place coverages with authorized insurers and the results thereof.~~

(1)~~(3)~~ Each foreign insurer accepting premiums shall, on or before the end of the month following each calendar quarter, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during the ~~such~~ calendar quarter.

(2)~~(4)~~ Each alien insurer accepting premiums shall, on or before June 30 of each year, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during the preceding calendar year.

(3)~~(5)~~ The department may waive the filing requirements described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

(4)~~(6)~~ Each insurer's report and supporting information shall be in a computer-readable format as determined by the Florida Surplus Lines Service Office or ~~shall~~ be submitted on forms prescribed by the Florida Surplus Lines Service Office and ~~shall~~ show for each applicable agent:

(a) A listing of all policies, certificates, cover notes, or other forms of confirmation of insurance coverage or any substitutions thereof or endorsements thereto and the identifying number; and

(b) Any additional information required by the department or Florida Surplus Lines Service Office.

Section 23. Paragraph (a) of subsection (2) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall make payable to the department the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office~~,~~ and remit the tax to the Florida Surplus Lines Service Office on or before the 45th day after each calendar quarter ~~at the same time as provided for the filing of the quarterly affidavit, under s. 626.931~~. The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b)~~,~~ within 10 days after ~~of~~ receipt.

Section 24. Subsection (1) of section 626.935, Florida Statutes, is amended to read:

626.935 Suspension, revocation, or refusal of surplus lines agent's license.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent and all other licenses and appointments held by the licensee under this code~~,~~ on any of the following grounds:

(a) Removal of the licensee's office from the licensee's state of residence.

(b) Removal of the accounts and records of his or her surplus lines business from this state or the licensee's state of residence during the period when such accounts and records are required to be maintained under s. 626.930.

(c) Closure of the licensee's office for more than 30 consecutive days.

~~(d) Failure to make and file his or her affidavit or reports when due as required by s. 626.931.~~

(d) ~~(e)~~ Failure to pay the tax or service fee on surplus lines premiums~~,~~ as provided in the Surplus Lines Law.

(e) ~~(f)~~ Suspension, revocation, or refusal to renew or continue the license or appointment as a general lines agent, service representative, or managing general agent.

(f) ~~(g)~~ Lack of qualifications as for an original surplus lines agent's license.

(g) ~~(h)~~ Violation of this Surplus Lines Law.

(h) ~~(i)~~ ~~For~~ Any other applicable cause for which the license of a general lines agent could be suspended, revoked, or refused under s. 626.611 or s. 626.621.

Section 25. Subsection (1) of section 626.936, Florida Statutes, is amended to read:

626.936 Failure to file reports or pay tax or service fee; administrative penalty.—

(1) A ~~Any~~ licensed surplus lines agent who neglects to file a report ~~or an affidavit~~ in the form and within the time required under ~~or provided for in~~ the Surplus Lines Law may be fined up to $50 per day for each day the neglect continues, beginning the day after the report ~~or affidavit~~ was due until the date the report ~~or affidavit~~ is received. All sums collected under this section shall be deposited into the Insurance Regulatory Trust Fund.

Section 26. Paragraph (q) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(q) *Certain insurance transactions through credit card facilities prohibited.*—

1. Except as provided in subparagraph 3., no person shall knowingly solicit or negotiate ~~any~~ insurance; seek or accept applications for insurance; issue or deliver any policy; receive, collect, or transmit premiums, to or for an ~~any~~ insurer; or otherwise transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, through the arrangement or facilities of a credit card facility or organization, for the purpose of insuring credit card holders or prospective credit card holders. The term "credit card holder" as used in this paragraph means a ~~any~~ person who may pay the charge for purchases or other transactions through the credit card facility or organization,

whose credit with such facility or organization is evidenced by a credit card identifying such person as being one whose charges the credit card facility or organization will pay, and who is identified as such upon the credit card ~~either~~ by name, account number, symbol, insignia, or ~~any~~ other method or device of identification. This subparagraph does not apply as to health insurance or to credit life, credit disability, or credit property insurance.

2. If ~~Whenever~~ any person does or performs in this state any of the acts in violation of subparagraph 1. for or on behalf of an ~~any~~ insurer or credit card facility, such insurer or credit card facility shall be deemed ~~held~~ to be doing business in this state and, if an insurer, shall be subject to the same state, county, and municipal taxes as insurers that have been legally qualified and admitted to do business in this state by agents or otherwise are subject, the same to be assessed and collected against such insurers; and such person so doing or performing any of such acts is ~~shall be~~ personally liable for all such taxes.

3. A licensed agent or insurer may solicit or negotiate ~~any~~ insurance; seek or accept applications for insurance; issue or deliver any policy; receive, collect, or transmit premiums, to or for an ~~any~~ insurer; or otherwise transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, through the arrangement or facilities of a credit card facility or organization, for the purpose of insuring credit card holders or prospective credit card holders if:

a. The insurance or policy which is the subject of the

transaction is noncancelable by any person other than the named insured, the policyholder, or the insurer;

b. Any refund of unearned premium is made ~~directly~~ to the credit card holder by mail or electronic transfer; and

c. The credit card transaction is authorized by the signature of the credit card holder or other person authorized to sign on the credit card account.

The conditions enumerated in sub-subparagraphs a.-c. do not apply to health insurance or to credit life, credit disability, or credit property insurance; and sub-subparagraph c. does not apply to property and casualty insurance if ~~so long as~~ the transaction is authorized by the insured.

4. No person may use or disclose information resulting from the use of a credit card in conjunction with the purchase of insurance if~~, when~~ such information is to the advantage of the ~~such~~ credit card facility or an insurance agent, or is to the detriment of the insured or any other insurance agent; except that this provision does not prohibit a credit card facility from using or disclosing such information in a ~~any~~ judicial proceeding or consistent with applicable law on credit reporting.

5. ~~No~~ Such insurance may not ~~shall~~ be sold through a credit card facility in conjunction with membership in any automobile club. The term "automobile club" means a legal entity that ~~which~~, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or maintenance of a motor vehicle; however, the term ~~definition of~~

~~automobile clubs~~ does not include persons, associations, or corporations that ~~which~~ are organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon race courses established and marked as such for the duration of such particular event. The words "motor vehicle" used herein shall be the same as defined in chapter 320.

Section 27. Paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review the filing to determine whether the ~~if a~~ rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which

insurers calculate investment income attributable to classes of insurance written in this state and the manner in which investment income is used to calculate insurance rates. Such manner must contemplate allowances for an underwriting profit factor and full consideration of investment income that ~~which~~ produce a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may not disapprove a rate as excessive solely due to the insurer's ~~insurer~~ having obtained catastrophic reinsurance to cover the insurer's estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method, or a straight average of model results or output ranges, which are independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology~~,~~ and as further provided in s. 627.0628.

12. A reasonable margin for underwriting profit and contingencies.

13. The cost of medical services, if applicable.

14. Other relevant factors that affect the frequency or severity of claims or expenses.

Section 28. Paragraph (d) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(d) With respect to a rate filing under s. 627.062, an insurer shall employ and may not modify or adjust actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable in determining hurricane loss factors for use in a rate filing under s. 627.062. An insurer shall employ and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels pursuant to paragraph (b) with respect to a rate filing under s. 627.062 made more than 180 ~~60~~ days after the commission has made such findings. This paragraph does not prohibit an insurer from using a straight average of model results or output ranges or using straight averages for the purposes of a rate filing under s. 627.062.

Section 29. Subsection (8) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(8) Rates are not unfairly discriminatory if averaged broadly among members of a group; nor are rates unfairly

discriminatory even though they are lower than rates for nonmembers of the group. However, such rates are unfairly discriminatory if they are not actuarially measurable and credible and sufficiently related to actual or expected loss and expense experience of the group so as to ensure ~~assure~~ that nonmembers of the group are not unfairly discriminated against. Use of a single United States Postal Service zip code as a rating territory shall be deemed unfairly discriminatory unless filed pursuant to paragraph (1)(a) and such rating territory incorporates sufficient actual or expected loss and loss adjustment expense experience so as to be actuarially measurable and credible.

Section 30. Subsection (6) is added to section 627.0653, Florida Statutes, to read:

627.0653 Insurance discounts for specified motor vehicle equipment.—

(6) The office may approve a premium discount applicable to any rates, rating schedules, or rating manuals for liability, personal injury protection, and collision coverages for motor vehicle insurance policies filed with the office for vehicles equipped with electronic vehicle crash avoidance technology that is factory installed or with a retrofitted system that complies with National Highway Traffic Safety Administration standards.

Section 31. Present subsections (2) through (4) of section 627.072, Florida Statutes, are redesignated as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

627.072 Making and use of rates.—

(2) A retrospective rating plan may contain a provision

that allows for the negotiation of premium between the employer and the insurer for employers having exposure in more than one state and an estimated annual countrywide standard premium of $750,000 or more for workers' compensation.

Section 32. The Office of Insurance Regulation, in consultation with the National Council on Compensation Insurance, is directed to prepare a report that analyzes the use of negotiated workers' compensation premium provisions within retrospective rating plans. The report must examine the use of such provisions in neighboring and competitive states, specifically as to any savings in the actual premium if a retrospective rating deviation is applied, compared to the standard workers' compensation premium, and the potential inequity for the state's employers due to the lack of such provisions in this state. The report must also examine the potential savings to Florida employers which results from implementing negotiated premiums for employers having exposure in more than one state and an estimated annual countrywide standard premium of at least $250,000, $500,000, and $750,000. The report shall be delivered to the task force for approval by September 1, 2014, and the approved report shall be delivered to the President of the Senate and the Speaker of the House of Representatives by November 1, 2014. This section is repealed June 30, 2015.

Section 33. Subsection (2) of section 627.281, Florida Statutes, is amended to read:

627.281 Appeal from rating organization; workers' compensation and employer's liability insurance filings.—

(2) If the ~~such~~ appeal is based on ~~upon~~ the failure of the

rating organization to make a filing on behalf of a ~~such~~ member or subscriber which is based on a system of expense provisions which ~~differs~~, in accordance with the right granted in s. 627.072(3) ~~627.072(2)~~, differs from the system of expense provisions included in a filing made by the rating organization, the office shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the office shall apply the applicable standards set forth in ss. 627.062 and 627.072.

Section 34. Paragraph (h) of subsection (5) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(5)

(h) Any premium or assessments collected by the plan in excess of the amount necessary to fund projected ultimate incurred losses and expenses of the plan and not paid to insureds of the plan in conjunction with loss prevention or dividend programs shall be retained by the plan for future use. Any state funds received by the plan in excess of the amount necessary to fund deficits in subplan D or any tier shall be returned to the state. Any dividend payable to a former insured of the plan may be retained by the plan for future use upon such terms as set forth in the declaration of dividend.

Section 35. Subsection (9) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to

implement a clearinghouse program by January 1, 2014.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. ~~627.4133(2)(b)4.b.~~ applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

Section 36. Section 627.3519, Florida Statutes, is repealed.

Section 37. Section 627.409, Florida Statutes, is amended to read:

627.409 Representations in applications; warranties.—

(1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and ~~is~~ not a warranty. Except as provided in subsection (3), a misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply:

(a) The misrepresentation, omission, concealment, or statement is fraudulent or is material ~~either~~ to the acceptance of the risk or to the hazard assumed by the insurer.

(b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

(2) A breach or violation by the insured of a ~~any~~ warranty,

condition, or provision of a ~~any~~ wet marine or transportation insurance policy, contract of insurance, endorsement, or application ~~therefor~~ does not void the policy or contract, or constitute a defense to a loss thereon, unless such breach or violation increased the hazard by any means within the control of the insured.

(3) For residential property insurance, if a policy or contract is in effect for more than 90 days, a claim filed by the insured may not be denied based on credit information available in public records.

Section 38. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to a ~~any~~ personal lines or commercial residential property insurance policy, including a~~, but not limited to, any~~ homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 ~~100~~ days before the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30.~~ The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

~~1. The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days prior to the effective date of the nonrenewal, cancellation, or termination for a first-named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least a 5-year period immediately prior to the date of the written notice.~~

1.~~2.~~ If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the premium ~~in connection with the payment of premiums~~ on a policy or an ~~any~~ installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail.~~, and~~ If the contract is void, any premium received by the insurer from a third party must be refunded to that party in

full.

2.~~3.~~ If ~~such~~ cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 90 days, the insurer may not cancel the policy unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or the cancellation is for all insureds under such policies for a class of insureds. This subparagraph does not apply to individually rated risks having a policy term of less than 90 days.

4. After a policy or contract has been in effect for 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records. ~~The requirement for providing written notice by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover~~

~~collapse pursuant to s. 627.706.~~

5.~~b.~~ A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

~~After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.~~

6.~~5.~~ Notwithstanding any other ~~provision of~~ law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its

finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7.~~6.~~ A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to ~~either~~ the property or motor vehicle insurance after providing 90 days' notice.

Section 39. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

(1) Each insurer that provides ~~which does~~ or may provide liability insurance coverage to pay all or a portion of a ~~any~~ claim that ~~which~~ might be made shall ~~provide~~, within 30 days after ~~of~~ the written request of the claimant, provide a statement, under oath, of a corporate officer or the insurer's claims manager, ~~or~~ superintendent, or licensed company adjuster setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense that the ~~which such~~ insurer reasonably believes is available to the ~~such~~ insurer at the time of filing such statement.

(e) A copy of the policy.

~~In addition,~~ The insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall also disclose the name and coverage of each known insurer

to the claimant and ~~shall~~ forward the ~~such~~ request for information ~~as~~ required by this subsection to all affected insurers. The insurer shall ~~then~~ supply the required information ~~required in this subsection~~ to the claimant within 30 days after ~~of~~ receipt of such request.

Section 40. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto within ~~not later than~~ 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including policies, endorsements, notices, or other documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farm owners' insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitute ~~shall constitute~~ delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission must ~~shall~~ include a notice to the insured or to the person

entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.

Section 41. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If a renewal policy contains ~~does contain~~ such change, the insurer must give the named insured written notice of the change, which may ~~must~~ be enclosed along with the written notice of renewal premium required by ss. 627.4133 and 627.728 or be sent in a separate notice that complies with the nonrenewal mailing time requirement for that particular line of business. The insurer must also provide a sample copy of the notice to the insured's insurance agent before or at the same time that notice is given to the insured. Such notice shall be entitled "Notice of Change in Policy Terms."

Section 42. Section 627.4553, Florida Statutes, is created to read:

627.4553 Recommendations to surrender.—If an insurance agent recommends the surrender of an annuity or life insurance policy containing a cash value and is not recommending that the proceeds from the surrender be used to fund or purchase another annuity or life insurance policy, before execution of the surrender, the insurance agent, or the insurance company if no agent is involved, shall provide, on a form adopted by rule by the department, information concerning the annuity or policy to

be surrendered, including the amount of any surrender charge, the loss of any minimum interest rate guarantees, the amount of any tax consequences resulting from the surrender, the amount of any forfeited death benefit, and the value of any other investment performance guarantees being forfeited as a result of the surrender. This section also applies to a person performing insurance agent activities pursuant to an exemption from licensure under this part.

Section 43. Paragraph (b) of subsection (4) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(4) The department shall adopt by rule a property insurance mediation program to be administered by the department or its designee. The department may also adopt special rules which are applicable in cases of an emergency within the state. The rules shall be modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court. The rules must ~~shall~~ provide ~~for~~:

(b) Qualifications, denial of application, suspension, revocation of approval, and other penalties for ~~of~~ mediators as provided in s. 627.745 and in the Florida Rules for ~~of~~ Certified and Court-Appointed ~~Court Appointed~~ Mediators~~, and for such other individuals as are qualified by education, training, or experience as the department determines to be appropriate~~.

Section 44. Section 627.70151, Florida Statutes, is created to read:

627.70151 Appraisal; conflicts of interest.—An insurer that offers residential coverage, as defined in s. 627.4025, or a

policyholder that uses an appraisal clause in the property insurance contract to establish a process for estimating or evaluating the amount of the loss through the use of an impartial umpire may challenge the umpire's impartiality and disqualify the proposed umpire only if:

(1) A familial relationship within the third degree exists between the umpire and a party or a representative of a party;

(2) The umpire has previously represented a party or a representative of a party in a professional capacity in the same or a substantially related matter;

(3) The umpire has represented another person in a professional capacity on the same or a substantially related matter, which includes the claim, same property, or an adjacent property and that other person's interests are materially adverse to the interests of any party; or

(4) The umpire has worked as an employer or employee of a party within the preceding 5 years.

Section 45. Paragraph (c) of subsection (2) of section 627.706, Florida Statutes, is amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(c) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, ~~and~~ who is determined by the department to be fair and impartial, and who

is not otherwise ineligible for certification as provided in s. 627.7074.

Section 46. Subsections (3), (7), and (18) of section 627.7074, Florida Statutes, are amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(3) Following the receipt of the report required ~~provided~~ under s. 627.7073 or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section if coverage is available under the policy and the claim was submitted within the timeframe provided in s. 627.706(5). Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015 but does not invalidate the appraisal clause of the insurance policy. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to subsection (1) electronically or by United States mail.

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The department shall allow the parties to submit requests for disqualifying ~~to disqualify~~ evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship exists between the neutral evaluator and either party or a representative of either party within the third degree.

2. The proposed neutral evaluator has, in a professional

capacity, previously represented either party or a representative of either party, in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of a ~~any~~ party to the case.

(b) The department shall deny an application, or suspend or revoke the certification, of a neutral evaluator to serve in the neutral evaluator capacity if the department finds that one or more of the following grounds exist:

1. Lack of one or more of the qualifications for certification specified in this section.

2. Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the certification.

3. Demonstrated lack of fitness or trustworthiness to act as a neutral evaluator.

4. Fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of business in the financial services industry.

5. Violation of any provision of this code or of a lawful order or rule of the department or aiding, instructing, or encouraging another party to commit such violation.

(c) ~~(b)~~ The parties shall appoint a neutral evaluator from the department list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 14 business days, the department shall appoint a neutral evaluator from the list of certified neutral evaluators. The department shall allow each party to disqualify two neutral evaluators without cause. Upon selection or appointment, the department shall promptly refer the request to the neutral evaluator.

(d) ~~(c)~~ Within 14 business days after the referral, the neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The conference may be held by telephone, if feasible and desirable. The neutral evaluator shall make reasonable efforts to hold the conference within 90 days after the receipt of the request by the department. Failure of the neutral evaluator to hold the conference within 90 days does not invalidate either party's right to neutral evaluation or to a neutral evaluation conference held outside this timeframe.

(18) The department shall adopt rules of procedure for the neutral evaluation process and for certifying, denying or suspending the certification of, and revoking certification as, a neutral evaluator.

Section 47. Subsection (8) of section 627.711, Florida Statutes, is amended to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(8) At its expense, the insurer may require that a uniform mitigation verification form provided by a policyholder, a policyholder's agent, or an authorized mitigation inspector or

inspection company be independently verified by an inspector, an inspection company, or an independent third-party quality assurance provider that ~~which~~ possesses a quality assurance program before accepting the uniform mitigation verification form as valid. The insurer may exempt from additional independent verification any uniform mitigation verification form provided by a policyholder, a policyholder's agent, an authorized mitigation inspector, or an inspection company that possesses a quality assurance program that meets the standards established by the insurer. A uniform mitigation verification form provided by a policyholder, a policyholder's agent, an authorized mitigation inspector, or an inspection company to Citizens Property Insurance Corporation is not subject to additional verification, and the property is not subject to reinspection by the corporation, absent material changes to the structure for the term stated on the form if the form signed by a qualified inspector was submitted to, reviewed, and verified by a quality assurance program approved by the corporation before submission to the corporation.

Section 48. Subsections (1), (2), and (3) of section 627.7283, Florida Statutes, are amended to read:

627.7283 Cancellation; return of premium.—

(1) If the insured cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice or request for cancellation, whichever is later. This requirement applies to a cancellation initiated by an insured for any reason.

(2) If an insurer cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer the unearned premium portion of any premium within 15 days after the effective date of the policy cancellation.

(3) If the unearned premium is not mailed or electronically transferred within the applicable period, the insurer must pay to the insured 8 percent interest on the amount due. If the unearned premium is not mailed or electronically transferred within 45 days after the applicable period, the insured may bring an action against the insurer pursuant to s. 624.155.

Section 49. Paragraph (a) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may directly pay ~~for~~ such charges ~~directly~~ to the ~~such~~ person or institution lawfully rendering ~~such~~ treatment if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid ~~for~~ as having actually been rendered, to the best knowledge of the insured or his or her guardian. However, such a charge may not exceed the amount the person or institution customarily

charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement ~~for the service, treatment, or supply~~.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care as defined by s. 395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies from March 1 until the last day of February ~~throughout the remainder~~ of the following ~~that~~ year, notwithstanding any subsequent

change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

3. Subparagraph 1. does not allow the insurer to apply a ~~any~~ limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.

4. If an insurer limits payment as authorized by subparagraph 1., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

5. ~~Effective July 1, 2012,~~ An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the

insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A policy form approved by the office satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

Section 50. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 627.744, Florida Statutes, are amended to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(1) A private passenger motor vehicle insurance policy providing physical damage coverage, including collision or comprehensive coverage, may not be issued in this state unless the insurer has inspected the motor vehicle in accordance with this section. Physical damage coverage on a motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide required documents. However, payment of a claim may be conditioned upon the insurer's receipt of the required documents, and physical damage loss occurring after the effective date of coverage is not payable until the documents are provided to the insurer.

(2) This section does not apply:

(a) To a policy for a policyholder who has been insured for 2 years or longer, without interruption, under a private passenger motor vehicle policy that ~~which~~ provides physical damage coverage for any vehicle~~,~~ if the agent of the insurer verifies the previous coverage.

(b) To a new, unused motor vehicle purchased or leased from

a licensed motor vehicle dealer or leasing company~~,~~ if the insurer is provided with:

1. A bill of sale, ~~or~~ buyer's order, or lease agreement that ~~which~~ contains a full description of the motor vehicle~~,~~ ~~including all options and accessories~~; or

2. A copy of the title or registration that ~~which~~ establishes transfer of ownership from the dealer or leasing company to the customer and a copy of the window sticker ~~or the dealer invoice showing the itemized options and equipment and the total retail price of the vehicle~~.

~~For the purposes of this paragraph, the physical damage coverage on the motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide the required documents. However, payment of a claim is conditioned upon the receipt by the insurer of the required documents, and no physical damage loss occurring after the effective date of the coverage is payable until the documents are provided to the insurer.~~

Section 51. Paragraph (b) of subsection (3) of section 627.745, Florida Statutes, is amended, present subsections (4) and (5) of that section are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

627.745 Mediation of claims.—

(3)

(b) To qualify for approval as a mediator, an individual ~~a person~~ must meet one of the following qualifications:

1. Possess an active certification as a Florida Supreme

Court certified circuit court mediator. A circuit court mediator whose certification is in a lapsed, suspended, or decertified status is not eligible to participate in the program ~~a masters or doctorate degree in psychology, counseling, business, accounting, or economics, be a member of The Florida Bar, be licensed as a certified public accountant, or demonstrate that the applicant for approval has been actively engaged as a qualified mediator for at least 4 years prior to July 1, 1990~~.

2. Be an approved department mediator as of July 1, 2014, and have conducted at least one mediation on behalf of the department within the 4 years ~~immediately~~ preceding that ~~the~~ date ~~the application for approval is filed with the department, have completed a minimum of a 40-hour training program approved by the department and successfully passed a final examination included in the training program and approved by the department~~. ~~The training program shall include and address all of the following:~~

~~a. Mediation theory.~~

~~b. Mediation process and techniques.~~

~~c. Standards of conduct for mediators.~~

~~d. Conflict management and intervention skills.~~

~~e. Insurance nomenclature.~~

(4) The department shall deny an application, or suspend or revoke its approval of a mediator or certification of a neutral evaluator to serve in such capacity, if the department finds that any of the following grounds exist:

(a) Lack of one or more of the qualifications for approval or certification specified in this section.

(b) Material misstatement, misrepresentation, or fraud in

obtaining, or attempting to obtain, the approval or certification.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.

(d) Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in the conduct of business in the financial services industry.

(e) Violation of any provision of this code or of a lawful order or rule of the department, violation of the Florida Rules of Certified and Court Appointed Mediators, or aiding, instructing, or encouraging another party in committing such a violation.

The department may adopt rules to administer this subsection.

Section 52. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually by May ~~March~~ 31 of the year after the reporting year. The commission shall adopt rules regarding the collection and analysis of the data from the title insurance industry.

Section 53. Subsections (1), (3), (10), and (12) of section

628.461, Florida Statutes, are amended to read:

628.461 Acquisition of controlling stock.—

(1) A person may not, individually or in conjunction with an ~~any~~ affiliated person of such person, acquire directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or of a controlling company~~,~~ unless:

(a) The person or affiliated person has filed with the office and sent to the insurer and controlling company a letter of notification regarding the transaction or proposed transaction within ~~no later than~~ 5 days after any form of tender offer or exchange offer is proposed~~,~~ or within ~~no later than~~ 5 days after the acquisition of the securities if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved;

(b) The person or affiliated person has filed with the office a statement as specified in subsection (3). The statement must be completed and filed within 30 days after:

1. Any definitive acquisition agreement is entered;

2. Any form of tender offer or exchange offer is proposed; or

3. The acquisition of the securities~~,~~ if no definitive acquisition agreement, tender offer, or exchange offer is involved; and

(c) The office has approved the tender or exchange offer,

or acquisition if no tender offer or exchange offer is involved, and approval is in effect.

~~In lieu of a filing as required under this subsection, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation and control. The disclaimer shall fully disclose all material relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the office disallows the disclaimer. The office shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A filing as required under this subsection must be made as to any acquisition that equals or exceeds 10 percent of the outstanding voting securities.

(3) The statement to be filed with the office under subsection (1) and furnished to the insurer and controlling company must ~~shall~~ contain the following information and any additional information ~~as~~ the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the policyholders and shareholders of the insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or

on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by, or on behalf of, a corporation, association, or trust, as to the corporation, association, or trust and as to any person who ~~controls either~~ directly or indirectly controls the corporation, association, or trust, the identity of, and the background information specified in subsection (4) on, each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust;

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition;

(c) Any plans or proposals that ~~which~~ such persons may have made to liquidate such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals that which such persons may have made to liquidate any controlling company of such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management;

(d) The number of shares or other securities which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired; and

(e) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the insurer or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the

giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(10) Upon notification to the office by the domestic stock insurer or a controlling company that any person or any affiliated person of such person has acquired 10 ~~5~~ percent or more of the outstanding voting securities of the domestic stock insurer or controlling company without complying with ~~the provisions of~~ this section, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the domestic stock insurer or controlling company; however, the person or any affiliated person of such person may request a proceeding, which ~~proceeding~~ shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with an ~~any~~ affiliated person of such person, has acquired 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this subsection that the person or affiliated person has acquired voting securities of a domestic stock insurer or controlling company in violation of this section, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

(12)~~(a)~~ A presumption of control may be rebutted by filing a disclaimer of control. A person may file a disclaimer of control with the office. The disclaimer must fully disclose all

material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. The disclaimer of control shall be filed on a form prescribed by the office, or a person or acquiring party may file with the office a copy of a Schedule 13G on file with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or Rule 13d-1(c) under the Securities Exchange Act of 1934, as amended. After a disclaimer is filed, the insurer is relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person, unless the office disallows the disclaimer. ~~For the purpose of this section, the term "affiliated person" of another person means:~~

~~1. The spouse of such other person;~~

~~2. The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;~~

~~3. Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;~~

~~4. Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;~~

~~5. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;~~

~~6. Any officer, director, partner, copartner, or employee of such other person;~~

~~7. If such other person is an investment company, any investment adviser of such company or any member of an advisory~~

~~board of such company;~~

~~8. If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or~~

~~9. Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.~~

~~(b) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more domestic stock insurance companies.~~

Section 54. Subsection (11) of section 631.717, Florida Statutes, is amended to read:

631.717 Powers and duties of the association.—

(11) The association is ~~shall~~ not ~~be~~ liable for any civil action under s. 624.155 arising from any acts alleged to have been committed by a member insurer before ~~prior to~~ its liquidation. ~~This subsection does not affect the association's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida domestic rehabilitation or a liquidation.~~

Section 55. Section 631.737, Florida Statutes, is amended to read:

631.737 Rescission and review generally.—The association shall review claims and matters regarding covered policies based upon the record available to it on and after the date of

liquidation. Notwithstanding any other provision of this part, in order to allow for orderly claims administration by the association, entry of a liquidation order by a court of competent jurisdiction tolls ~~shall be deemed to toll~~ for 1 year any rescission or noncontestable period allowed by the contract, the policy, or by law. The association's obligation is to pay any valid insurance policy or contract claims, if warranted, after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a rehabilitation or a liquidation.

Section 56. Subsections (6) and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(6) An association that ~~which~~ holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following conditions:

(a) Maintains net assets of at least $750,000.

(b) Uses ~~Utilizes~~ a contractual liability insurance policy approved by the office that: ~~which~~

1. Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or

2. Complies with subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

(c) The insurer issuing the contractual liability insurance policy:

~~1. Maintains a policyholder surplus of at least $100 million.~~

1.~~2.~~ Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

~~3. Is in no way affiliated with the warranty association.~~

2.~~4.~~ In conjunction with the warranty association's filing of the quarterly and annual reports, provides, on a form prescribed by the commission, a statement certifying the gross written premiums in force reported by the warranty association and a statement that all of the warranty association's gross written premium in force is covered under the contractual liability policy, regardless of whether ~~or not~~ it has been reported.

~~(7) A contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, wherever written, unless all of the following are satisfied:~~

~~(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;~~

~~(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;~~

~~(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5~~

~~years, and:~~

~~1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file either of Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;~~

~~2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~3. Has and maintains at all times a minimum net worth of not less than $10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office annually; and~~

~~4. Is authorized to do business in this state; and~~

~~(d) The insurer issuing the contractual liability policy:~~

~~1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least $100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office;~~

~~2. Holds a certificate of authority to do business in this state and is approved to write this type of coverage; and~~

~~3. Acknowledges to the office quarterly that it insures all of the association's claims exposure under contracts delivered in this state.~~

~~If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.~~

Section 57. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1260
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Brandes and Soto
SUBJECT:	Insurance
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Fav/CS**
3.	Betta	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1260 enacts the following changes related to insurance:

- Revises the criteria for establishing a not-for-profit self-insurance fund;
- Revises insurance agency licensure application requirements;
- Allows an insurance agency license to continue in force until cancelled, suspended, revoked or terminated;
- Creates a license for unaffiliated insurance agents;
- Expands the scope limited licenses to transact motor vehicle rental insurance issued to a business entity that offers motor vehicles for rent or lease;
- Provides the Department of Financial Services (DFS) with additional authority to regulate mediators, navigators, and sinkhole neutral evaluators;
- Provides the DFS with an additional ground to deny, suspend, revoke, or refuse to renew a license for an insurance agent, adjuster, customer or service representative, or managing general agent;
- Deletes the requirement that representatives of an insurer must provide at least 48 hours' notice to the insured before scheduling a meeting or conducting an onsite inspection of the insured property;
- Revises the application for a certificate of authority to be an insurance administrator;
- Allows an insurer to use a qualified third party to conduct required reviews of an insurance administrator;

- Allows annual financial statements of insurance administrators to cover the prior fiscal year;
- Allows motor vehicle insurers to electronically transfer unearned premium to a policyholder who cancels a motor vehicle insurance policy;
- Repeals the requirement that surplus lines agents file an affidavit with the Florida Surplus Lines Service Office (FSLSO);
- Includes using a straight average of hurricane model results or output ranges as factors the Office of Insurance Regulation (OIR) must consider in a rate filing;
- Allows motor vehicle insurance rating territories to encompass a single zip code;
- Allows the OIR to approve a premium discount to rates for liability, personal injury protection, and collision coverages for motor vehicle policies for vehicles with electronic vehicle crash avoidance technology;
- Increases from 60 days to 180 days the time an insurer is not required to use the newest version of an approved hurricane model;
- Allows workers' compensation insurance retrospective rating plans that provide for negotiation of rating factors between the insurer and employer in specified instances;
- Allows the Florida Workers' Compensation Joint Underwriting Association to retain dividends that are not paid to former insureds;
- Prohibits insurers from denying residential property insurance claims on the basis of credit information that is publicly available if the insurance policy has been effective for more than 90 days;
- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal and commercial lines residential property insurance policies;
- Authorizes a licensed company adjuster to provide the sworn statement of liability insurance coverage required by current law;
- Allows a policyholder to elect electronic delivery of policy documents;
- Allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium;
- Requires an insurance agent recommending the surrender of an annuity or life insurance policy with a cash value, but is not recommending the proceeds be used to fund another life insurance or annuity product, to provide specified disclosures;
- Creates conflict of interest standards for appraisers in residential property insurance claims;
- Specifies instances when an insurer need not provide notice of the availability of sinkhole neutral evaluation;
- Allows insurers to exempt uniform mitigation verification forms from independent verification under certain circumstances and prohibits Citizens Property Insurance Corporation from subjecting such forms to additional verification in certain circumstances;
- Clarifies that the annual update to the Personal Injury Protection medical fee schedule applies until the last day of February in the following year;
- Creates exemptions to the required preinsurance inspection of private passenger motor vehicles;
- Changes the date by which title insurers and title insurance agencies must annually submit financial data to the Office of Insurance Regulation (OIR);
- Expands the risks industrial insured captive insurance companies may insure;
- Revises requirements related to the acquisition of controlling stock in an insurer; and

- Provides exceptions to certain financial requirements applicable to service warranty associations.

II. Present Situation:

Not-For-Profit Self-Insurance Funds

Section 624.4625, F.S., provides that two or more not-for-profit corporations located and organized under Florida law may form a self-insurance fund. The purpose of the self-insurance fund must be to pool and spread the property and casualty liabilities of group members. The fund must meet a number of requirements including:

- Annual normal premiums in excess of $5 million;
- Each participating member receiving at least 75 percent of its revenues from local, state, and federal governmental sources;
- Use of a qualified actuary to determine actuarially sound rates and adequate reserves;
- Maintaining excess insurance coverage;
- Submitting annually audited financial statements; and
- Other requirements set forth under the statute.

Licensing of Insurance Agents Selling Motor Vehicle Rental Insurance

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the DFS to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.[1]

Limited lines insurance agents are individuals, or in some cases entities, licensed as insurance agents but limited to selling one or more of the following forms of insurance (each requiring a separate license):

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit insurance;
- Crop hail and multiple-peril crop insurance;
- In-transit and storage personal property insurance; and
- Portable electronics insurance.[2]

A limited lines insurance agent license generally has fewer requirements for licensing than other insurance agents. These licensees must, however, file an application with the DFS and be appointed by an insurance company.

[1] s. 626.112, F.S.
[2] s. 626.321, F.S.

Department of Financial Services

The DFS licenses insurance agencies and agents. The DFS Division of Agent and Agency Services receives licensing applications, issues licenses, and investigates violations of the Insurance Code.[3] In order to transact insurance, a person must be licensed by the DFS and appointed by an insurer to transact insurance on its behalf.[4] If an agent fails to maintain an appointment during a four-year period, the agent's license expires and the agent must qualify as a first time applicant before transacting insurance.[5]

Section 624.310, F.S., gives the DFS the authority to initiate administrative proceedings to seek cease and desist orders, to seek the removal of affiliated parties, to impose administrative fines, and to suspend or revoke licenses. Any service of documents authorized or required by s. 624.310, F.S., must be made by certified mail, personal delivery, or by service of process in accordance with ch. 48, F.S. Section 624.310, F.S., does not allow for service by electronic mail.

Insurance Agency Licensure and Registration

The DFS is responsible for licensing insurance agencies in accordance with s. 626.172, F.S. An application for licensure must be signed by the owner of the agency.[6] Insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.[7]

Each place of business where an agent transacts insurance must have an agency license.[8] Section 626.747, F.S., requires a licensed insurance agent to be at each branch location where activities requiring licensure as an insurance agent occur. Such an agent is commonly referred to as the "agent in charge."

Section 626.112(7), F.S., provides that agencies existing prior to January 1, 2003, are allowed to file an application for registration in lieu of applying for licensure. A benefit of registration over licensing is that registrations do not expire, whereas licenses expire every three years.[9] The DFS staff indicates that Florida is the only state that registers insurance agencies in lieu of licensing them and that many registered agencies are seeking licensure.[10]

Insurance Agents

A "general lines agent" is an agent who transacts property insurance, casualty insurance, surety insurance, certain types of health insurance, and marine insurance.[11] A "customer representative" means an individual appointed by a general lines agent or agency to assist that agent or agency in

[3] The Division of Agent and Agency Services website is found at http://www.myfloridacfo.com/Division/Agents/#.UxnmwPldUeG (last accessed March 7, 2013).
[4] *See* ss. 626.015(3) and 626.112 F.S.
[5] *See* s. 626.431, F.S.
[6] *See* s. 626.172(2), F.S.
[7] *See* s. 626.112(7), F.S.
[8] *See* s. 626.112(7), F.S.
[9] *See* s. 626.382, F.S.
[10] Interview with DFS staff, March 7, 2014.
[11] *See* s. 626.015(5), F.S.

transacting the business of insurance from the office of that agent or agency.[12] A "limited customer representative" is a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency.[13]

Regulation of Navigators

In 2010, the federal Patient Protection and Affordable Care Act became law. The act created "navigators" to aid consumers in selecting a health plan. Part XIII of ch. 626, F.S., requires navigators to register with the DFS and provides a registration process for navigators.[14] Section 626.9957, F.S., provides disciplinary rules for navigators and grounds for the denial of registration.

Alternative Dispute Resolution Programs

The DFS administers alternative dispute programs for various types of insurance and has mediation programs for property insurance[15] and automobile insurance[16] claims. The DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[17] The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.[18]

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.[19] In addition, an applicant must complete a training program approved by the DFS.[20]

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by the DFS and who is determined by the DFS to be fair and impartial.[21] According to an analysis provided by the DFS,[22] the number of reported mediations and neutral evaluations is:

[12] *See* s. 626.015(4), F.S.
[13] *See*. s. 626.015(11), F.S.
[14] http://www.myfloridacfo.com/Division/Agents/Industry/News/Navigators.htm#.UxsW4vldUeE (last accessed March 8, 2014).
[15] *See* s. 627.7015, F.S.
[16] *See* s. 626.745, F.S.
[17] *See* s. 627.7074, F.S.
[18] *See* ss. 627.7015, 627.7074, and 627.745, F.S.
[19] *See* ss. 627.7015, 627.745(3), F.S.
[20] *See* ss. 627.7015, 627.745(3), F.S.
[21] *See* s. 627.706, F.S.
[22] *See* Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014) (on file with the Committee on Banking and Insurance).

	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013
Mediations	3,489	3,323	3,966
Neutral Evaluations	2,245	2,681	1,867

The DFS does not have the explicit authority to investigate, remove, or discipline mediators and neutral evaluators.

Public Adjuster and Insurance Adjuster Notice Requirements for Residential Property Insurance Claims

Section 626.854, F.S., defines a public adjuster as any person[23] who is compensated for aiding an insured or third-party claimant to file an insurance claim or negotiate the settlement of an insurance claim.[24] Section 626.854(6), F.S., prohibits public adjusters from initiating contact or contracting with an insured or claimant regarding a residential property insurance claim until at least 48 hours after the event that is the basis of the claim occurs. The Florida Supreme Court, however, ruled the 48 hour prohibition an unconstitutional regulation of commercial speech in a 2012 decision.[25] Section 626.854(14), F.S., contains a corresponding requirement that adjusters, investigators and attorneys representing insurers must provide the claimant or claimant's representative at least 48 hours' notice prior to scheduling a meeting with the claimant or inspecting the insured property. This requirement remains effective under Florida law.

Insurance Administrators

An insurance administrator is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with an insurance policy. To operate as an insurance administrator, a person must obtain a certificate of authority to act as an administrator from the Office of Insurance Regulation.[26] An insurer who utilizes an insurance administrator must at least semiannually conduct a review of the operations of an administrator that administers more than 100 certificateholders of that insurer.[27] An administrator must have a written agreement between itself and each insurer for which it performs administrative functions.[28] Administrators must also file an annual financial statement with the OIR containing the administrator's financial condition, transactions, and affairs no later than March 1 of each year.[29]

[23] Other than an attorney at law.
[24] Licensed health care providers or their employees who prepare or file health insurance claims on behalf of patients are excluded from the definition, as are any person who files a health insurance claim on behalf of another and does so without compensation.
[25] *Atwater v. Kortum*, 95 So.3d 85 (Fla. 2012).
[26] S. 626.8805, F.S.
[27] S. 626.8817, F.S.
[28] S. 626.882, F.S.
[29] S. 626.89, F.S.

Surplus Lines Agent Affidavit

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents. Before a surplus lines insurance agent can place insurance in the surplus lines market, s. 626.916, F.S., requires the insurance agent to make a diligent effort to procure the desired coverage from admitted insurers. Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is $1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or Office) within 30 days of the effective date of the transaction. They must also transmit service fees to the Office each month, and must transmit assessment and tax payments to the Office quarterly.

Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FSLSO. The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.

Hurricane Loss Projection Models

The Florida Commission on Hurricane Loss Projection Methodology (Commission) was established by the Legislature to serve as an independent body to provide expert evaluation of computer models that project hurricane losses.[30] The Commission is assigned to the State Board of Administration. The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include:[31]

- The Insurance Consumer Advocate;
- The person responsible for FHCF operations;
- The Executive Director of Citizens Property Insurance Corporation;
- The Director of Emergency Management;
- An actuary member from the FHCF Advisory Council;
- An actuary employed by the OIR;
- An appointment by the state Chief Financial Officer who is an actuary employed with a property and casualty insurer;
- An appointment by the state Chief Financial Officer who is an insurance finance expert and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is a statistics expert in meteorology and who is a full-time faculty member in the State University System; and
- An appointment by the state Chief Financial Officer who is an expert in computer system design and who is a full-time faculty member in the State University System.

[30] See s. 627.0628, F.S.
[31] S. 627.0628(2) (b), F.S.

The Commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. Only hurricane loss models or methods that the Commission has found to be accurate can be used by insurers to estimate the hurricane losses that are used to set property insurance rates. After the Commission finds a model to be accurate, an insurer has 60 days to use the model to predict the insurer's probable maximum loss "with respect to a rate filing."[32]

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.062, F.S., is Florida's rating law. Among other requirements, it provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory. Insurer rate filings that comply with the law and are adequately supported by actuarial justification must be accepted by the OIR. Pursuant to s. 627.0651, F.S., the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited.

Premium Discounts for Motor Vehicle Insurance

Section 627.0653, F.S., sets forth motor vehicle insurance discounts that insurers must offer for specified motor vehicle equipment. Insurers are required to provide a premium discount for liability, personal injury protection (PIP), and collision coverages if the insured vehicle is equipped with factory-installed, four-wheel antilock brakes. A premium discount on comprehensive coverage must be provided for an antitheft device or vehicle recovery system that is factory installed or approved by the OIR. Discounts must be provided on PIP and medical payments coverage if a vehicle has one or more factory installed airbags. The statute also allows, but does not require, insurers to provide a discount on comprehensive coverage for permanent etching of the vehicle identification number on all windows of the vehicle. Section 627.0652, F.S., requires insurers to provide a discount to insureds age 55 years or older who successfully complete a motor vehicle accident prevention course approved by the Department of Highway Safety and Motor Vehicles.

Workers' Compensation Retrospective Rating Plans

Florida law requires every workers' compensation insurer to file with the OIR its rates and classifications that the insurer proposes to use.[33] Section 627.072, F.S., prescribes factors used in the determination of rates. Section 627.091(1), F.S., requires every insurer to file with the OIR every manual of classifications, rules, and rates, and every rating plan, which it proposes to use. Rate filings for workers' compensation are subject to approval by the OIR before they become effective. The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.[34]

[32] S. 627.0628(3) (d), F.S.
[33] Section 627. 091(4), F.S., allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf. The law expressly provides that an insurer is not required to be a member of any rating organization, but all workers' compensation insurers in Florida have chosen to do so. Currently, all workers' compensation insurers are members of the National Council on Compensation Insurance.
[34] Section 627.062, F.S.

Current Florida law and the rating plans approved by OIR allow for various ways for insurers to compete in the market by varying or adjusting premiums, including retrospective (retro) rating plans that adjust the premium at the end of the policy period to reflect the actual loss experience of the employer. In a retro rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred in the policy period. The insurer and employer negotiate on certain expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation rating for over 50 years in Florida and nationwide. The National Council on Compensation Insurance (NCCI) has filed actuarially sound rating plans.

In 1991, the NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida. The LRARO was described as providing greater flexibility of negotiation between an insurer and employer for risks with over $1,000,000 in standard premium." In 1991, the Department of Insurance (predecessor of the Office of Insurance Regulation) disapproved the use of the LRARO on the basis that it did not comply with s. 627.091(1), F.S., and that the LRARO was not a rating plan but an agreement to use any factors acceptable to both parties.[35] Subsequently, in 1993, an insurer filed its own version of the LRARO and the Department of Insurance disapproved it. The rejection of the plan was primarily on the basis that the use of the LRARO would not allow agency oversight as to the determination of premiums since it proposed to allow the insurer and prospective insureds to agree unilaterally on the components to be used in the rating process.[36] The insurer appealed the disapproval to the Division of Administrative Hearings (DOAH) and DOAH found that the Department of Insurance was justified in disapproving the plan.

Currently, the LRARO plans are available in the majority of the states. However, Alaska, Arkansas, Florida, and Nebraska do not allow its use.[37] The NCCI retro plan rule, which does not apply in Florida, provides that an insured is eligible for the LRARO if the estimated standard premium individually or in any combination with any other commercial casualty lines of insurance exceeds an annual standard premium eligibility threshold of $500,000 for the term of a retrospective rating plan. The following table provides examples of states with different annual standard premium eligibility thresholds for LRARO.[38]

[35] *See Liberty Mutual Insurance Company, et. al., v. State of Florida, Department of Insurance, Case No. 94-0892 (Fla. DOAH 1994).*
[36] *Id.*
[37] E-mail from Lori Lovgren, NCCI (Mar. 4, 2014) (on file with Senate Committee on Banking and Insurance).
[38] *Id.*

LRARO Premium Eligibility Threshold	
State	**Annual Standard Premium**
Arizona	$250,000
Kansas	$1,000,000
Minnesota	$250,000
Nevada	$250,000
New Hampshire	$250,000
North Carolina	$250,000

Refunds to Insureds from the Workers' Compensation Joint Underwriting Association

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA)[39] is the market of last resort for workers' compensation and employers' liability coverage. Only employers that cannot find coverage in the voluntary market are eligible for coverage in the FWCJUA. At the end of October 2013, the FWCJUA had 1,636 policies with corresponding premiums of $29.4 million.[40]

The FWCJUA has a three-tier rating plan. As a brief overview, Tier 1 is for employers with good loss experience; Tier 2 is for employers with moderate loss experience and non-rated new employers; and Tier 3 is for employers not eligible for Tiers 1 or 2.[41] As of January 1, 2014, the premium for Tier 1 is five percent above voluntary rates, Tier 2 is 20 percent above voluntary rates, and Tier 3[42] is 75 percent above voluntary rates. Additionally, all three tiers have a flat surcharge of $475. Tier 3 policies are also subject to assessment if premiums are not sufficient to cover losses and expenses.

Misrepresentations on Insurance Applications and Cancellation of Insurance Policies

Section 627.409, F.S., provides recovery under an insurance policy may be prevented if a misrepresentation, omission, concealment of fact, or incorrect statement on an application for insurance (1) is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer or (2) if the true facts had been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss. If an insurer discovers a misrepresentation or omission after issuing the policy, it may deny coverage after a claim is made. In *Nationwide Mutual Fire Insurance*

[39] The Florida Workers' Compensation Insurance Plan (FWCIP) was the residual market for Florida until the FWCJUA was created on January 1, 1994.
[40] *See* "2013 Workers' Compensation Annual Report," Florida Office of Insurance Regulation (December 31, 2013). Available at: http://www.floir.com/search/search.aspx#2013 workers compensation annual report (Last accessed March 21, 2014).
[41] For further specifics, see the FWCJUA's website: http://www.fwcjua.com/.
[42] In addition, an Assigned Risk Adjustment Program (ARAP) surcharge applies for Tier 3.

Company v. Kramer,[43] an insurer refused to pay a claim for a stolen automobile because the insureds did not disclose a previous bankruptcy filing. In *Kieser v. Old Line Insurance Company of America*,[44] an insurance company refused to pay a life insurance policy because the insured failed to disclose certain health conditions and failed to disclose that he was shopping for other life insurance policies. In *Universal Property and Casualty Insurance Company v. Johnson*,[45] an insurance company refused to pay a property insurance claim because the insureds failed to disclose prior criminal history. A misrepresentation from or an omission in an insurance application need not be intentional in order for the insurance company to deny recovery.[46]

Section 627.4133(2), F.S., requires notice to the insured before an insurer can cancel, nonrenew, or terminate any personal lines or commercial residential property insurance policy. The timing of the notice ranges from ten days for nonpayment of premium to 120 days for certain policyholders.[47] After the policy has been in effect for 90 days, such a policy cannot be canceled unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy.[48] According to the DFS, there are instances of insurance companies reviewing a policyholder's application for insurance after a claim has been filed and denying coverage based on misrepresentations about credit history.[49]

Notice of Cancellation or Nonrenewal

The requirements for an insurer to give notice of cancelling or nonrenewing a residential property insurance policy are contained in s. 627.4133(2), F.S. The specific notice depends on the particular circumstances of the policy being nonrenewed, as follows:

- Generally, an insurer must give the insured 100 days written notice of nonrenewal or cancellation;
- For any nonrenewal or cancellation that would be effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days, whichever is earlier;
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;
- If the insured structure has been insured by the insurer or an affiliate for at least five years, the insurer must give 120 days' notice of nonrenewal or cancellation;
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;

[43] 725 So.2d 1141 (Fla. 2d DCA 1998).
[44] 712 So.2d 1261 (Fla. 1st DCA 1998).
[45] 114 So.3d 1031 (Fla. 1st DCA 2013).
[46] *Universal Property and Casualty Insurance Company*, 114 So.3d at 1035.
[47] *See* s. 627.4133(2), F.S.
[48] *Id*.
[49] *See* Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014)(on file with the Committee on Banking and Insurance).

- If the OIR finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days' written notice of cancellation or nonrenewal;
- If a policy covers both home and motor vehicle, the insurer must give the insured 100 days written notice of nonrenewal.

Required Disclosures by Liability Insurers

Under current law, a liability insurer must provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to the such insurer at the time of filing such statement; and
- A copy of the policy.

Further, the above statement must be under oath by a corporate officer or the insurer's claims manager or superintendent.

Delivery of Insurance Policies Electronically

Section 627.421, F.S., requires every insurance policy[50] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed. The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[51] Insurance is specifically included in E-SIGN.[52] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. The UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by

[50] s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)
[51] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.
[52] *Id.*

delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

In 2013, legislation[53] was enacted allowing all insurance policies to be electronically transmitted to the policyholder. The legislation also contained specific electronic delivery parameters for insurance covering commercial risks.

Change of Policy Terms in Insurance Policies

An insurer must give the policyholder written Notice of Change in Policy Terms with the policy renewal notice to make a change in the terms of a property and casualty insurance contract. Additionally, the notice must comply with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date.[54] A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

Mitigation Discount Verification for Citizens Property Insurance Corporation

Since 2003, insurers have been required to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.[55] Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed.

Typically, policyholders are responsible for substantiating to their insurers that the insured property has mitigation features. Policyholders submit a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form.

Insurers can require mitigation forms provided to the insurer by mitigation inspectors or mitigation inspection companies be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.[56] At their expense, insurers can also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents.

[53] Ch. 2013-190, L.O.F.
[54] s. 627.43141, F.S.
[55] s. 627.0629(1)(a), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).
[56] s. 627.711(8), F.S.

Personal Injury Protection Insurance (PIP)

In 2012, the Legislature enacted HB 119,[57] making substantial changes to laws applying to Florida's PIP requirements. Among numerous other changes, the bill amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The new provision states, in part:

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered…and the applicable fee schedule or payment limitation applies throughout the remainder of that year….

The above language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied just to the end of the calendar year or applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[58] stating that the plain language of the section requires the fee schedule in place on March 1, to apply throughout the following 365 days, or until March 1, of the following year.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, used motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title and certain other documentation. Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

Title Insurance

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance. Pursuant to s. 627.782, F.S., the Financial Services Commission (FSC) is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years. Title insurers and title insurance agencies are required to submit to the Office of Insurance Regulation (OIR), on or before March 31st of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

[57] Ch. 2012-151, L.O.F.
[58] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx. Last visited March 16, 2013.

Model Holding Company Act and Regulations

For years, the OIR's financial oversight authority has included a review of transactions among affiliates and members of insurance holding companies by adopting the National Association of Insurance Commissioners' (NAIC) Model Insurance Holding Company Act.

In response to the recent financial crisis, the NAIC's Solvency Modernization Initiative (SMI)[59] studied key group supervision issues for insurance holding company systems. In light of the 2008 liquidity crisis and collapse of American International Group, Inc., the SMI's efforts focused on the risks and activities of non-insurance entities within insurance holding companies, concluded there was a corresponding regulatory need to obtain affiliates' financial information, such as enterprise risk. The NAIC model act defines "enterprise risk" as:

> [A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.[60]

As a result, the NAIC adopted revisions to its *Model Insurance Holding Company System Regulatory Act and Regulations* in December 2010**,** which states must adopt as an accreditation component. These revisions include:

- Expansions to regulators' ability to evaluate any entity within an insurance holding company system;
- Enhancements to the regulator's rights to access books and records and to compel production of information;
- Establishment of expectation of funding with regard to regulator participation in supervisory colleges;
- Enhancements in corporate governance, such as board of directors and senior management responsibilities;
- The inclusion of financial statements as part of an affiliate's registration requirements; and
- Enterprise risk reporting requirements.

Currently, s. 628.461, F.S., provides that a person or affiliated person[61] must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire five percent or more of a domestic stock insurer or of a controlling company. The statute also sets forth the information required to be disclosed in the statement, which includes criminal and regulatory history information. Alternatively, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as

[59] NAIC Solvency Modernization Initiative (last viewed February 3, 2014), at http://www.naic.org/index_smi.htm
[60] Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.
[61] Currently, "affiliated person" is defined in s. 628.461(12)(a), F.S., to include spouses, parents and lineal descendants, and persons affiliated through 5 percent ownership, common control, or management.

the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent).

During the pendency of the OIR's review of an acquisition filing, the insurer is not permitted to make a "material change" to its operation or management, unless the OIR has approved or been notified, respectively. A "material change" consists of a disposal or obligation of five percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate five percent of the insurer's capital and surplus.

Service Warranty Associations

A service warranty is generally defined as a contract to perform the repair or replacement of a consumer product for failure due to a defect.[62] A service warranty association is defined as any person, other than an authorized insurer, issuing service warranties.[63]

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. A service warranty association can allow its premiums to exceed the ratio to net assets limitations of s. 634.406, F.S., only if the association meets all of the following:

- Maintains net assets of at least $750,000.
- Utilizes a contractual liability insurance policy approved by the office which:
  - Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or
  - Complies with the requirements of subsection (3)[64] and is issued by an insurer that maintains a policyholder surplus of at least $200 million.
- The insurer issuing the contractual liability insurance policy:
  - Maintains a policyholder surplus of at least $100 million.
  - Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Is in no way affiliated with the warranty association.
  - Provides a statement certifying the gross written premiums is covered under the contractual liability policy, whether or not it has been reported.

[62] S. 634.401(13), F.S.
[63] S. 634.401(14), F.S.
[64] Subsection (3) of s. 634.406, F.S., states that a warranty association need not establish an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claims liability from an authorized insurer. The terms of the policy must contain the following (a) state the insurer will pay losses and unearned premium refunds directly to a person making a claim under the warranty association contract in the event the services warranty association does not do so; (b) the insurer must assume full responsibility for administering claims if the warranty association cannot do so; (c) 60 days written notice must be given to the OIR prior to policy cancellation; (d) the policy must insure all service warranty contracts issued while the policy was in effect whether or not the premium has been remitted to the insurer; (e) If the insurer is fulfilling the service warranty covered by the policy and the service warranty holder cancels the warranty, the insurer must fully refund unearned premium, subject to a cancellation fee under s. 634.414, F.S.; and (f) a warranty association may not use an unearned premium reserve and contractual liability insurance policy simultaneously. However, the warranty association may have contractual liability coverage on service warranties previously sold and sell new service warranties covered by the unearned premium reserve, and the converse. The warranty association must be able to distinguish how each individual service warranty is covered.

The statute further requires that a contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, unless numerous specified conditions are met.

III. Effect of Proposed Changes:

Not-For-Profit Self-Insurance Funds

Section 1 amends s. 624.4625(1)(b), F.S., to permit a publicly supported organization under s. 501(c)(3) or s. 4947(a)(1) of the United States Internal Revenue Code, as evidenced by the participating member's most recently filed Internal Revenue Service Form 990 or 990-EZ, Schedule A, to participate as a member of a not-for-profit self-insurance fund. This option is in addition to current law which provides that each member receive at least 75 percent of its revenues from local, state, or federal government sources.

Unaffiliated Agents (Sections 2, 3, 8, and 41)

According to the DFS, some insurance agents act as advisors to clients for a fee. These agents provide advice and recommendations regarding, among other things, insurance products but do not sell the products. **Section 3** defines in s. 626.015(18), F.S., a new type of insurance agent, an unaffiliated insurance agent, and **Section 8** specifies the scope of the unaffiliated insurance agent license in s. 626.311, F.S. An unaffiliated insurance agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. This bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This bill prohibits an unaffiliated insurance agent from holding an appointment from an insurer, from transacting an insurance contract for an insurer, and from interfering with commissions from an appointed insurance agent. Unaffiliated insurance agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received.

The unaffiliated agent is not appointed by an insurer to sell insurance products. This can lead to a situation where an agent's license expires because the agent is not appointed during a four-year period.[65] This bill allows an unaffiliated agent to appoint himself or herself. S**ection 2** amends s. 624.501, F.S., to require unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

Section 41 creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting

[65] Phone interview with DFS staff.

from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

Agent in Charge and Branch Agencies (Sections 4, 13, and 14)

Effective January 1, 2015, **Section 4** creates s. 626.0428(4), F.S., which defines an agent in charge as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency location. Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the locations when an agent is not physically present, and (2) unlicensed employees at the locations do not engage in insurance activities that require licensure as an insurance agent or customer representative.

This bill requires each insurance agency and branch office to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with the DFS at the DFS website. A change of the designated agent in charge must be reported to the DFS within 30 days, and becomes effective upon notification to the DFS.

This bill provides that an insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by and providing services to the agency at all times. When the agent in charge ends his or her affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended his or her affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended his or her affiliation with the agency.

This bill provides that an agent in charge of an insurance agency is accountable for the wrongful acts, misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

Section 13 repeals s. 626.747, F.S., relating to branch agencies, effective January 1, 2015. The section is incorporated and expanded in the new s. 624.0428(4), F.S.

Section 14 amends, s. 626.8411(1)(b), F.S., correcting a cross reference to properly cite the new branch agency requirements created by Section 7.

Insurance Agency Licensing and Registration (Sections 5, 6 and 7)

Section 5 amends s. 626.112, F.S., prohibiting the DFS from issuing limited customer service licenses, effective October 1, 2014.

Section 6 also amends s. 626.112, F.S., eliminating the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her or his own name and does not employ or use other insurance licensees, effective January 1, 2015.

The bill provides that a branch place of business established by a licensed agency is considered a branch agency.[66] A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with the DFS a licensed agent in charge of the branch location; and (2) has submitted to the DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

This bill no longer allows certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. This bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also eliminates the three-year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law.

Section 7 amends s. 626.172, F.S., allowing an owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, to complete and sign an insurance agency application. This bill also allows a third party to complete, submit, and sign an agency license application on the agency's behalf. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or misrepresentations.

This bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf, the physical address of the branch location, including its name, e-mail address, and telephone number, the date that the branch office began transacting insurance, and the fingerprints of each individual required to be listed in the agency application.

Motor Vehicle Retail Insurance License

Section 9 amends s. 626.321(1), F.S., changing the limited license statute for motor vehicle rental insurance. Under current law, a limited license to sell motor vehicle rental insurance can be issued to a business that offers motor vehicles for rent or lease. A license issued to a rental business covers each office, branch office, or place of business associated with the rental

[66] This bill further provides that a license issued to a business entity that offers motor vehicles for rent encompasses each employee or authorized representative at a designated branch.

business. The bill expands this coverage to include each employee working at the rental business. Thus, all employees would be covered by the rental business' license to sell rental insurance. According to DFS, the agency interprets the current law relating to rental insurance licensing to mean the license for the rental company business covers each branch office and each employee working at the rental business. Thus, the change made by the bill is clarifying and is consistent with the application of the current law by the DFS.

Continuation of Insurance Agency Licensure

Section 10 amends s. 626.382, F.S., to allow an insurance agency license to continue in force until it is cancelled, suspended, revoked, terminated, or expires by operation of law. Under current law, the license is issued for a three-year period and may be renewed.

Mediators, Navigators, and Neutral Evaluators (Sections 11, 12, 42, 44, 45, and 50)

Section 11 amends s. 626.601, F.S., to authorize the Department of Financial Services to inquire into alleged improper conduct of mediators, neutral evaluators, and navigators and subsequently initiate and conduct an investigation if reasonable cause exists of an insurance code violation.

Section 42 amends s. 627.7015(4)(b), F.S., to specify that the requirements for qualification as a mediator of liability claims under s. 627.745, F.S., are also the standards that the DFS applies for denial of application, suspension, revocation, and other penalties for mediators who participate in the DFS property insurance mediation program.

Section 44 amends s. 627.706(2)(c), F.S., to specify that a sinkhole neutral evaluator is a person who is not otherwise ineligible for certification as a neutral evaluator under s. 627.7074, F.S.

Sections 45 and 50 amend s. 627.7074, F.S., and s. 627.745, F.S., to require the DFS to deny an application or revoke its approval of a mediator or neutral evaluator for any of the following:

- Lack of one or more of the qualifications required for approval or certification.
- Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain approval or certification.
- Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.
- Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in conducting business in the financial services industry.
- Violation of any provision of the Florida Insurance Code; a lawful order or rule of the DFS; or aiding, instructing, or encouraging another party to commit such a violation.

The bill grants rulemaking authority to administer these requirements.

Section 50 also changes the requirements for qualifying as a mediator under the motor vehicle insurance claim mediation program for personal injury claims of $10,000 or less, or for property damage claims of any amount. Under the bill, a mediator must possess an active certification as a Florida Circuit Court Mediator or be an appointed department mediator as of July 1, 2014, who has conducted at least one mediation on behalf of the DFS within four years prior to that date. This provision essentially grandfathers in current and active mediators so they can continue, even if they are not certified as a Florida Circuit Court Mediator. The bill eliminates the 40-hour

mediation training program and test that all mediators currently must complete in order to be approved as a mediator under the program. In order to become certified as a Florida Circuit Court Mediator, one must fulfil education requirements set by the Florida Supreme Court, complete a mediation training program certified by the Florida Supreme Court, and observe and conduct mediations under the supervision of a certified mediator.[67]

Section 12 amends s. 626.621, F.S., to allow the DFS to deny an application for, suspend, revoke, or refuse to renew or continue a license or appointment of an agent, adjuster, customer representative, service representative, or managing general agent who directly or indirectly accepts any compensation, inducement, or reward from an inspector or inspection company for referring the owner of the property to the inspector or inspection company.

Insurance Company Adjusters – Notice Requirement

Section 15 repeals s. 626.854(16), F.S., which currently requires insurance company employee adjusters, independent adjusters, attorneys, investigators, or other persons acting on behalf of an insurer to provide at least 48 hours' notice to the insured, claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. A prohibition on public adjusters contacting or contracting with insureds and claimants within 48 hours of a loss in s. 626.854(6), F.S., was ruled unconstitutional by the Florida Supreme Court in 2012.

Insurance Administrators – Certificate of Authority Requirements

Section 16 amends s. 626.8805, F.S., changing the information that must be filed with the OIR or made available for OIR inspection as part of an application for a certificate of authority to act as an insurance administrator. The bill requires the applicant to provide the names, addresses, official positions, and professional qualifications of individuals who are employed or retained by the administrator and who are responsible for the conduct of the affairs of the administrator. Current law contains a broader standard, requiring information of any person who exercises control or influence over the affairs of the administrator.

Insurance Administrators – Oversight Responsibilities of Insurers

Sections 17-20 amend ss. 626.8817, 626.882, 626.883, and 626.884, F.S., to allow an insurer who uses the services of an administrator to contract with a qualified third party to conduct the required semiannual review of an administrator that administers benefits for more than 100 certificateholders on behalf of the insurer.

The bill also specifies that the written agreement between an insurer and an administrator that details the responsibilities of the insurer and administrator specifies the rights, duties, and obligations of the administrator and insurer. Any restrictions regarding the proprietary rights of the insurer and administrator related to continuing access to books and records maintained by the administrator are governed by the written agreement between the parties required under s. 626.8817, F.S.

[67] *See* http://www.flcourts.org/core/fileparse.php/283/urlt/HowToBecomeMediator.pdf (last accessed February 7, 2014).

Insurance Administrators – Annual Financial Statement

Section 21 amends s. 626.89, F.S., to change the date by which an administrator must file an annual financial statement with the OIR. The bill requires administrators to file the statement with the OIR within three months after the end of the administrator's fiscal year, rather than by April 1 as required under current law. The bill also allows the financial statement to cover the previous fiscal year, rather than a calendar year, if the administrator's accounting is on a fiscal year basis. Administrators must file an independently audited financial statement annually with the OIR within five months of the administrator's fiscal year, rather than by June 1 as required under current law.

Repeal of Surplus Lines Agent Affidavit Requirement

Section 22 amends s. 626.931, F.S., to eliminate the requirement that each surplus lines agent must, on or before the 45th day following each calendar quarter, file with the Florida Surplus Lines Service Office (FSLSO) an affidavit stating that all surplus lines insurance he or she transacted during that calendar year has been submitted to the FSLSO and that includes efforts made to place coverage with authorized insurers and the results of those efforts. However, surplus lines agents must still file a copy of information on each surplus lines transaction with the FSLSO in accordance with the FSLSO's plan of operation.

Sections 23-25 amend ss. 626.932, 626.935, and 626.936, F.S., to conform to the elimination of the affidavit requirement in s. 626.89, F.S.

Insurance Discounts for Motor Vehicle Equipment

Section 30 amends s. 627.0653, F.S., to specify that the OIR, when reviewing a rate filing for liability, personal injury protection, and collision coverages for motor vehicle insurance policies, may approve a premium discount applicable to the rates for vehicles equipped with electronic vehicle crash avoidance technology that is factory installed or a retrofitted system that complies with the National Highway Traffic Safety Administration standards.

Use of Hurricane Models in Rate Filings

Section 27 amends s. 627.062, F.S., to specify that the Office of Insurance Regulation, when reviewing a rate filing, must consider projections of hurricane losses estimated using a straight average of model results or output ranges independently found acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628, F.S.[68]

[68] Section 627.0628, F.S., tasks the Florida Commission on Hurricane Loss Projection Methodology with considering actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy or reliability of hurricane loss projections used in rate filing and probable maximum loss levels. Insurers are prohibited from using in a rate filing a modified or adjusted model, actuarial method, principle, standard, or output range that the commission has found accurate or reliable.

Section 28 amends s. 627.0628, F.S., to increase from 60 days to 180 days the time an insurer is not required to use the newest version of a model approved by the Commission on Hurricane Loss Projection Methodology. This section also specifies that an insurer is not prohibited from using a straight average of model results or output ranges or using straight averages in a rate filing.

Motor Vehicle Insurance Rating

Section 29 amends s. 627.0651, F.S., to allow motor vehicle insurance rating programs that result in at least a single zip code as a rating territory for motor vehicle insurance rates. The bill will allow the use of such territories that are filed with the OIR if the territory incorporates sufficient loss data to be actuarially measurable and credible. The OIR would determine if the rates for such territories are excessive, inadequate, or unfairly discriminatory. Current law prohibits the use of a single zip code as a rating territory as being unfairly discriminatory.

Workers' Compensation Retrospective Rating Plans

Section 31 amends s. 627.072, F.S., allowing an insurer and employer to negotiate the retrospective plan rating factors that can be used for calculating the premium when the employer has multistate exposure, an estimated annual standard premium in Florida of at least $100,000 for workers' compensation, and an annual estimated countrywide standard premium of $750,000 or more for workers' compensation. Such plans and forms must be filed with the OIR. Only insurers with at least $500 million in surplus as to policyholders may negotiate premium with eligible employers.

Section 32 provides a technical conforming cross reference in s. 627.281, F.S.

Florida Workers' Compensation Joint Underwriting Association (FWCJUA) Dividend and Premium Refunds

Section 33 amends s. 627.311(5)(h), F.S., authorizing the FWCJUA to retain for future use any dividends that cannot be paid to former insureds of the FWCJUA for reasons set forth in the declaration of the dividend. Currently, the FWCJUA reports the property[69] and owner's name, last known address, and other information to the Department of Financial Services, Bureau of Unclaimed Property. The owner can claim her or his property at no cost, any time, regardless of the amount.[70] The bill eliminates the ability of a person to recover unclaimed property that is left in possession of the FWCJUA at any time in the future. The FWCJUA will not report unclaimed property to the DFS and will ultimately use the unclaimed funds in its possession.

Repeal of Duplicative Citizens Property Insurance Corporation Report

Section 35 repeals 627.3519, F.S., because it requires a report that is duplicative of the report required under s. 627.35191, F.S.

[69] Over the past 5 years, the FWCJUA has reported unclaimed property totaling $279,499.06 to the DFS. The amount for each year follows: $16,388.32 (2009); $87,813.27 (2010); $63,552.52 (2011); $73,631.27 (2012); $38,113.68 (2013).
[70] *See* chap. 717, F.S., (the Florida Disposition of Unclaimed Property Act) and information on unclaimed property on the website of the Florida Department of Financial Services: http://www.myfloridacfo.com.

Misrepresentations on Insurance Applications and Cancellation of Insurance Policies

Section 36 amends s. 627.409, F.S. The bill provides that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied based on credit information available in the public record. The bill does not change the law relating to other types of insurance or other types of misrepresentations (such as a misrepresentation regarding health or criminal history).

Section 37 amends s. 627.4133(2)(b), F.S., to provide that after a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

Residential Property Insurance Notice of Cancellation Requirements

Section 37 amends s. 627.4133(2)(b), F.S., to reduce to 120 days the advance written notice of nonrenewal, cancellation, or termination an insurer must give the first-named insured of a personal lines or commercial residential property insurance policy.

Section 34 provides a technical conforming cross reference in s. 627.3518, F.S.

Insurer Sworn Statement Detailing Liability Coverage and Alleged Defenses

Section 38 amends s. 627.4137, F.S., to authorize the licensed company adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by current law setting forth the name of the insurer, the name of each insured, the limits of liability coverage, a statement of each policy defense the insurer reasonably believes is available, and a copy of the policy. Current law allows the sworn statement to be provided by only the insurer's claims manager or superintendent, or a corporate officer of the insurer.

Electronic Delivery of Personal Lines Insurance Policies

Section 39 amends s. 627.421, F.S., allowing insurers to deliver insurance policies by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of insurance policy documents.

Notice of Change in Policy Terms Delivered Separately from Notice of Renewal Premium

Section 40 amends s. 627.43141(2), F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply with the nonrenewal mailing time requirement for that particular line of business. Insurers must also provide or make available electronically the Notice of Change in Policy Terms to the insured's insurance agent before or at the same time the notice is given to the insured.

Information Required With the Surrender of Life Insurance or Annuity

Section 41 creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

Conflict of Interest Standards for Residential Property Insurance Appraisal Umpires

Section 43 creates s. 627.70151, F.S., to only allow a residential property insurer or policyholder to challenge the impartiality of an appraisal umpire if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire previously professionally represented a party or party representative in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same claim or a substantially related claim whose interests are materially adverse to the interests of any party; or
- The umpire has been an employer or employee of a party within the preceding five years.

Notice to Policyholder of Availability of Sinkhole Neutral Evaluation

Section 45 amends s. 627.7074(3), F.S., to limit the circumstances when an insurer must notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim. The insurer must provide the notice only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period which is two years after the policyholder knew or reasonably should have known about the sinkhole loss. There are no parameters under current law about notification of neutral evaluation. Thus, insurers are required to notify a policyholder about neutral evaluation in cases where there is no sinkhole coverage or when the sinkhole claim is untimely filed.

Verification of Uniform Mitigation Verification Forms

Section 46 amends s. 627.711(8), F.S., to provide an exception to the mitigation form independent verification process for Citizens only. The bill does not allow independent verification of mitigation discount forms submitted to Citizens if a quality assurance program approved by Citizens reviewed and verified the form when it was submitted. In addition, Citizens is not allowed to reinspect a property to confirm mitigation features if the mitigation form was reviewed and verified by a quality assurance program approved by them. The bill also allows insurers to exempt such forms from independent verification if the form is submitted by a company with a quality assurance program that meets the standards established by the insurer.

Return of Motor Vehicle Insurance Premiums

Section 47 amends s. 627.7283, F.S., to allow the insurer to electronically transfer unearned premium to a policyholder who cancels a motor vehicle insurance policy. The insurer may also deliver the unearned premium by mail. Current law is retained requiring the insurer to refund the unearned premium within 30 days of the later of the policy cancellation date or the date the insurer receives notice of the cancellation.

Section 26 amends s. 626.9541(1)(q), F.S., the unfair insurance practices act, to specify that insurers and agents that utilize a credit card facility or seek to insure credit card holders may provide refunds of unearned premium by mail or electronic transfer.

Personal Injury Protection Medical Fee Schedule Clarification

Section 48 amends s. 627.736(5)(a), F.S., to clarify that the Personal Injury Protection medical fee schedule that is effective on March 1 of each year applies until the last day of the following February.

Exemptions to the Preinsurance Inspection of Private Passenger Motor Vehicles

Section 49 amends s. 627.744, F.S., to exempt from preinsurance inspection new, unused motor vehicles that are leased from a licensed motor vehicle dealer or leasing company, if the insurer is provided with a lease agreement that contains a full description of the motor vehicle or a copy of the registration and a copy of the window sticker. In addition, this section deletes the preinsurance inspection exemption for new, unused motor vehicles purchased if the following conditions apply:

- If the bill of sale or buyer's order contains a full description of all options and accessories, or
- If the dealer invoice showing the itemized options, equipment, and total retail price is submitted as documentation.

Title Insurance Data Submission to the OIR

Section 51 amends s. 627.782, F.S., to extend the date by which title insurers and title insurance agencies must annually submit data on the title insurance industry to the OIR for the most recently concluded year from March 31 to May 31.

Requirements Related to Acquisition of Controlling Stock

Section 52 amends s. 628.461, F.S., relating to acquisition of controlling stock of a domestic stock insurer or a controlling company. The bill increases from five percent to 10 percent the amount of stock that is considered "controlling stock" of an insurer or controlling company. Currently, s. 628.461, F.S., provides that a person or affiliated person must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire five percent or more of a domestic stock insurer or of a controlling company. The statement must contain certain criminal, employment, and regulatory history information.

The bill provides that a person may rebut a presumption of control by filing a disclaimer of control on a form prescribed by the OFR or by providing a copy of a Schedule 13G on file with the U.S. Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer. Under current law, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent).

The section deletes the definition of "affiliated person" from the statute.

Florida Life and Health Insurance Guaranty Association (FLHIGA) – Obligation to Pay Claims

Section 53 amends s. 631.717(11), F.S., deleting language stating that the FLHIGA not being subject to statutory bad faith claims under s. 624.155, F.S., does not affect its obligation to pay valid policy or contract claims.

Section 54 amends s. 631.737, F.S., stating that the FLHIGA is obligated to pay valid claims. The amendments to these sections do not affect the obligation of the FLHIGA to pay valid policy or contract claims and will continue to not be subject to the provisions of s. 631.717(11), F.S.

Service Warranty Association Financial Requirements

Section 55 amends s. 634.406, F.S., to revise the requirement that if a service warranty association's premiums exceed the statutorily required 7-to-1 ratio of gross written premium to net assets, it must maintain net assets of $750,000 and maintain a contractual liability insurance policy that reimburses the service warranty association for 100 percent of its claims liability and is approved by the OIR. Under the bill, the contractual liability policy may be issued by an affiliate of the warranty association. Additionally, the insurer issuing the policy must either maintain at least a $100 million policyholder surplus or maintain a policyholder surplus of at least $200 million and issue a policy that complies with the provisions of subsection (3).[71]

[71] Subsection (3) of s. 634.406, F.S., states that a warranty association need not establish an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claims liability from an authorized insurer. The terms of the policy must contain the following (a) state the insurer will pay losses and unearned premium refunds directly to a person making a claim under the warranty association contract in the event the services warranty association does not do so; (b) the insurer must assume full responsibility for administering claims if the warranty association cannot do so; (c) 60 days written notice must be given to the OIR prior to policy cancellation; (d) the policy must insure all service warranty contracts issued while the policy was in effect whether or not the premium has been remitted to the insurer; (e) If the insurer is fulfilling the service warranty covered by the policy and the service warranty holder cancels the warranty, the insurer must fully refund unearned premium, subject to a cancellation fee under s. 634.414, F.S.; and (f) a warranty association may not use an unearned premium reserve and contractual liability insurance policy simultaneously. However, the warranty association may have contractual liability coverage on service warranties previously sold and sell new service warranties covered by the unearned premium reserve, and the converse. The warranty association must be able to distinguish how each individual service warranty is covered.

Effective Date:

Section 56 provides that except as otherwise expressly provided, the bill is effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 1260 allows workers' compensation insurers and larger employers greater flexibility in negotiating retrospective rating plans by allowing the parties to determine the rating factors used to calculate premiums. This change may result in a reduction in premiums for such employers.

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA) declares dividends to its policyholders generally after the expiration of a seven-year look back period. Thus, the 2006 policyholder dividend would likely be declared in 2013. If FWCJUA is unable to pay a former policyholder, it must submit the funds to the Bureau of Unclaimed Property where they can be claimed by the policyholder. The bill will allow the FWCJUA to retain those funds pursuant to the terms set forth in the dividend.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 53 deletes the definition of "affiliated person" from s. 628.461, F.S. The definition helps determine when a person, in conjunction with an affiliated person, has acquired controlling stock. Deletion of this definition may create ambiguity within the statute.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.4625, 624.501, 626.015, 626.0428, 626.112, 626.172, 626.311, 626.321, 626.382, 626.601, 626.621, 626.8411, 626.854, 626.8805, 626.8817, 626.882, 626.883, 626.884, 626.89, 626.931, 626.932, 626.935, 626.936, 626.9541, 627.062, 627.0628, 627.0651, 627.0653, 627.072, 627.281, 627.311, 627.3518, 627.409, 627.4133, 627.4137, 627.421, 627.43141, 627.4553, 627.7015, 627.706, 627.7074, 627.711, 627.7283, 627.736, 627.744, 627.745, 627.782, 628.461, 631.717, 631.734, and 634.406.

This bill creates the following sections of the Florida Statutes: 627.4553 and 627.70151.

This bill creates an undesignated section of Florida law.

This bill repeals the following sections of the Florida Statutes: 626.747 and 627.3519.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 22, 2014:
The committee substitute:

- Permits the OIR to approve a premium discount for electronic vehicle crash avoidance technology.
- Permits publicly supported organizations that receive a substantial part of its support from a government entity or from the general public, as evidenced on the entities most recent filing with the Internal Revenue Service, to join a corporation not for profit self-insurance fund.
- Provides an agent, adjuster, customer or service representative, or managing general agency may not directly or indirectly receive compensation, inducement, or reward from an inspector or inspection company for referring the owner of a property to the inspector or an inspection company.
- Revises the conditions when an insurer and employer can negotiate the retrospective plan rating factors that can be used for calculating the premium. Insurers with at least $500 million in surplus as to policyholders may negotiate premium with employers that have multistate exposure an annual estimated premium of at least $100,000 in this state for workers' compensation, and an annual estimated countrywide standard premium of $750,000 or more for workers' compensation.

CS by Banking and Insurance on March 14, 2014:
The committee substitute:

- Deletes the boiler inspection provisions of the bill.
- Deletes the corporation not-for-profit self-insurance fund provision of the bill.
- Deletes the insurance premium finance provision of the bill.
- Deletes current law requiring company insurance adjusters, investigators, attorneys, or other persons acting on the insurer's behalf to provide at least 48 hours' notice to the insured or insured's representatives before scheduling a meeting with the insured or an onsite inspection of the insured property.
- Allows an insurer to electronically transfer unearned premium back to a motor vehicle insurance policyholder who cancels the policy.
- Revises a provision in the bill to allow the Florida Workers' Compensation Joint Underwriting Association to retain dividends payable to a former insured.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senators Brandes and Soto

597-02850A-14 20141260c1

A bill to be entitled

An act relating to insurance; amending s. 624.501, F.S.; revising original appointment and renewal fees related to certain insurance representatives; amending s. 626.015, F.S.; defining the term "unaffiliated insurance agent"; amending s. 626.0428, F.S.; requiring a branch place of business to have an agent in charge; authorizing an agent to be in charge of more than one branch office under certain circumstances; providing requirements relating to the designation of an agent in charge; prohibiting an insurance agency from conducting insurance business at a location without a designated agent in charge; providing that the agent in charge is accountable for misconduct and violations committed by the licensee and any person under his or her supervision; amending s. 626.112, F.S.; prohibiting limited customer representative licenses from being issued after a specified date; providing licensure exemptions that allow specified individuals or entities to conduct insurance business at specified locations under certain circumstances; revising licensure requirements and penalties with respect to registered insurance agencies; providing that the registration of an approved registered insurance agency automatically converts to an insurance agency license on a specified date; amending s. 626.172, F.S.; revising requirements relating to applications for insurance agency licenses; conforming provisions to changes made by the

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act; amending s. 626.311, F.S.; limiting the types of business that may be transacted by certain agents; amending s. 626.321, F.S.; providing that a limited license to offer motor vehicle rental insurance issued to a business that rents or leases motor vehicles encompasses the employees of such business; amending s. 626.382, F.S.; providing that an insurance agency license continues in force until canceled, suspended, revoked, terminated, or expired; amending s. 626.601, F.S.; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; revising a confidentiality provision; repealing s. 626.747, F.S., relating to branch agencies, agents in charge, and the payment of additional county tax under certain circumstances; amending s. 626.8411, F.S.; conforming a cross-reference; amending s. 626.854, F.S.; deleting the requirement that a 48 hours' notice be provided before scheduling an onsite inspection of insured property; conforming a cross-reference; amending s. 626.8805, F.S.; revising insurance administrator application requirements; amending s. 626.8817, F.S.; authorizing an insurer's designee to provide certain coverage information to an insurance administrator; authorizing an insurer to subcontract the review of an insurance administrator; amending s. 626.882, F.S.; prohibiting a person from acting as an insurance administrator

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

without a specific written agreement; amending s. 626.883, F.S.; requiring an insurance administrator to furnish fiduciary account records to an insurer; requiring administrator withdrawals from a fiduciary account to be made according to a specific written agreement; providing that an insurer's designee may authorize payment of claims; amending s. 626.884, F.S.; revising an insurer's right of access to certain administrator records; amending s. 626.89, F.S.; revising the deadline for filing certain financial statements; deleting provisions allowing an extension for administrator to submit certain financial statements; amending s. 626.931, F.S.; deleting provisions requiring a surplus lines agent to file a quarterly affidavit with the Florida Surplus Lines Service Office; amending s. 626.932, F.S.; revising the due date of surplus lines tax; amending ss. 626.935 and 626.936, F.S.; conforming provisions to changes made by the act; amending s. 626.9541, F.S.; revising provisions for unfair methods of competition and unfair or deceptive acts relating to conducting certain insurance transactions through credit card facilities; amending s. 627.062, F.S.; authorizing the Office of Insurance Regulation to use a straight average of model results or output ranges to estimate hurricane losses when determining whether the rates in a rate filing are excessive, inadequate, or unfairly discriminatory; amending s. 627.0628, F.S.; increasing the length of time during which an insurer must adhere

to certain findings made by the Commission on Hurricane Loss Projection Methodology with respect to certain methods, principles, standards, models, or output ranges used in a rate filing; providing that the requirement to adhere to such findings does not limit an insurer from using straight averages of model results or output ranges under specified circumstances; amending s. 627.0651, F.S.; revising provisions for making and use of rates for motor vehicle insurance; amending s. 627.072, F.S.; authorizing retrospective rating plans relating to workers' compensation and employer's liability insurance to allow negotiations between certain employers and insurers with respect to rating factors used to calculate premiums; amending ss. 627.281, F.S.; conforming a cross-reference; amending s. 627.311, F.S.; providing that certain dividends may be retained by the joint underwriting plan for future use; amending s. 627.3518, F.S.; conforming a cross-reference; repealing s. 627.3519, F.S., relating to an annual report on the aggregate report of maximum losses of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation; amending s. 627.409, F.S.; providing that a claim for residential property insurance may not be denied based on certain credit information; amending s. 627.4133, F.S.; extending the period for prior notice required with respect to the nonrenewal, cancellation, or termination of certain insurance policies; deleting

certain provisions that require extended periods of prior notice with respect to the nonrenewal, cancellation, or termination of certain insurance policies; prohibiting the cancellation of certain policies that have been in effect for a specified amount of time, except under certain circumstances; prohibiting the cancellation of a policy or contract that has been in effect for a specified amount of time based on certain credit information; amending s. 627.4137, F.S.; adding licensed company adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage; amending s. 627.421, F.S.; authorizing a policyholder of personal lines insurance to affirmatively elect delivery of policy documents by electronic means; amending s. 627.43141, F.S.; authorizing a notice of change in policy terms to be sent in a separate mailing to an insured under certain circumstances; requiring an insurer to provide such notice to the insured's insurance agent; creating s. 627.4553, F.S.; providing requirements for the recommendation to surrender an annuity or life insurance policy; amending s. 627.7015, F.S.; revising the rulemaking authority of the department with respect to qualifications and specified types of penalties covered under the property insurance mediation program; creating s. 627.70151, F.S.; providing criteria for an insurer or policyholder to challenge the impartiality of a loss appraisal umpire

for purposes of disqualifying such umpire; amending s. 627.706, F.S.; revising the definition of the term "neutral evaluator"; amending s. 627.7074, F.S.; revising notification requirements for participation in the neutral evaluation program; providing grounds for the department to deny an application, or suspend or revoke certification, of a neutral evaluator; requiring the department to adopt rules relating to certification of neutral evaluators; amending s. 627.711, F.S.; revising verification requirements for uniform mitigation verification forms; amending s. 627.7283, F.S.; providing for the electronic transfer of unearned premiums returned when a policy is cancelled; amending s. 627.736, F.S.; revising the time period for applicability of certain Medicare fee schedules or payment limitations; amending s. 627.744, F.S.; revising preinsurance inspection requirements for private passenger motor vehicles; amending s. 627.745, F.S.; revising qualifications for approval as a mediator by the department; providing grounds for the department to deny an application, or suspend or revoke approval of a mediator or certification of a neutral evaluator; authorizing the department to adopt rules; amending s. 627.782, F.S.; revising the date by which title insurance agencies and certain insurers must annually submit specified information to the Office of Insurance Regulation; amending s. 628.461, F.S.; revising filing requirements relating to the acquisition of controlling stock; revising the amount

of outstanding voting securities of a domestic stock insurer or a controlling company that a person is prohibited from acquiring unless certain requirements have been met; prohibiting persons acquiring a certain percentage of voting securities from acquiring certain securities; providing that a presumption of control may be rebutted by filing a disclaimer of control; deleting a definition; amending ss. 631.717 and 631.734, F.S.; transferring a provision relating to the obligations of the Florida Life and Health Insurance Guaranty Association; amending s. 634.406, F.S.; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (6) and subsections (7) and (8) of section 624.501, Florida Statutes, are amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(6) Insurance representatives, property, marine, casualty,

and surety insurance.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(c) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

(7) Life insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

(8) Health insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00

Total.....$60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

Section 2. Present subsection (18) of section 626.015, Florida Statutes, is renumbered as subsection (19), and a new subsection (18) is added to that section, to read:

626.015 Definitions.—As used in this part:

(18) "Unaffiliated insurance agent" means a licensed insurance agent, except a limited lines agent, who is self-appointed and who practices as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents.

Section 3. Effective January 1, 2015, section 626.0428, Florida Statutes, is amended to read:

626.0428 Agency personnel powers, duties, and limitations.—

(1) An individual employed by an agent or agency on salary who devotes full time to clerical work, with incidental taking of insurance applications or quoting or receiving premiums on incoming inquiries in the office of the agent or agency, is not deemed to be an agent or customer representative if his or her compensation does not include in whole or in part any commissions on such business and is not related to the

production of applications, insurance, or premiums.

(2) An employee or authorized representative located at a designated branch of an agent or agency may not bind insurance coverage unless licensed and appointed as an agent or customer representative.

(3) An employee or authorized representative of an agent or agency may not initiate contact with any person for the purpose of soliciting insurance unless licensed and appointed as an agent or customer representative. As to title insurance, an employee of an agent or agency may not initiate contact with any individual proposed insured for the purpose of soliciting title insurance unless licensed as a title insurance agent or exempt from such licensure pursuant to s. 626.8417(4).

(4)(a) Each place of business established by an agent or agency, firm, corporation, or association must be in the active full-time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location.

(b) Notwithstanding paragraph (a), the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when an agent is not physically present and unlicensed employees at the location do not engage in insurance activities requiring licensure as an insurance agent or customer representative.

(c) An insurance agency and each branch place of business of an insurance agency shall designate an agent in charge and file the name and license number of the agent in charge and the

physical address of the insurance agency location with the department and the department's website. The designation of the agent in charge may be changed at the option of the agency. A change of the designated agent in charge is effective upon notice to the department. Notice to the department must be provided within 30 days after such change.

(d) An insurance agency location may not conduct the business of insurance unless an agent in charge is designated by and providing services to the agency at all times. If the agent in charge designated with the department ends his or her affiliation with the agency for any reason and the agency fails to designate another agent in charge within 30 days as provided in paragraph (c) and such failure continues for 90 days, the agency license automatically expires on the 91st day after the date the designated agent in charge ended his or her affiliation with the agency.

(e) For purposes of this subsection, an "agent in charge" is the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency location, regardless of whether the agent in charge handles a specific transaction or deals with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of money.

(f) An agent in charge of an insurance agency is accountable for the wrongful acts, misconduct, or violations of this code committed by the licensee or by any person under his or her supervision while acting on behalf of the agency. However, an agent in charge is not criminally liable for any act unless the agent in charge personally committed the act or knew

or should have known of the act and of the facts constituting a violation of this code.

Section 4. Paragraph (b) of subsection (1) and subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(1)

(b) Except as provided in subsection (6) or in applicable department rules, and in addition to other conduct described in this chapter with respect to particular types of agents, a license as an insurance agent, service representative, customer representative, or limited customer representative is required in order to engage in the solicitation of insurance. Effective October 1, 2014, limited customer representative licenses may not be issued. For purposes of this requirement, as applicable to ~~any of~~ the license types described in this section, the solicitation of insurance is the attempt to persuade any person to purchase an insurance product by:

1. Describing the benefits or terms of insurance coverage, including premiums or rates of return;

2. Distributing an invitation to contract to prospective purchasers;

3. Making general or specific recommendations as to insurance products;

4. Completing orders or applications for insurance products;

5. Comparing insurance products, advising as to insurance matters, or interpreting policies or coverages; or

6. Offering or attempting to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

However, an employee leasing company licensed under ~~pursuant to~~ chapter 468 which is seeking to enter into a contract with an employer that identifies products and services offered to employees may deliver proposals for the purchase of employee leasing services to prospective clients of the employee leasing company setting forth the terms and conditions of doing business; classify employees as permitted by s. 468.529; collect information from prospective clients and other sources as necessary to perform due diligence on the prospective client and to prepare a proposal for services; provide and receive enrollment forms, plans, and other documents; and discuss or explain in general terms the conditions, limitations, options, or exclusions of insurance benefit plans available to the client or employees of the employee leasing company were the client to contract with the employee leasing company. Any advertising materials or other documents describing specific insurance coverages must identify and be from a licensed insurer or its licensed agent or a licensed and appointed agent employed by the employee leasing company. The employee leasing company may not advise or inform the prospective business client or individual employees of specific coverage provisions, exclusions, or limitations of particular plans. As to clients for which the employee leasing company is providing services pursuant to s. 468.525(4), the employee leasing company may engage in activities permitted by ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions specified in those sections. If a

prospective client requests more specific information concerning the insurance provided by the employee leasing company, the employee leasing company must refer the prospective business client to the insurer or its licensed agent or to a licensed and appointed agent employed by the employee leasing company.

Section 5. Effective January 1, 2015, subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(7)(a) An ~~Effective October 1, 2006, no~~ individual, firm, partnership, corporation, association, or ~~any~~ other entity may not ~~shall~~ act in its own name or under a trade name, directly or indirectly, as an insurance agency~~,~~ unless it possesses ~~complies with s. 626.172 with respect to possessing~~ an insurance agency license issued pursuant to s. 626.172 for each place of business at which it engages in ~~any~~ activity that ~~which~~ may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the agency licensing requirements of this subsection.

(b) A branch place of business which is established by a licensed agency is considered a branch agency and is not required to be licensed if it transacts business under the same name and federal tax identification number as the licensed agency, has designated a licensed agent in charge of the location as required by s. 626.0428, and has submitted the

address and telephone number of the location to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions begin at the location ~~Each agency engaged in business in this state before January 1, 2003, which is wholly owned by insurance agents currently licensed and appointed under this chapter, each incorporated agency whose voting shares are traded on a securities exchange, each agency designated and subject to supervision and inspection as a branch office under the rules of the National Association of Securities Dealers, and each agency whose primary function is offering insurance as a service or member benefit to members of a nonprofit corporation may file an application for registration in lieu of licensure in accordance with s. 626.172(3). Each agency engaged in business before October 1, 2006, shall file an application for licensure or registration on or before October 1, 2006~~.

(c) ~~1.~~ If an agency is required to be licensed but fails to file an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty ~~in an amount~~ of up to $10,000.

~~2. If an agency is eligible for registration but fails to file an application for registration or an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty in an amount of up to $5,000.~~

(d) ~~(b)~~ Effective October 1, 2015, the department must automatically convert the registration of an approved ~~a~~ registered insurance agency to ~~shall, as a condition precedent to continuing business, obtain~~ an insurance agency license ~~if~~

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~~the department finds that, with respect to any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, any person has:~~

~~1. Been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases.~~

~~2. Employed any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department. An insurance agency may request, on forms prescribed by the department, verification of any person's license status. If a request is mailed within 5 working days after an employee is hired, and the employee's license is currently suspended or revoked, the agency shall not be required to obtain a license, if the unlicensed person's employment is immediately terminated.~~

~~3. Operated the agency or permitted the agency to be operated in violation of s. 626.747.~~

~~4. With such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:~~

~~a. Solicited or handled controlled business. This subparagraph shall not prohibit the licensing of any lending or financing institution or creditor, with respect to insurance only, under credit life or disability insurance policies of borrowers from the institutions, which policies are subject to part IX of chapter 627.~~

~~b. Misappropriated, converted, or unlawfully withheld~~

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~~moneys belonging to insurers, insureds, beneficiaries, or others and received in the conduct of business under the license.~~

~~c. Unlawfully rebated, attempted to unlawfully rebate, or unlawfully divided or offered to divide commissions with another.~~

~~d. Misrepresented any insurance policy or annuity contract, or used deception with regard to any policy or contract, done either in person or by any form of dissemination of information or advertising.~~

~~e. Violated any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license.~~

~~f. Violated any lawful order or rule of the department.~~

~~g. Failed or refused, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.~~

~~h. Violated the provision against twisting as defined in s. 626.9541(1)(l).~~

~~i. In the conduct of business, engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter.~~

~~j. Willfully overinsured any property insurance risk.~~

~~k. Engaged in fraudulent or dishonest practices in the conduct of business arising out of activities related to insurance or the insurance agency.~~

~~l. Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance or the insurance agency.~~

~~m. Authorized or knowingly allowed individuals to transact~~

~~insurance who were not then licensed as required by this code.~~

~~5. Knowingly employed any person who within the preceding 3 years has had his or her relationship with an agency terminated in accordance with paragraph (d).~~

~~6. Willfully circumvented the requirements or prohibitions of this code.~~

Section 6. Subsections (2), (3), and (4) of section 626.172, Florida Statutes, are amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must ~~shall~~ be signed by an individual required to be listed in the application under paragraph (a) ~~the owner or owners of the agency. If the agency is incorporated, the application shall be signed by the president and secretary of the corporation~~. An insurance agency may allow a third party to complete, submit, and sign an application on the insurance agency's behalf, but the insurance agency is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for an insurance agency license must ~~shall~~ include:

(a) The name of each ~~majority~~ owner, partner, officer, ~~and~~ director, president, senior vice president, secretary, treasurer, and limited liability company member, who directs or participates in the management or control of the insurance agency, whether through ownership of voting securities, by contract, by ownership of an agency bank account, or otherwise.

(b) The residence address of each person required to be listed in the application under paragraph (a).

(c) The name, principal business street address, and e-mail

address of the insurance agency and the name, address, and e-mail address of the agency's registered agent or person or company authorized to accept service on behalf of the agency ~~its principal business address~~.

(d) The name, physical address, e-mail address, and telephone number ~~location~~ of each branch agency and the date that the branch location begins transacting insurance ~~office and the name under which each agency office conducts or will conduct business~~.

(e) The name of each agent to be in full-time charge of an agency office and specification of which office, including branch locations.

(f) The fingerprints of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application under paragraph (a) ~~partner~~; and

~~3. Each owner of an unincorporated agency;~~

3.~~4.~~ Each individual owner who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange~~;~~

~~5. The president, senior vice presidents, treasurer, secretary, and directors of the agency; and~~

~~6. Any other person who directs or participates in the management or control of the agency, whether through the ownership of voting securities, by contract, or otherwise~~.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints

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must ~~shall~~ be processed in accordance with s. 624.34. However, fingerprints need not be filed for an ~~any~~ individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g) Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for persons required to be listed on the application.

(3)~~(h)~~ ~~Beginning October 1, 2005,~~ The department must ~~shall~~ accept the uniform application for nonresident agency licensure. The department may adopt by rule revised versions of the uniform application.

~~(3) The department shall issue a registration as an insurance agency to any agency that files a written application with the department and qualifies for registration. The application for registration shall require the agency to provide the same information required for an agency licensed under subsection (2), the agent identification number for each owner who is a licensed agent, proof that the agency qualifies for registration as provided in s. 626.112(7), and any other additional information that the department determines is necessary in order to demonstrate that the agency qualifies for registration. The application must be signed by the owner or owners of the agency. If the agency is incorporated, the application must be signed by the president and the secretary of~~

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~~the corporation. An agent who owns the agency need not file fingerprints with the department if the agent obtained a license under this chapter and the license is currently valid.~~

~~(a) If an application for registration is denied, the agency must file an application for licensure no later than 30 days after the date of the denial of registration.~~

~~(b) A registered insurance agency must file an application for licensure no later than 30 days after the date that any person who is not a licensed and appointed agent in this state acquires any ownership interest in the agency. If an agency fails to file an application for licensure in compliance with this paragraph, the department shall impose an administrative penalty in an amount of up to $5,000 on the agency.~~

~~(c) Sections 626.6115 and 626.6215 do not apply to agencies registered under this subsection.~~

(4) The department must ~~shall~~ issue a license ~~or registration~~ to each agency upon approval of the application, and each agency location must ~~shall~~ display the license ~~or registration~~ prominently in a manner that makes it clearly visible to any customer or potential customer who enters the agency location.

Section 7. Present subsection (6) of section 626.311, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

626.311 Scope of license.—

(6) An agent who appoints his or her license as an unaffiliated insurance agent may not hold an appointment from an insurer for any license he or she holds; transact, solicit, or service an insurance contract on behalf of an insurer; interfere

with commissions received or to be received by an insurer-appointed insurance agent or an insurance agency contracted with or employing insurer-appointed insurance agents; or receive compensation or any other thing of value from an insurer, an insurer-appointed insurance agent, or an insurance agency contracted with or employing insurer-appointed insurance agents for any transaction or referral occurring after the date of appointment as an unaffiliated insurance agent. An unaffiliated insurance agent may continue to receive commissions on sales that occurred before the date of appointment as an unaffiliated insurance agent if the receipt of such commissions is disclosed when making recommendations or evaluating products for a client that involve products of the entity from which the commissions are received.

Section 8. Paragraph (d) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(d) *Motor vehicle rental insurance.*—

1. License covering only insurance of the risks set forth in this paragraph when offered, sold, or solicited with and incidental to the rental or lease of a motor vehicle and which applies only to the motor vehicle that is the subject of the lease or rental agreement and the occupants of the motor vehicle:

a. Excess motor vehicle liability insurance providing

coverage in excess of the standard liability limits provided by the lessor in the lessor's lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle.

b. Insurance covering the liability of the lessee to the lessor for damage to the leased or rented motor vehicle.

c. Insurance covering the loss of or damage to baggage, personal effects, or travel documents of a person renting or leasing a motor vehicle.

d. Insurance covering accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the leased or rented motor vehicle.

2. Insurance under a motor vehicle rental insurance license may be issued only if the lease or rental agreement is for up to ~~no more than~~ 60 days, the lessee is not provided coverage for more than 60 consecutive days per lease period, and the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide coverage of such risks and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. If the lease is extended beyond 60 days, the coverage may be extended ~~one time~~ only once for up to ~~a period not to exceed an additional~~ 60 days. Insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. The license may be issued only to the full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance

sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.

a. A license issued to a business entity that offers motor vehicles for rent or lease encompasses each office, branch office, employee, authorized representative located at a designated branch, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.

b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business which ~~that~~ is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

Section 9. Effective January, 1, 2015, section 626.382, Florida Statutes, is amended to read:

626.382 Continuation, expiration of license; insurance agencies.—The license of an ~~any~~ insurance agency ~~shall be issued for a period of 3 years and~~ shall continue in force until canceled, suspended, or revoked~~,~~ or until it is otherwise terminated or becomes expired by operation of law. ~~A license may~~

~~be renewed by submitting a renewal request to the department on a form adopted by department rule.~~

Section 10. Section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; investigation ~~inquiry~~; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by an ~~any~~ interested person and filed with the department or office, inquire into the ~~any~~ alleged improper conduct of any licensed, approved, or certified licensee, insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, navigator, continuing education course provider, instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of ~~any~~ such individual or entity ~~licensee~~ if it has reasonable cause to believe that the individual or entity ~~licensee~~ has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the individual or entity ~~licensee~~ being investigated unless it determines that contacting such individual or entity ~~person~~ could jeopardize the successful completion of the investigation or cause injury to the public.

(2) In the investigation by the department or office of the alleged misconduct, the individual or entity ~~licensee~~ shall, if ~~whenever so~~ required by the department or office, open the individual's or entity's ~~cause his or her~~ books and records ~~to be open~~ for inspection for the purpose of such investigation

~~inquiries~~.

(3) ~~The~~ Complaints against an individual or entity ~~any licensee~~ may be informally alleged and are not required to include ~~need not be in any such~~ language ~~as is~~ necessary to charge a crime on an indictment or information.

(4) The expense for any hearings or investigations conducted pursuant to this section ~~under this law~~, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

(5) If the department or office, after investigation, has reason to believe that an individual ~~a licensee~~ may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual ~~licensee~~ to file with the department or office a complete set of his or her fingerprints, ~~which shall be~~ accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

(6) The complaint and any information obtained pursuant to the investigation by the department or office are confidential and ~~are~~ exempt from ~~the provisions of~~ s. 119.07~~,~~ unless the department or office files a formal administrative complaint, emergency order, or consent order against the individual or entity ~~licensee~~. ~~Nothing in~~ This subsection does not ~~shall be construed to~~ prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such

information with any law enforcement agency or other regulatory body.

Section 11. Effective January 1, 2015, section 626.747, Florida Statutes, is repealed.

Section 12. Effective January 1, 2015, subsection (1) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions ~~of part II~~ applicable to general lines agents or agencies also apply to title insurance agents or agencies:

(a) Section 626.734, relating to liability of certain agents.

(b) Section 626.0428(4)(a) and (b) ~~626.747~~, relating to branch agencies.

(c) Section 626.749, relating to place of business in residence.

(d) Section 626.753, relating to sharing of commissions.

(e) Section 626.754, relating to rights of agent following termination of appointment.

Section 13. Subsections (14) and (18) of section 626.854, Florida Statutes, are amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

~~(14) A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the~~

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~~insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.~~

(17)~~(18) The provisions of~~ Subsections (5)-(16) ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as defined in s. 718.111(11).

Section 14. Paragraph (c) of subsection (2) and subsection (3) of section 626.8805, Florida Statutes, are amended to read:

626.8805 Certificate of authority to act as administrator.—

(2) The administrator shall file with the office an application for a certificate of authority upon a form to be adopted by the commission and furnished by the office, which application shall include or have attached the following information and documents:

(c) The names, addresses, official positions, and professional qualifications of the individuals employed or retained by the administrator who are responsible for the conduct of the affairs of the administrator, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, and the principal officers in the case of a corporation or~~,~~ the partners or members in the case of a partnership or association~~, and any other person who exercises control or influence over the affairs~~ of the administrator.

(3) The applicant shall make available for inspection by

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the office copies of all contracts relating to services provided by the administrator to ~~with~~ insurers or other persons using ~~utilizing~~ the services of the administrator.

Section 15. Subsections (1) and (3) of section 626.8817, Florida Statutes, are amended to read:

626.8817 Responsibilities of insurance company with respect to administration of coverage insured.—

(1) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer or its designee to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in a ~~the~~ written agreement binding upon ~~between~~ the administrator and the insurer.

(3) If ~~In cases in which~~ an administrator administers benefits for more than 100 certificateholders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review must be an onsite audit of the operations of the administrator. The insurer may contract with a qualified third party to conduct such review.

Section 16. Subsections (1) and (4) of section 626.882, Florida Statutes, are amended to read:

626.882 Agreement between administrator and insurer; required provisions; maintenance of records.—

(1) A ~~No~~ person may not act as an administrator without a written agreement, as required under s. 626.8817, which

specifies the rights, duties, and obligations of the ~~between such person as~~ administrator and ~~an~~ insurer.

(4) If a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments to that agreement shall be furnished to the insurer or its designee by the administrator and shall be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

Section 17. Subsections (3), (4), and (5) of section 626.883, Florida Statutes, are amended to read:

626.883 Administrator as intermediary; collections held in fiduciary capacity; establishment of account; disbursement; payments on behalf of insurer.—

(3) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for more than one insurer, the administrator shall keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The administrator shall, upon request of an insurer or its designee, furnish such insurer or designee with copies of records pertaining to deposits and withdrawals on behalf of or for such insurer.

(4) The administrator may not pay any claim by withdrawals from a fiduciary account. Withdrawals from such account shall be made as provided in the written agreement required under ss. 626.8817 and 626.882 ~~between the administrator and the insurer~~ for any of the following:

(a) Remittance to an insurer entitled to such remittance.

(b) Deposit in an account maintained in the name of such insurer.

(c) Transfer to and deposit in a claims-paying account, with claims to be paid as provided by such insurer.

(d) Payment to a group policyholder for remittance to the insurer entitled to such remittance.

(e) Payment to the administrator of the commission, fees, or charges of the administrator.

(f) Remittance of return premium to the person or persons entitled to such ~~return~~ premium.

(5) All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of, and as authorized by, such insurer or its designee.

Section 18. Subsection (3) of section 626.884, Florida Statutes, is amended to read:

626.884 Maintenance of records by administrator; access; confidentiality.—

(3) The insurer shall retain the right of continuing access to books and records maintained by the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement pertaining to ~~between the insurer and the administrator on~~ the proprietary rights of the parties in such books and records.

Section 19. Subsections (1) and (2) of section 626.89, Florida Statutes, are amended to read:

626.89 Annual financial statement and filing fee; notice of change of ownership.—

(1) Each authorized administrator shall annually file with the office a full and true statement of its financial condition, transactions, and affairs within 3 months after the end of the

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administrator's fiscal year~~. The statement shall be filed annually on or before March 1~~ or within such extension of time ~~therefor~~ as the office for good cause may have granted. The statement must ~~and shall~~ be for the preceding fiscal ~~calendar~~ year and must~~. The statement shall~~ be in such form and contain such matters as the commission prescribes and must ~~shall~~ be verified by at least two officers of the ~~such~~ administrator. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's statement within 2 months after its fiscal year end.~~

(2) Each authorized administrator shall also file an audited financial statement performed by an independent certified public accountant. The audited financial statement shall be filed with the office within 5 months after the end of the administrator's fiscal year and be ~~on or before June 1~~ for the preceding fiscal ~~calendar~~ year ~~ending December 31~~. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's audited financial statement within 5 months after the end of its fiscal year.~~ An audited financial statement prepared on a consolidated basis must include a columnar consolidating or combining worksheet that must be filed with the statement and must comply with the following:

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(a) Amounts shown on the consolidated audited financial statement must be shown on the worksheet;

(b) Amounts for each entity must be stated separately; and

(c) Explanations of consolidating and eliminating entries must be included.

Section 20. Section 626.931, Florida Statutes, is amended to read:

626.931 ~~Agent affidavit and~~ Insurer reporting requirements.—

~~(1) Each surplus lines agent shall on or before the 45th day following each calendar quarter file with the Florida Surplus Lines Service Office an affidavit, on forms as prescribed and furnished by the Florida Surplus Lines Service Office, stating that all surplus lines insurance transacted by him or her during such calendar quarter has been submitted to the Florida Surplus Lines Service Office as required.~~

~~(2) The affidavit of the surplus lines agent shall include efforts made to place coverages with authorized insurers and the results thereof.~~

(1) ~~(3)~~ Each foreign insurer accepting premiums shall, on or before the end of the month following each calendar quarter, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during the ~~such~~ calendar quarter.

(2) ~~(4)~~ Each alien insurer accepting premiums shall, on or before June 30 of each year, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this

state during the preceding calendar year.

(3) ~~(5)~~ The department may waive the filing requirements described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

(4) ~~(6)~~ Each insurer's report and supporting information shall be in a computer-readable format as determined by the Florida Surplus Lines Service Office or ~~shall~~ be submitted on forms prescribed by the Florida Surplus Lines Service Office and ~~shall~~ show for each applicable agent:

(a) A listing of all policies, certificates, cover notes, or other forms of confirmation of insurance coverage or any substitutions thereof or endorsements thereto and the identifying number; and

(b) Any additional information required by the department or Florida Surplus Lines Service Office.

Section 21. Paragraph (a) of subsection (2) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall make payable to the department the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office~~,~~ and remit the tax to the Florida Surplus Lines Service Office on or before the 45th day after each calendar quarter ~~at the same time as provided for the filing of the quarterly affidavit, under s. 626.931~~. The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b)~~,~~ within 10 days after ~~of~~ receipt.

Section 22. Subsection (1) of section 626.935, Florida Statutes, is amended to read:

626.935 Suspension, revocation, or refusal of surplus lines

agent's license.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent and all other licenses and appointments held by the licensee under this code~~,~~ on any of the following grounds:

(a) Removal of the licensee's office from the licensee's state of residence.

(b) Removal of the accounts and records of his or her surplus lines business from this state or the licensee's state of residence during the period when such accounts and records are required to be maintained under s. 626.930.

(c) Closure of the licensee's office for more than 30 consecutive days.

~~(d) Failure to make and file his or her affidavit or reports when due as required by s. 626.931.~~

(d)~~(e)~~ Failure to pay the tax or service fee on surplus lines premiums~~,~~ as provided in the Surplus Lines Law.

(e)~~(f)~~ Suspension, revocation, or refusal to renew or continue the license or appointment as a general lines agent, service representative, or managing general agent.

(f)~~(g)~~ Lack of qualifications as for an original surplus lines agent's license.

(g)~~(h)~~ Violation of this Surplus Lines Law.

(h)~~(i)~~ ~~For~~ Any other applicable cause for which the license of a general lines agent could be suspended, revoked, or refused under s. 626.611 or s. 626.621.

Section 23. Subsection (1) of section 626.936, Florida Statutes, is amended to read:

626.936 Failure to file reports or pay tax or service fee;

administrative penalty.—

(1) A ~~Any~~ licensed surplus lines agent who neglects to file a report ~~or an affidavit~~ in the form and within the time required under ~~or provided for in~~ the Surplus Lines Law may be fined up to $50 per day for each day the neglect continues, beginning the day after the report ~~or affidavit~~ was due until the date the report ~~or affidavit~~ is received. All sums collected under this section shall be deposited into the Insurance Regulatory Trust Fund.

Section 24. Paragraph (q) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(q) *Certain insurance transactions through credit card facilities prohibited.*—

1. Except as provided in subparagraph 3., no person shall knowingly solicit or negotiate ~~any~~ insurance; seek or accept applications for insurance; issue or deliver any policy; receive, collect, or transmit premiums, to or for an ~~any~~ insurer; or otherwise transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, through the arrangement or facilities of a credit card facility or organization, for the purpose of insuring credit card holders or prospective credit card holders. The term "credit card holder" as used in this paragraph means a ~~any~~ person who may pay the charge for purchases or other

transactions through the credit card facility or organization, whose credit with such facility or organization is evidenced by a credit card identifying such person as being one whose charges the credit card facility or organization will pay, and who is identified as such upon the credit card ~~either~~ by name, account number, symbol, insignia, or ~~any~~ other method or device of identification. This subparagraph does not apply as to health insurance or to credit life, credit disability, or credit property insurance.

2. If ~~Whenever~~ any person does or performs in this state any of the acts in violation of subparagraph 1. for or on behalf of an ~~any~~ insurer or credit card facility, such insurer or credit card facility shall be deemed ~~held~~ to be doing business in this state and, if an insurer, shall be subject to the same state, county, and municipal taxes as insurers that have been legally qualified and admitted to do business in this state by agents or otherwise are subject, the same to be assessed and collected against such insurers; and such person so doing or performing any of such acts is ~~shall be~~ personally liable for all such taxes.

3. A licensed agent or insurer may solicit or negotiate ~~any~~ insurance; seek or accept applications for insurance; issue or deliver any policy; receive, collect, or transmit premiums, to or for an ~~any~~ insurer; or otherwise transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, through the arrangement or facilities of a credit card facility or organization, for the purpose of insuring credit card holders or prospective credit card holders if:

a. The insurance or policy which is the subject of the transaction is noncancelable by any person other than the named insured, the policyholder, or the insurer;

b. Any refund of unearned premium is made ~~directly~~ to the credit card holder by mail or electronic transfer; and

c. The credit card transaction is authorized by the signature of the credit card holder or other person authorized to sign on the credit card account.

The conditions enumerated in sub-subparagraphs a.-c. do not apply to health insurance or to credit life, credit disability, or credit property insurance; and sub-subparagraph c. does not apply to property and casualty insurance if ~~so long as~~ the transaction is authorized by the insured.

4. No person may use or disclose information resulting from the use of a credit card in conjunction with the purchase of insurance if~~, when~~ such information is to the advantage of the ~~such~~ credit card facility or an insurance agent, or is to the detriment of the insured or any other insurance agent; except that this provision does not prohibit a credit card facility from using or disclosing such information in a ~~any~~ judicial proceeding or consistent with applicable law on credit reporting.

5. ~~No~~ Such insurance may not ~~shall~~ be sold through a credit card facility in conjunction with membership in any automobile club. The term "automobile club" means a legal entity that ~~which~~, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or

maintenance of a motor vehicle; however, the term ~~definition of automobile clubs~~ does not include persons, associations, or corporations that ~~which~~ are organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon race courses established and marked as such for the duration of such particular event. The words "motor vehicle" used herein shall be the same as defined in chapter 320.

Section 25. Paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review the filing to determine whether the ~~if a~~ rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of

actuarial science and economics to specify the manner in which insurers calculate investment income attributable to classes of insurance written in this state and the manner in which investment income is used to calculate insurance rates. Such manner must contemplate allowances for an underwriting profit factor and full consideration of investment income that ~~which~~ produce a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may not disapprove a rate as excessive solely due to the insurer's ~~insurer~~ having obtained catastrophic reinsurance to cover the insurer's estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method, or a straight average of model results or output ranges, which are independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology~~,~~ and as further provided in s. 627.0628.

12. A reasonable margin for underwriting profit and

contingencies.

13. The cost of medical services, if applicable.

14. Other relevant factors that affect the frequency or severity of claims or expenses.

Section 26. Paragraph (d) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(d) With respect to a rate filing under s. 627.062, an insurer shall employ and may not modify or adjust actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable in determining hurricane loss factors for use in a rate filing under s. 627.062. An insurer shall employ and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels pursuant to paragraph (b) with respect to a rate filing under s. 627.062 made more than 180 ~~60~~ days after the commission has made such findings. This paragraph does not prohibit an insurer from using a straight average of model results or output ranges or using straight averages for the purposes of a rate filing under s. 627.062.

Section 27. Subsection (8) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(8) Rates are not unfairly discriminatory if averaged

broadly among members of a group; nor are rates unfairly discriminatory even though they are lower than rates for nonmembers of the group. However, such rates are unfairly discriminatory if they are not actuarially measurable and credible and sufficiently related to actual or expected loss and expense experience of the group so as to ensure ~~assure~~ that nonmembers of the group are not unfairly discriminated against. Use of a single United States Postal Service zip code as a rating territory shall be deemed unfairly discriminatory unless filed pursuant to paragraph (1)(a) and such rating territory incorporates sufficient actual or expected loss and loss adjustment expense experience so as to be actuarially measurable and credible.

Section 28. Present subsections (2) through (4) of section 627.072, Florida Statutes, are redesignated as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

627.072 Making and use of rates.—

(2) A retrospective rating plan may contain a provision that allows for the negotiation of premium between the employer and the insurer for employers having exposure in more than one state, an estimated annual standard premium in this state of $175,000, and an estimated annual countrywide standard premium of $1 million or more for workers' compensation.

Section 29. Subsection (2) of section 627.281, Florida Statutes, is amended to read:

627.281 Appeal from rating organization; workers' compensation and employer's liability insurance filings.—

(2) If the ~~such~~ appeal is based on ~~upon~~ the failure of the

rating organization to make a filing on behalf of a ~~such~~ member or subscriber which is based on a system of expense provisions which ~~differs~~, in accordance with the right granted in s. 627.072(3) ~~627.072(2)~~, differs from the system of expense provisions included in a filing made by the rating organization, the office shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the office shall apply the applicable standards set forth in ss. 627.062 and 627.072.

Section 30. Paragraph (h) of subsection (5) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(5)

(h) Any premium or assessments collected by the plan in excess of the amount necessary to fund projected ultimate incurred losses and expenses of the plan and not paid to insureds of the plan in conjunction with loss prevention or dividend programs shall be retained by the plan for future use. Any state funds received by the plan in excess of the amount necessary to fund deficits in subplan D or any tier shall be returned to the state. Any dividend payable to a former insured of the plan may be retained by the plan for future use upon such terms as set forth in the declaration of dividend.

Section 31. Subsection (9) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to

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implement a clearinghouse program by January 1, 2014.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. ~~627.4133(2)(b)4.b.~~ applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

Section 32. Section 627.3519, Florida Statutes, is repealed.

Section 33. Section 627.409, Florida Statutes, is amended to read:

627.409 Representations in applications; warranties.—

(1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and ~~is~~ not a warranty. Except as provided in subsection (3), a misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply:

(a) The misrepresentation, omission, concealment, or statement is fraudulent or is material ~~either~~ to the acceptance of the risk or to the hazard assumed by the insurer.

(b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

(2) A breach or violation by the insured of a ~~any~~ warranty,

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condition, or provision of a ~~any~~ wet marine or transportation insurance policy, contract of insurance, endorsement, or application ~~therefor~~ does not void the policy or contract, or constitute a defense to a loss thereon, unless such breach or violation increased the hazard by any means within the control of the insured.

(3) For residential property insurance, if a policy or contract is in effect for more than 90 days, a claim filed by the insured may not be denied based on credit information available in public records.

Section 34. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to a ~~any~~ personal lines or commercial residential property insurance policy, including a~~, but not limited to, any~~ homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 ~~100~~ days before the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30.~~ The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

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~~1. The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days prior to the effective date of the nonrenewal, cancellation, or termination for a first-named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least a 5-year period immediately prior to the date of the written notice.~~

1.~~2.~~ If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the premium ~~in connection with the payment of premiums~~ on a policy or an ~~any~~ installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail.~~, and~~ If the contract is void, any premium received by the insurer from a third party must be refunded to that party in

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full.

2.~~3.~~ If ~~such~~ cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 90 days, the insurer may not cancel the policy unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or the cancellation is for all insureds under such policies for a class of insureds. This subparagraph does not apply to individually rated risks having a policy term of less than 90 days.

4. After a policy or contract has been in effect for 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records. ~~The requirement for providing written notice by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706.~~

5.~~b.~~ A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

~~After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.~~

6.~~5.~~ Notwithstanding any other ~~provision of~~ law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its

finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7.~~6.~~ A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to ~~either~~ the property or motor vehicle insurance after providing 90 days' notice.

Section 35. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

(1) Each insurer that provides ~~which does~~ or may provide liability insurance coverage to pay all or a portion of a ~~any~~ claim that ~~which~~ might be made shall ~~provide~~, within 30 days after ~~of~~ the written request of the claimant, provide a statement, under oath, of a corporate officer or the insurer's claims manager, ~~or~~ superintendent, or licensed company adjuster setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense that the ~~which such~~ insurer reasonably believes is available to the ~~such~~ insurer at the time of filing such statement.

(e) A copy of the policy.

~~In addition,~~ The insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall also disclose the name and coverage of each known insurer

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to the claimant and ~~shall~~ forward the ~~such~~ request for information ~~as~~ required by this subsection to all affected insurers. The insurer shall ~~then~~ supply the required information ~~required in this subsection~~ to the claimant within 30 days after ~~of~~ receipt of such request.

Section 36. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto within ~~not later than~~ 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including policies, endorsements, notices, or other documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farm owners' insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitute ~~shall constitute~~ delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission must ~~shall~~ include a notice to the insured or to the person

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entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.

Section 37. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If a renewal policy contains ~~does contain~~ such change, the insurer must give the named insured written notice of the change, which may ~~must~~ be enclosed along with the written notice of renewal premium required by ss. 627.4133 and 627.728 or be sent in a separate notice that complies with the nonrenewal mailing time requirement for that particular line of business. The insurer must also provide a sample copy of the notice to the insured's insurance agent before or at the same time that notice is given to the insured. Such notice shall be entitled "Notice of Change in Policy Terms."

Section 38. Section 627.4553, Florida Statutes, is created to read:

627.4553 Recommendations to surrender.—If an insurance agent recommends the surrender of an annuity or life insurance policy containing a cash value and is not recommending that the proceeds from the surrender be used to fund or purchase another annuity or life insurance policy, before execution of the surrender, the insurance agent, or the insurance company if no agent is involved, shall provide, on a form adopted by rule by the department, information concerning the annuity or policy to

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be surrendered, including the amount of any surrender charge, the loss of any minimum interest rate guarantees, the amount of any tax consequences resulting from the surrender, the amount of any forfeited death benefit, and the value of any other investment performance guarantees being forfeited as a result of the surrender. This section also applies to a person performing insurance agent activities pursuant to an exemption from licensure under this part.

Section 39. Paragraph (b) of subsection (4) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(4) The department shall adopt by rule a property insurance mediation program to be administered by the department or its designee. The department may also adopt special rules which are applicable in cases of an emergency within the state. The rules shall be modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court. The rules must ~~shall~~ provide ~~for~~:

(b) Qualifications, denial of application, suspension, revocation of approval, and other penalties for ~~of~~ mediators as provided in s. 627.745 and in the Florida Rules for ~~of~~ Certified and Court-Appointed ~~Court Appointed~~ Mediators~~, and for such other individuals as are qualified by education, training, or experience as the department determines to be appropriate~~.

Section 40. Section 627.70151, Florida Statutes, is created to read:

627.70151 Appraisal; conflicts of interest.—An insurer that offers residential coverage, as defined in s. 627.4025, or a

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policyholder that uses an appraisal clause in the property insurance contract to establish a process for estimating or evaluating the amount of the loss through the use of an impartial umpire may challenge the umpire's impartiality and disqualify the proposed umpire only if:

(1) A familial relationship within the third degree exists between the umpire and a party or a representative of a party;

(2) The umpire has previously represented a party or a representative of a party in a professional capacity in the same or a substantially related matter;

(3) The umpire has represented another person in a professional capacity on the same or a substantially related matter, which includes the claim, same property, or an adjacent property and that other person's interests are materially adverse to the interests of any party; or

(4) The umpire has worked as an employer or employee of a party within the preceding 5 years.

Section 41. Paragraph (c) of subsection (2) of section 627.706, Florida Statutes, is amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(c) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, ~~and~~ who is determined by the department to be fair and impartial, and who

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is not otherwise ineligible for certification as provided in s. 627.7074.

Section 42. Subsections (3), (7), and (18) of section 627.7074, Florida Statutes, are amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(3) Following the receipt of the report required ~~provided~~ under s. 627.7073 or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section if coverage is available under the policy and the claim was submitted within the timeframe provided in s. 627.706(5). Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015 but does not invalidate the appraisal clause of the insurance policy. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to subsection (1) electronically or by United States mail.

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The department shall allow the parties to submit requests for disqualifying ~~to disqualify~~ evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship exists between the neutral evaluator and either party or a representative of either party within the third degree.

2. The proposed neutral evaluator has, in a professional

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capacity, previously represented either party or a representative of either party, in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of a ~~any~~ party to the case.

(b) The department shall deny an application, or suspend or revoke the certification, of a neutral evaluator to serve in the neutral evaluator capacity if the department finds that one or more of the following grounds exist:

1. Lack of one or more of the qualifications for certification specified in this section.

2. Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the certification.

3. Demonstrated lack of fitness or trustworthiness to act as a neutral evaluator.

4. Fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of business in the financial services industry.

5. Violation of any provision of this code or of a lawful order or rule of the department or aiding, instructing, or encouraging another party to commit such violation.

(c) ~~(b)~~ The parties shall appoint a neutral evaluator from the department list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 14 business days, the department shall appoint a neutral evaluator from the list of certified neutral evaluators. The department shall allow each party to disqualify two neutral evaluators without cause. Upon selection or appointment, the department shall promptly refer the request to the neutral evaluator.

(d) ~~(c)~~ Within 14 business days after the referral, the neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The conference may be held by telephone, if feasible and desirable. The neutral evaluator shall make reasonable efforts to hold the conference within 90 days after the receipt of the request by the department. Failure of the neutral evaluator to hold the conference within 90 days does not invalidate either party's right to neutral evaluation or to a neutral evaluation conference held outside this timeframe.

(18) The department shall adopt rules of procedure for the neutral evaluation process and for certifying, denying or suspending the certification of, and revoking certification as, a neutral evaluator.

Section 43. Subsection (8) of section 627.711, Florida Statutes, is amended to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(8) At its expense, the insurer may require that a uniform mitigation verification form provided by a policyholder, a policyholder's agent, or an authorized mitigation inspector or

inspection company be independently verified by an inspector, an inspection company, or an independent third-party quality assurance provider that ~~which~~ possesses a quality assurance program before accepting the uniform mitigation verification form as valid. The insurer may exempt from additional independent verification any uniform mitigation verification form provided by a policyholder, a policyholder's agent, an authorized mitigation inspector, or an inspection company that possesses a quality assurance program that meets the standards established by the insurer. A uniform mitigation verification form provided by a policyholder, a policyholder's agent, an authorized mitigation inspector, or an inspection company to Citizens Property Insurance Corporation is not subject to additional verification, and the property is not subject to reinspection by the corporation, absent material changes to the structure for the term stated on the form if the form signed by a qualified inspector was submitted to, reviewed, and verified by a quality assurance program approved by the corporation before submission to the corporation.

Section 44. Subsections (1), (2), and (3) of section 627.7283, Florida Statutes, are amended to read:

627.7283 Cancellation; return of premium.—

(1) If the insured cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice or request for cancellation, whichever is later. This requirement applies to a cancellation initiated by an insured for any reason.

(2) If an insurer cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer the unearned premium portion of any premium within 15 days after the effective date of the policy cancellation.

(3) If the unearned premium is not mailed or electronically transferred within the applicable period, the insurer must pay to the insured 8 percent interest on the amount due. If the unearned premium is not mailed or electronically transferred within 45 days after the applicable period, the insured may bring an action against the insurer pursuant to s. 624.155.

Section 45. Paragraph (a) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may directly pay ~~for~~ such charges ~~directly~~ to the ~~such~~ person or institution lawfully rendering ~~such~~ treatment if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid ~~for~~ as having actually been rendered, to the best knowledge of the insured or his or her guardian. However, such a charge may not exceed the amount the person or institution customarily

charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement ~~for the service, treatment, or supply~~.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care as defined by s. 395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies from March 1 until the last day of February ~~throughout the remainder~~ of the following ~~that~~ year, notwithstanding any subsequent

change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

3. Subparagraph 1. does not allow the insurer to apply a ~~any~~ limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.

4. If an insurer limits payment as authorized by subparagraph 1., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

5. ~~Effective July 1, 2012,~~ An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the

insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A policy form approved by the office satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

Section 46. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 627.744, Florida Statutes, are amended to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(1) A private passenger motor vehicle insurance policy providing physical damage coverage, including collision or comprehensive coverage, may not be issued in this state unless the insurer has inspected the motor vehicle in accordance with this section. Physical damage coverage on a motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide required documents. However, payment of a claim may be conditioned upon the insurer's receipt of the required documents, and physical damage loss occurring after the effective date of coverage is not payable until the documents are provided to the insurer.

(2) This section does not apply:

(a) To a policy for a policyholder who has been insured for 2 years or longer, without interruption, under a private passenger motor vehicle policy that ~~which~~ provides physical damage coverage for any vehicle~~,~~ if the agent of the insurer verifies the previous coverage.

(b) To a new, unused motor vehicle purchased or leased from

a licensed motor vehicle dealer or leasing company~~,~~ if the insurer is provided with:

1. A bill of sale, ~~or~~ buyer's order, or lease agreement that ~~which~~ contains a full description of the motor vehicle~~,~~ ~~including all options and accessories~~; or

2. A copy of the title or registration that ~~which~~ establishes transfer of ownership from the dealer or leasing company to the customer and a copy of the window sticker ~~or the dealer invoice showing the itemized options and equipment and the total retail price of the vehicle~~.

~~For the purposes of this paragraph, the physical damage coverage on the motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide the required documents. However, payment of a claim is conditioned upon the receipt by the insurer of the required documents, and no physical damage loss occurring after the effective date of the coverage is payable until the documents are provided to the insurer.~~

Section 47. Paragraph (b) of subsection (3) of section 627.745, Florida Statutes, is amended, present subsections (4) and (5) of that section are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

627.745 Mediation of claims.—

(3)

(b) To qualify for approval as a mediator, an individual ~~a person~~ must meet one of the following qualifications:

1. Possess an active certification as a Florida Supreme

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Court certified circuit court mediator. A circuit court mediator whose certification is in a lapsed, suspended, or decertified status is not eligible to participate in the program ~~a masters or doctorate degree in psychology, counseling, business, accounting, or economics, be a member of The Florida Bar, be licensed as a certified public accountant, or demonstrate that the applicant for approval has been actively engaged as a qualified mediator for at least 4 years prior to July 1, 1990~~.

2. Be an approved department mediator as of July 1, 2014, and have conducted at least one mediation on behalf of the department within the 4 years ~~immediately~~ preceding that ~~the~~ date ~~the application for approval is filed with the department, have completed a minimum of a 40-hour training program approved by the department and successfully passed a final examination included in the training program and approved by the department~~. ~~The training program shall include and address all of the following:~~

~~a. Mediation theory.~~

~~b. Mediation process and techniques.~~

~~c. Standards of conduct for mediators.~~

~~d. Conflict management and intervention skills.~~

~~e. Insurance nomenclature.~~

(4) The department shall deny an application, or suspend or revoke its approval of a mediator or certification of a neutral evaluator to serve in such capacity, if the department finds that any of the following grounds exist:

(a) Lack of one or more of the qualifications for approval or certification specified in this section.

(b) Material misstatement, misrepresentation, or fraud in

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obtaining, or attempting to obtain, the approval or certification.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.

(d) Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in the conduct of business in the financial services industry.

(e) Violation of any provision of this code or of a lawful order or rule of the department, violation of the Florida Rules of Certified and Court Appointed Mediators, or aiding, instructing, or encouraging another party in committing such a violation.

The department may adopt rules to administer this subsection.

Section 48. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually by May ~~March~~ 31 of the year after the reporting year. The commission shall adopt rules regarding the collection and analysis of the data from the title insurance industry.

Section 49. Subsections (1), (3), (10), and (12) of section

628.461, Florida Statutes, are amended to read:

628.461 Acquisition of controlling stock.—

(1) A person may not, individually or in conjunction with an ~~any~~ affiliated person of such person, acquire directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or of a controlling company~~,~~ unless:

(a) The person or affiliated person has filed with the office and sent to the insurer and controlling company a letter of notification regarding the transaction or proposed transaction within ~~no later than~~ 5 days after any form of tender offer or exchange offer is proposed~~,~~ or within ~~no later than~~ 5 days after the acquisition of the securities if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved;

(b) The person or affiliated person has filed with the office a statement as specified in subsection (3). The statement must be completed and filed within 30 days after:

1. Any definitive acquisition agreement is entered;

2. Any form of tender offer or exchange offer is proposed; or

3. The acquisition of the securities~~,~~ if no definitive acquisition agreement, tender offer, or exchange offer is involved; and

(c) The office has approved the tender or exchange offer,

or acquisition if no tender offer or exchange offer is involved, and approval is in effect.

~~In lieu of a filing as required under this subsection, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation and control. The disclaimer shall fully disclose all material relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the office disallows the disclaimer. The office shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A filing as required under this subsection must be made as to any acquisition that equals or exceeds 10 percent of the outstanding voting securities.

(3) The statement to be filed with the office under subsection (1) and furnished to the insurer and controlling company must ~~shall~~ contain the following information and any additional information ~~as~~ the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the policyholders and shareholders of the insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or

on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by, or on behalf of, a corporation, association, or trust, as to the corporation, association, or trust and as to any person who ~~controls either~~ directly or indirectly controls the corporation, association, or trust, the identity of, and the background information specified in subsection (4) on, each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust;

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition;

(c) Any plans or proposals that ~~which~~ such persons may have made to liquidate such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals that which such persons may have made to liquidate any controlling company of such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management;

(d) The number of shares or other securities which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired; and

(e) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the insurer or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the

giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(10) Upon notification to the office by the domestic stock insurer or a controlling company that any person or any affiliated person of such person has acquired 10 ~~5~~ percent or more of the outstanding voting securities of the domestic stock insurer or controlling company without complying with ~~the provisions of~~ this section, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the domestic stock insurer or controlling company; however, the person or any affiliated person of such person may request a proceeding, which ~~proceeding~~ shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with an ~~any~~ affiliated person of such person, has acquired 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this subsection that the person or affiliated person has acquired voting securities of a domestic stock insurer or controlling company in violation of this section, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

(12)~~(a)~~ A presumption of control may be rebutted by filing a disclaimer of control. A person may file a disclaimer of control with the office. The disclaimer must fully disclose all

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material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. The disclaimer of control shall be filed on a form prescribed by the office, or a person or acquiring party may file with the office a copy of a Schedule 13G on file with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or Rule 13d-1(c) under the Securities Exchange Act of 1934, as amended. After a disclaimer is filed, the insurer is relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person, unless the office disallows the disclaimer. ~~For the purpose of this section, the term "affiliated person" of another person means:~~

~~1. The spouse of such other person;~~

~~2. The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;~~

~~3. Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;~~

~~4. Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;~~

~~5. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;~~

~~6. Any officer, director, partner, copartner, or employee of such other person;~~

~~7. If such other person is an investment company, any investment adviser of such company or any member of an advisory~~

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~~board of such company;~~

~~8. If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or~~

~~9. Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.~~

~~(b) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more domestic stock insurance companies.~~

Section 50. Subsection (11) of section 631.717, Florida Statutes, is amended to read:

631.717 Powers and duties of the association.—

(11) The association is ~~shall~~ not ~~be~~ liable for any civil action under s. 624.155 arising from any acts alleged to have been committed by a member insurer before ~~prior to~~ its liquidation. ~~This subsection does not affect the association's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida domestic rehabilitation or a liquidation.~~

Section 51. Section 631.737, Florida Statutes, is amended to read:

631.737 Rescission and review generally.—The association shall review claims and matters regarding covered policies based upon the record available to it on and after the date of

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liquidation. Notwithstanding any other provision of this part, in order to allow for orderly claims administration by the association, entry of a liquidation order by a court of competent jurisdiction tolls ~~shall be deemed to toll~~ for 1 year any rescission or noncontestable period allowed by the contract, the policy, or by law. The association's obligation is to pay any valid insurance policy or contract claims, if warranted, after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a rehabilitation or a liquidation.

Section 52. Subsections (6) and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(6) An association that ~~which~~ holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following conditions:

(a) Maintains net assets of at least $750,000.

(b) Uses ~~Utilizes~~ a contractual liability insurance policy approved by the office that: ~~which~~

1. Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or

2. Complies with subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

(c) The insurer issuing the contractual liability insurance policy:

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~~1. Maintains a policyholder surplus of at least $100 million.~~

1.~~2.~~ Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

~~3. Is in no way affiliated with the warranty association.~~

2.~~4.~~ In conjunction with the warranty association's filing of the quarterly and annual reports, provides, on a form prescribed by the commission, a statement certifying the gross written premiums in force reported by the warranty association and a statement that all of the warranty association's gross written premium in force is covered under the contractual liability policy, regardless of whether ~~or not~~ it has been reported.

~~(7) A contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, wherever written, unless all of the following are satisfied:~~

~~(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;~~

~~(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;~~

~~(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5~~

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~~years, and:~~

~~1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file either of Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;~~

~~2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~3. Has and maintains at all times a minimum net worth of not less than $10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office annually; and~~

~~4. Is authorized to do business in this state; and~~

~~(d) The insurer issuing the contractual liability policy:~~

~~1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least $100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office;~~

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~~2. Holds a certificate of authority to do business in this state and is approved to write this type of coverage; and~~

~~3. Acknowledges to the office quarterly that it insures all of the association's claims exposure under contracts delivered in this state.~~

~~If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.~~

Section 53. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

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The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 10, 2014

I respectfully request that **Senate Bill #1260**, relating to Insurance, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

SENATE APPROPRIATIONS
RECEIVED
14 APR 10 PM 2:
ALERT TO CHAIRMAN
STAFF DIR. STAFF

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

1.22.14
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic Workers comp

Bill Number 1260 *(if applicable)*

Name Gerald Weiker

Amendment Barcode 192956 *(if applicable)*

Job Title lobbyist

Address 101 E. Colly
Street

Tallahassee
City *State* *Zip*

Phone 222-9075

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing American Insurance Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Insurance

Bill Number 1260 *(if applicable)*

Name Logan McFaddin

Amendment Barcode *(if applicable)*

Job Title Director of Legislative Affairs

Address LL-22 The Capitol
Street
Tallahassee FL 32399
City *State* *Zip*

Phone 413-2890

E-mail logan.mcfaddin@myfloridacfo.com

Speaking: [X] For [ ] Against [ ] Information

Representing CFO's Office

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations	
BILL:	PCS/CS/SB 1272 (376118)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Brandes
SUBJECT:	Transportation and Motor Vehicles
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/CS**
2.	Carey	Martin	ATD	**Fav/CS**
3.	Carey	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1272 makes a number of revisions to transportation laws administered by the Florida Department of Transportation (FDOT) and to motor vehicle laws administered by the Department of Highway Safety & Motor Vehicles (DHSMV). More specifically, the bill:

- Extends the Florida Transportation Commission's (FTC) oversight of expressway and bridge authorities to the Mid-Bay Bridge Authority (MBBA) and repeals provisions relating to the Florida Statewide Passenger Rail Commission (FSPRC).
- Revises provisions to allow for reinstatement of driving privileges for certain cases regarding driver license suspensions due to unpaid child support.
- Requires the court to make a specific determination of whether a driver license can be issued for business purposes only (BPO) when suspending a driver license for unpaid child support and convictions of certain drug offenses.
- Repeals the requirement that a court order the driver license suspension of persons who fail to appear on worthless check charges, and permits and applies the suspension only to persons previously found guilty of bad check charges.
- Requires the Department of State, in consultation with the Department of Law Enforcement, to establish a retention schedule for records generated through the use of an automated license plate recognition system.
- Prohibits a bus from stopping to load or unload passengers in a manner that restricts the progression of traffic on a roadway.

- Provides that the prohibition against unattended vehicles left with the engine running does not apply to a vehicle started by remote control while the ignition, transmission, and doors are locked.
- Includes devices used to improve driver safety in the current exception for devices that may be mounted on windshields.
- Expands those authorized to conduct testing of autonomous vehicle technology, expands potential testing locations, and removes the requirement that a human operator be in the vehicle when testing on a closed course or designated testing roadways.
- Limits the DHSMV's authority to withhold the issuance of a vehicle registration when a notice to surrender has been submitted by a lienor to the DHSMV to the vehicle identified the notice. The bill allows the registered owner to dispute a notice to surrender by bringing a civil action and provides procedural requirements for disposition of a challenge.
- Directs the DHSMV to develop a plan of action that addresses motor vehicle registration holds for outstanding tolls, parking tickets, and fines.
- Enhances accountability of organizations receiving specialty license plate revenues by:
  - Providing guidelines for revenue use and compliance determinations;
  - Extending the DHSMV's period within which to determine compliance with the guidelines from 90 to 120 days;
  - Providing guidelines for corrective actions; and
  - Authorizing the DHSMV to commission an independent consultant to assist in determining compliance.
- Extends the moratorium on issuance of new specialty license plates from July 1, 2014, to July 1, 2016.
- Authorizes individuals with amateur radio licenses recognized, as opposed to issued, by the Federal Communications Commission (FCC) to apply for a special license plate.
- Requires licensed recreational vehicle dealers who apply for supplemental licenses to hold off-premises sales, not in conjunction with a public vehicle show, to notify the DHSMV of the dates and location of the sales.
- Requires the DHSMV to develop an optional digital proof of driver license.
- Authorizes tax collectors who have completed the transition of driver license services to retain certain fees related to license issuance that are currently deposited into the Highway Safety Operating Trust Fund.
- Exempts applicants who are homeless or whose annual income is at or below 100% of the federal poverty level from the $25 fee for an identification card.
- Revises the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way.
- Amends the process that the FDOT must follow relating to proposals to enter into a lease of FDOT property for joint public-private development.
- Revises state law relating to the designation, voting membership, and reapportionment of metropolitan planning organizations (MPOs).
- Authorizes Enterprise Florida, Inc., to be a consultant to the FDOT for consideration of economic development transportation projects.
- Requires full-service gasoline stations offering self-service at a lesser cost to meet certain decal display requirements and preempts local government laws and regulations relating to the provision of fueling assistance by a self-service gas station.
- Authorizes the FDOT to program and pay maintenance costs related to the Pinellas Bayway.

- Makes various editorial and grammatical changes and corrects cross-references necessitated by changes made elsewhere in the bill.

The bill has not been reviewed by the Revenue Estimating Conference. However, staff estimates a recurring negative impact to the General Revenue Fund, a recurring negative impact to the Highway Safety Operating Trust Fund, and a positive fiscal impact to county Tax Collectors beginning in Fiscal Year 2014-15. See Section V.

II. Present Situation:

The present situation is discussed below in Effect of Proposed Changes in this bill analysis.

III. Effect of Proposed Changes:

Florida Transportation Commission Oversight of Mid-Bay Bridge Authority and Passenger Rail Systems

Current Situation

The Florida Transportation Commission (FTC) is charged with periodically reviewing the status of the state transportation system, including rail and other component modes, and with recommending improvements to the system to the Governor and the Legislature. In 2007, the Legislature passed HB 985 amending s. 20.23(2)(b)8, F.S., to expand the oversight role of the FTC to include monitoring the efficiency, productivity, and management of the various tolling authorities created under ch. 348 and ch. 349, F.S. The Commission conducts periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

The Mid-Bay Bridge Authority (MBBA)[1] is the governing body of an independent special district in Okaloosa County for the purpose of planning, constructing, operating, and maintaining a bridge over the Choctawhatchee Bay. The MBBA operates the tolled, 3.6-mile long Mid-Bay Bridge across the Choctawhatchee Bay and approaches (SR 293) on the northern and southern sides of the bridge. The facility, which connects SR 20 with U.S. 98 east of Destin, is a link between Interstate 10 and U.S. 98 and provides a more direct route to tourists and residents between northern and southern Okaloosa and Walton Counties.[2] No state entity is currently charged with monitoring the efficiency, productivity, and management of the MBBA.

In 2009, the Florida Legislature created the Florida Statewide Passenger Rail Commission (FSPRC) to monitor, advise, and review publicly-funded passenger rail systems[3], resulting in oversight responsibilities that overlap with or are redundant to those of the FTC.

[1] Re-created by special act, ch. 2000-411, L.O.F.
[2] Senate Issue Brief 2012-208, *Cost Effectiveness of Regional Expressway and Bridge Authorities*, (September 2011).
[3] The only publicly funded passenger rail system in the state (Tri-Rail) then and now existing is operated by the South Florida Regional Transportation Authority, which is established in ch. 343, F.S. However, the first phase (31 miles) of a commuter rail project, SunRail,– an eventual 61-mile stretch of existing rail freight tracks through Orange, Seminole, Volusia and Osceola counties and the City of Orlando -- is under construction, and service could begin as early as 2014.

Specifically, and similar to the duty of the FTC, the Legislature charged the FSPRC in s. 20.23(3)(b)1., F.S., with the function of:

> Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. …This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.

The Florida Department of Transportation (FDOT) provides administrative support and service to the FSPRC. The commission last met in July 2012. Six of the nine seats on the FSPRC are currently vacant. The remaining three seats expire in August of 2014. [4]

Effect of Proposed Changes

Section 1 amends s. 20.23, F.S., expanding the FTC oversight responsibilities to include monitoring the efficiency, productivity, and management of the MBBA. The bill also amends s. 20.23, F.S., to repeal the Florida Statewide Passenger Rail Commission. Overlapping oversight of publicly-funded passenger rail systems is eliminated and remains solely with the FTC.

Section 3 of the bill revises s. 110.205, F.S., to modernize terms and correct cross-references required by statutory changes made in section 1 of the bill.

Non-Driving-Related Driver License Suspensions

Current Situation

Driver license revocations and suspensions either terminate or temporarily, respectively, withdraw one's driving privilege.[5] Initially, specific provisions addressed poor driving behavior. Driver's license suspensions and revocations are now commonly used as a means to punish individuals engaged in illegal behavior unrelated to the operation of a motor vehicle. Consequently, a substantial amount of time and resources are expended by state and local entities to deal with and process non-driving-related suspensions and revocations.

Current law provides penalties for driving with a suspended, revoked, or canceled license. Unknowing infractions are a moving violation, punishable as provided in ch. 318, F.S. Knowing infractions are punishable as a second degree misdemeanor on the first conviction (up to 30 days in jail and a $500 fine); a first degree misdemeanor on the second conviction (up to 60 days in jail and a $1,000 fine); and a third degree felony on the third or subsequent conviction (up to five years in prison and a $5,000 fine). Additionally, the arresting officer is authorized to impound the vehicle of a driver arrested for criminal violations under certain conditions.[6]

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[4] The FDOT email, February 24, 2014, on file in the Senate Transportation Committee.
[5] Section 322.01, F.S., *Definitions.*
[6] Section 322.34(8)(b), F.S.

Failure to Appear in Court for Worthless Checks: Section 832.09, F.S., provides for the suspension of a driver license after a warrant or capias is issued in a worthless check case. A person prosecuted for passing a worthless check who fails to appear before the court and against whom a warrant or capias for failure to appear is issued by the court must have his or her driver license suspended or revoked. Within five working days after issuance of the warrant or capias, the DHSMV has to be notified of the court's action.

Misdemeanor Theft: Section 812.0155, F.S., provides for the suspension of a driver license for misdemeanor theft. For a first time offender, the court is required to order suspension of the driver's license of a person adjudicated guilty of a misdemeanor violation, regardless of the value of property stolen. The first suspension for misdemeanor theft is for six months and subsequent suspensions are for one year each.

Drug Offenses: Section 322.055, F.S., provides for the automatic suspension of the driver license for conviction of drug related offenses, including when a motor vehicle is involved. The clerks of court are required to report to the DHSMV all convictions for the possession or sale of, trafficking, or conspiracy to possess, sell, or traffic controlled substances. This includes persons:

- 18 years of age or older;
- 18 years of age or older and eligible by reason of age for a driver's license or privilege;
- 18 years or older driver already under suspension or revocation for any reason; and
- 18 years of age or older and ineligible by reason of age for a driver's license.

Federal Child Support Enforcement: The Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, also known as the Welfare Reform Act of 1996, enacted section 466(a)(16) of the Social Security Act, which requires states to have (and use in appropriate cases) the authority to withhold, suspend or restrict the use of driver licenses of individuals owing past due child support. The United States Department of Health and Human Services Office of Child Support Enforcement (OCSE) administers a federal-state program that provides funding to child support agencies in the states to help develop, manage and operate their programs effectively and according to federal law.

State and Local Entities: At the state level, the DHSMV is responsible for issuing driver licenses and administering driver license examinations. The department is also responsible for suspending and revoking driver licenses, which includes providing notice required by law and communicating license reinstatement requirements. The role of other state agencies is to notify the department when individuals violate laws that can be sanctioned by driver license suspension. For example, if a parent is delinquent on child support payments, the Department of Revenue (DOR) notifies DHSMV to start the process of driver license suspension.

At the local level, clerks of court are responsible for collecting financial obligations imposed by the court for criminal and traffic offenses, as well as maintaining court records and ensuring that court orders are carried out. Section 322.245, F.S., requires clerks of court to notify the DHSMV when a driver fails to pay court-imposed financial obligations for criminal offenses. Failure to pay can result in a license suspension. In addition, clerks of court provide information to the DHSMV about any court actions that require the suspension or revocation of driver licenses. On behalf of DHSMV, clerks of court and county tax collectors may reinstate driving privileges and collect reinstatement fees.

The Office of Program Policy Analysis & Government Accountability (OPPAGA) completed a report on non-driver related suspensions and revocations in February 2014, which indicates that most suspensions for delinquent child support and truancy are reinstated fairly quickly, usually within the year. The DOR officials maintain that the threat of losing a driver license is one of the best compliance tools it has to enforce child support orders. The DOR collected approximately $101.8 million in delinquent child support payments in Fiscal Year 2012-2013 from parents who received a notice of suspension or whose license was suspended.[7]

Common Reasons for Non-Driving-Related Driver License Suspensions or Revocations[8]

Fiscal Year 2012-2013 Non-Driving-Related Suspensions or Revocations	**Number**
Failure to pay court financial obligations	70,216
Failure to pay child support	68,223
Conviction of drug-related offense	19,024
Non-compliance with school attendance	4,020
Failure to appear-worthless check	1,829
Conviction of theft offense	462
Other non-driving suspensions or revocations	3,493
Total	167,267

The OPPAGA report further states legislative alternatives based on its findings for non-driving-related suspensions or revocations:

- Leave driver license suspension for failure to appear in court on a worthless check, and for a conviction of misdemeanor theft offense charge, at the court's discretion;
- Explore modifying or opting out of Florida's implementation of the federal mandate requiring driver license suspension for drug convictions;
- Codify current DOR child support enforcement practices regarding the use of driver license suspensions;
- Evaluate the effectiveness of driver license suspension for school truancy.

Effect of Proposed Changes

Section 2 amends s. 61.13016, F.S., to provide additional justifications available to a person whose driver license has been suspended for failure to comply with child support responsibilities to delay the court's order of driver license suspension. The bill allows the court to withhold suspension of the driver license of persons who can demonstrate any of the following:

- The receipt of reemployment assistance or unemployment compensation;
- The receipt of benefits under the federal Supplemental Security Income or Social Security Disability Insurance program;
- The receipt of temporary cash assistance pursuant to ch. 414, F.S.; or
- That he or she is making payments in accordance with a confirmed bankruptcy plan under chapters 11, 12, or 13, F.S., of the U. S. Bankruptcy Code, 11 U.S.C. ss. 101 et seq.

[7] Office of Program Policy Analysis & Government Accountability, Florida Legislature, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, Report No.14-07 (Feb. 2014).
[8] Id,

Section 17 amends s. 322.055, F.S., to reduce the allowable driver license revocation or suspension period of a person convicted of possession, sale, or trafficking in a controlled substance from two years to one year. When a court orders such a revocation or suspension, the court must specifically make a determination as to whether a license may be issued allowing driving for business purposes only.

Section 18 amends s. 322.058, F.S., authorizing the DHSMV to reinstate the driver license of a person whose license was suspended for failure to comply with child support responsibilities upon proof of the additional justifications as provided in Section 2 of the bill.

Section 28 of the bill amends s. 562.11, F.S., to require a court ordering the suspension or revocation of the driver license of a person convicted of selling, giving, or serving alcohol to a person under 21, to specifically make a determination as to whether a license may be issued allowing driving for business purposes only.

Section 29 of the bill amends s. 812.0155, F.S., to require a court ordering the suspension or revocation of the driver license of a person adjudicated guilty of theft, to specifically make a determination as to whether a license may be issued allowing driving for business purposes only.

Section 30 of the bill amends s. 832.09, F.S., to allow, rather than mandate, a court to order suspension or revocation of the driver license of a person who is being prosecuted for passing a worthless check, failing to appear before the court and against whom a warrant or capias for failure to appear is issued by the court, if such person has previously been adjudicated guilty passing worthless checks under s. 832.05, F.S.

Automated License Plate Recognition Systems

Current Situation

An automated license plate recognition system (ALPRS) uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. The extracted information can be used with or without a database for many applications, such as electronic payment systems (toll payment, parking fee payment), and freeway and arterial monitoring systems for real-time traffic speed projections. This captured information (i.e., license plate number, date, time, and location) is collected, and may be matched to personal identifying databases and sometimes pooled into regional sharing systems. As a result, enormous databases may house the location and travel patterns of thousands, if not millions of individual motorists.

As an operational tool for law enforcement, ALPRSs scan the license plates of moving or parked vehicles while either mounted on a moving patrol car or attached to a fixed location, such as a toll plaza or free-standing installation. Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and

its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features.

Effect of Proposed Changes

Section 4 creates s. 316.0778, F.S., to define "automated license plate recognition system" to mean "a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data." The Department of State, in consultation with the Department of Law Enforcement, is directed to establish a retention schedule for records containing images and data generated through the use of an automated license plate recognition system, including a maximum period that records may be retained. Entities in possession of such records will be required to retain them in compliance with the schedule.

Loading and Unloading of Bus Passengers

Current Situation

Section 316.0815, F.S., requires that a driver of a vehicle yield the right-of-way to a publicly owned transit bus traveling in the same direction when the bus driver has signaled and the bus is reentering the traffic flow from a specifically designated pullout bay. However, specifically designated pullout bays are not available at every location at which such buses stop for the purpose of loading and unloading bus passengers, and stops are routinely made in the main-traveled portion of a roadway.

Section 316.083, F.S., authorizes drivers to overtake and pass a vehicle proceeding in the same direction and requires the driver of the overtaken vehicle to give way to the right in favor of the overtaking vehicle, without increasing vehicle speed, until completely passed by the overtaking vehicle. This requirement applies to the drivers of buses stopped in the main-traveled portion of a roadway to load and unload passengers.

Effect of Proposed Changes

Section 5 creates s. 316.0817, F.S., notwithstanding any other law, to prohibit a bus from stopping to load or unload passengers in a manner that impedes, blocks, or otherwise restricts the progression of traffic on the main-traveled portion of a roadway if there is another reasonable means for the bus to stop parallel to the travel lane and safely load and unload passengers. "Reasonable means" is defined for purposes of the new section to mean "sufficient unobstructed pavement or a designated turn lane that is sufficient in length to allow the safe loading and unloading of passengers parallel to the travel lane." These provisions do not apply to school buses. Enforcement of these provisions may be difficult, as the definition of "reasonable means" may be subject to differing interpretations. Private owners of "sufficient unobstructed pavement" that may be adjacent and parallel to the travel lane may object to damage incurred to the pavement should use of the owner's pavement occur.

Unattended Motor Vehicles/Remote Starters

Current Situation

Section 316.1975(2)(d), F.S., prohibits a vehicle from standing unattended with the engine running and ignition not in locked position with the key removed. A violation of this section is a noncriminal traffic infraction punishable as a nonmoving violation.[9] This section does not apply to the operator of:

- An authorized emergency vehicle equipped with antitheft device prohibiting the vehicle from being driven;
- A licensed delivery truck being used for business; or
- A solid waste or recovered materials collection vehicle.

Remote keyless systems are devices that allow a vehicle to be started up without requiring either the driver or the key to be physically inside the automobile. This is accomplished through a component that is connected to the ignition system and fitted with a radio receiver. When that component receives a signal from a paired transmitter, which typically takes the form of a key fob, it activates the starter motor. Through the advancement of technology, some newer vehicle models can be started by way of Smartphones.

Many vehicle models currently on the market and in use on the roadways are capable of being started by remote control. The current exceptions from the prohibition against allowing a vehicle to stand unattended without first stopping the engine, locking the ignition, and removing the key do not include a vehicle that is started by remote control while the ignition, transmission, and doors are locked.

Effect of Proposed Changes

Section 6 amends s. 316.1975, F.S., to provide that the prohibition of leaving a vehicle unattended with the engine running does not apply to a vehicle started by remote control while the ignition, transmission, and doors are locked.

Vehicle Windshields/Global Positioning System Devices

Current Situation

Current law requires that every motor vehicle, except a motorcycle or implement of husbandry, be equipped with a windshield.[10] Operation of a vehicle with any sign, sun-screening material, product, or covering attached to, in, or on the windshield is prohibited, except for the following:

- A certificate or other paper required to be displayed by law.
- Sun-screening material along a strip at the top of the windshield, if the material is transparent and does not encroach upon the driver's direct forward viewing area.
- A device, issued by a governmental entity or its designee, used for electronic toll payments.
- A global positioning system (GPS) or similar device used to obtain navigation or routing information while the motor vehicle is being operated.[11]

[9] Section 318.18, F.S. The penalty for a nonmoving violation is $30.
[10] Section 316.2952(1), F.S.
[11] Section 316.2952(2), F.S.

Many public and private entities utilize GPS and camera-based devices to monitor fleet operations and provide additional sensory-based safety features.[12] Suppliers of such devices report multiple benefits, such as improved vehicle maintenance, driver safety, and delivery times, as well as reduced insurance costs and overall reduction in operational expenses. Concern exists that the current exception for GPS or similar devices on vehicle windshields for purposes other than navigation or routing may not allow these devices to be placed on windshields.

Effect of Proposed Changes

Section 7 amends s. 316.2952(2), F.S., to specifically include in the current exception for GPS devices on windshields, those devices used to improve driver safety as a component of safety or provide driver feedback.

Autonomous Vehicle Testing

Current Situation

Section 316.86, F.S., currently authorizes operation of autonomous, or "self-driving," vehicles on roads in this state by employees, contractors, or other persons designated by manufacturers of autonomous technology for the purpose of testing the technology. The law requires that a human operator be present in the autonomous vehicle with the ability to monitor the vehicle's performance and if necessary to intervene. This provision does not apply when the autonomous vehicle is being tested on a closed course. An entity is required to submit to the DHSMV an instrument of insurance, surety bond, or proof of self-insurance in the amount of $5 million before performing testing in this state.

Effect of Proposed Changes

Section 8 amends s. 316.86, F.S., to expand those authorized to conduct testing to research organizations associated with accredited educational institutions. The requirement that a human be present in the vehicle is removed in certain circumstances and testing locations are expanded. A human operator must retain the ability to monitor the vehicle's performance and intervene, if necessary, unless the vehicle is being tested or demonstrated on a closed course *or any other testing roadway as designated by the FDOT and the applicable local government or authority.*

Motor Vehicle Registration Holds

Current Situation

Section 320.02, F.S., requires every owner or operator of a motor vehicle, driving on roads of Florida to register his or her vehicle in this state with the DHSMV or its authorized agent.

Section 320.1316, F.S., allows a lienor to notify the DHSMV when a liened vehicle is not surrendered as ordered and has otherwise been disposed of, concealed, removed, or destroyed by the registered owner (lienee.) When the DHSMV receives notice from a lienor, the registered vehicle's owners name is placed on the list of persons who may not be issued a license plate or

[12] See, *e.g.*, the following supplier websites: http://www.networkfleet.com/; http://www.fleetistics.com/; http://www.fmsgps.com/frontend/.

revalidation sticker for any vehicle. If the unsurrendered vehicle is jointly-owned, the name of each registered owner is placed on the list and no vehicle may be registered by any of the named individuals.

The lienor must maintain proof that written notice to surrender the vehicle was sent to each registered owner pursuant to s. 320.1316(1), F.S. A revalidation sticker or replacement license plate may not be issued for any vehicle until that person's name is no longer on the list or until the person presents documentation from the lienor that the unsurrendered vehicle has been surrendered to the lienor.

Citing insufficient due process to the affected registered owners, the DHSMV has declined to enforce the provisions of s. 320.1316, F.S., since its revision in 2010.

Effect of Proposed Changes

Sections 9 and 14 amend ss. 320.02 and 320.1316, F.S., respectively, to require that when an applicant's name appears on a list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate after a written notice to surrender a vehicle or vessel was submitted to the DHSMV by a lienor as provided in s. 320.1316, F.S., the DHSMV shall withhold renewal of registration or replacement registration of *only* the motor vehicle identified in the notice.

The registered owner of the vehicle may dispute a notice to surrender or his or her inclusion on the list by bringing a civil action in the county in which he or she resides. If the registered owner challenges the refusal to issue a license plate under s. 320.03(8), F.S., the court shall determine whether the lienor has a recorded lien on the vehicle or vessel and whether the lienor properly made a demand for the surrender in accordance with this section. The court shall determine whether good cause exists, which is limited to proof that:

- The vehicle was traded in to a licensed motor vehicle dealer before the date of the surrender demand;
- The lien of the vehicle in question has been paid in full, and demand satisfied;
- There is ongoing litigation relating to the validity or enforceability of the lien;
- The petitioner no longer has possession of the vehicle or vessel, and the loss of possession occurred under the operation of law (if the loss of possession did not occur under the operation of law, and a third party has physical possession of the vehicle or vessel, good cause is not proven).

If the petitioner establishes good cause for failure to surrender the vehicle or vessel, the court shall order removal of the petitioner's name(s) from the list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate, and reasonable attorney fees and costs shall be awarded.

However, if the court finds that the demand for surrender was properly made by the lienor and the petitioner fails to establish good cause for the failure to surrender the vehicle or vessel, the court shall award the lienor reasonable attorney fees and costs.

The lienor must maintain proof that written notice to surrender the vehicle or vessel was sent to each registered owner pursuant to s. 320.1316(1), F.S. Only the vehicle identified on the notice to surrender may be denied issuance of a revalidation sticker or replacement license plate, until the person's name no longer appears on the list, having presented the proper documentation from the lienor informing that the vehicle or vessel has been surrendered to the lienor, or a court orders that person's name removed from the list.

S**ection 32** of the bill also directs the DHSMV to develop a plan of action that addresses motor vehicle registration holds placed pursuant to ss. 316.1001 (toll violations), 316.1967 (parking violations), and 318.15, F.S., (civil penalty compliance), for presentation to the Legislature by February 1, 2015. The plan must include a methodology for applicants whose names have been placed on the list of persons who may be issued a license plate or revalidation sticker to rectify the cause of the hold through the payment of any outstanding toll, parking ticket, fine, and any other fee at the point of collection of the registration fee.

Specialty License Plates/Organization Accountability/Moratorium

Current Situation

Presently, there are 120 specialty license plates available for purchase, and four in the pre-sale phase. Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Pre-Sale Requirements: The approved specialty license plate organization must presell a minimum of 1,000 vouchers within 24 months before the DHSMV can begin manufacturing the specialty license plate. If, at the end of the 24-month presale period, the minimum sales requirement has not been met, the DHSMV will de-authorize the specialty plate, discontinue development, and discontinue issuance of the presale voucher.

Department Costs Defrayed: The DHSMV collects annual use fees from the sale of the specialty license plates and from these proceeds retains a sufficient amount to defray costs for inventory, distribution, and other direct costs associated with the specialty license plate program. The remainder of the proceeds collected are distributed as provided by law.[13]

Discontinuance of Specialty Plates: The DHSMV is required to discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter must be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates (collegiate plates are not included).[14]

[13] Section 320.08056(7), F.S.
[14] Section 320.08056(8)(a), F.S.

Audits and Attestation of Specialty Plates: Any organization that receives specialty license plate revenue and does not have an annual financial audit must attest annually, under penalties of perjury, that the annual use fee proceeds were used as stipulated under the law. The attestation report must be submitted in accordance with rules promulgated by the Auditor General. An organization's annual attestation must be submitted to the DHSMV within nine months after the end of each fiscal year. The DHSMV has 90 days after receiving an organization's audit or attestation to determine which recipients of revenues have not complied. If the determination is made that an organization has not complied or has failed to use revenues as stipulated, the DHSMV must discontinue the distribution of that organization's revenues. If the organization fails to comply within 12 months after the revenue is withheld, the proceeds from the relevant specialty license plate are deposited into the Highway Safety Operating Trust Fund to offset the DHSMV's cost of issuing the plate. In lieu of discontinuing an organization's revenue, the DHSMV may opt to request the Legislative Budget Commission to approve redirecting previously collected and future revenues to an organization capable of performing the same or similar purposes as the original recipient.

Moratorium: Currently, there is a statutory moratorium on the issuance of new specialty license plates. Section 45, ch. 2008-176, L.O.F., as amended by s. 21, ch. 2010-223, L.O.F., provides that "[e]except for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, F. S., prior to October 1, 2008, or which was included in a bill filed during the 2008 legislative session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2014.

Effect of Proposed Changes

Section 10 amends s. 320.08056(10), F.S., to define the terms "administrative costs" and "administrative expenses," for purposes of that section and s. 320.08058, F.S., to mean those expenditures which are considered as direct operating costs of the organization. These costs include but are not limited to:

- Administrative salaries of employees and officers of the organization who do not, or cannot prove, via detailed daily time sheets, that they actively participate in program activities;
- Bookkeeping and support services of the organization;
- Office supplies and equipment not directly utilized for the specified programs(s);
- Travel time, per diem, mileage reimbursement, and lodging expenses not directly associated with a specified program purpose;
- Paper, printing, envelopes, and postage not directly associated with a specified program purpose; or
- Miscellaneous expenses such as food, beverage, entertainment, and conventions.

Utilization of annual use fees from specialty license plates for these costs and expenses are limited by the provisions of s. 320.08058, F.S., which establish maximum percentages of the use fees that may be applied to such costs and expenses for each plate.

Section 11 amends s. 320.08062, F.S., to provide the DHSMV 120 days after receiving an organization's audit or attestation to determine whether recipients are in compliance, and authorizes the DHSMV to commission an independent actuarial consultant, or an independent certified public accountant, who has expertise in nonprofit and charitable organizations, to determine compliance. The DHSMV is required to discontinue the distribution of revenues to an organization that fails to submit the required documentation, but may resume distribution of the revenues upon receipt of the required documentation.

The bill requires the DHSMV to inform such organizations of its findings and direct the changes necessary to bring the organization into compliance. If the organization's officers sign under penalties of perjury that they acknowledge the findings of the DHSMV and attest that they have taken corrective action and will submit to a follow-up review, the DHSMV may resume the distribution of revenues. However, if an organization fails to comply with the directives of the DHSMV to correct actions as outlined, the revenue distributions must be discontinued until completion of the next regular session of the Legislature.

The DHSMV is required to notify the Legislature by the first day of the regular session of noncompliant organizations. If the Legislature does not provide direction to the organization and the DHSMV regarding the status of the undistributed revenues, the DHSMV must discontinue the plate, and the revenue from the plate must be immediately deposited into the Highway Safety Operating Trust Fund.

Section 12 amends s. 45 of ch. 2008-176, L.O.F., as amended by s. 21 of ch. 2010-223, L.O.F., to extend the current moratorium on issuance of new specialty license plates to July 1, 2016.

Amateur Radio Operators/Special License Plate

Current Situation

Amateur radio or ham radio call signs are unique identifiers for licensed amateur radio operators. In the United States, amateur radio licensing is governed by the Federal Communications Commission (FCC) which issues licenses to operate amateur stations for personal use to individuals once they demonstrate an understanding of both pertinent FCC regulations and knowledge of radio station operation and safety considerations. Canadian call signs are regulated internationally by the International Telecommunication Union (ITU) as well as nationally by Industry Canada, which regulates all aspects of amateur radio in the country. It assigns call signs, issues amateur radio licenses, conducts exams, allots frequency spectrum, and monitors the radio waves.

In 1952, Canada and the United States signed a Reciprocal Operating Agreement treaty. In the terms of the agreement, visiting amateurs may operate in the host country in accordance with the rules and regulations of the host country.

Under s. 320.083, F.S., persons who hold a valid amateur radio license *issued* by the FCC, may have their radio's call sign assigned to a special license plate for an additional fee. However, persons whose call sign was assigned in Canada by the ITU, may not.

Effect of Proposed Changes

Section 13 amends s. 320.083(1), F.S., to allow persons with amateur radio licenses *recognized* by the FCC to apply for a special license plate with their call sign assigned. This will allow Canadian, and potentially other long term visitors who register vehicles in the state to display their amateur radio call signs on their Florida license plate.

Licensed Recreational Vehicle Dealers

Current Situation

Section 320.01, F.S. provides that a recreational vehicle is a vehicle primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities of a recreational vehicle-type unit are the, "travel trailer," "camping trailer," "truck camper," "motor home," "private motor coach," "van conversion," "park trailer," and "fifth-wheel trailer." However, s. 320.771(1)(c), F.S., provides that a "recreational vehicle" does not include any camping trailer, as defined in s. 320.01(1)(b)2.

Any person or business that buys, sells, offers for sale, displays for sale, or deals in one or more recreational vehicles in any 12-month period is presumed to be a recreational vehicle dealer and must have an appropriate recreational vehicle dealer license issued by the DHSMV under s. 320.771, F.S.

Section 320.3203, F.S., which governs the sales agreements between recreational vehicle manufacturers and recreational vehicle dealers, requires manufacturers to have a written manufacturer/dealer agreement addressing the area of sales responsibility. A motor vehicle dealer may not sell a new recreational vehicle outside of the area of sales responsibility designated in the manufacturer/dealer agreement.

Often times, such businesses hold temporary, off-premises sales, such as, "tent sales", at open parking areas, fairgrounds, or simply a separate and different locale than their business address, to move the stock and inventory. Such off-premises sales require a supplemental license, issued by the DHSMV at no charge under s. 320.771(7), F.S., which permits off-premises sales for up to ten days.

Effect of Proposed Changes

Section 15 amends s. 320.771, F.S., to require a licensed recreational motor vehicle dealer conducting an off-premises sale, held not in conjunction with a public vehicle show to:

- Notify the applicable local DHSMV office of dates and location in which the license is requested.
- Provide staff to work at the temporary location during the off-premises sale.
- Meet all local government permit requirements.
- Have the permission of the property owner to operate at the location.
- Conspicuously display a sign at the licensed location that clearly identifies the dealer's name and business address as listed on the dealer's original license.

- Prominently include the dealer's name and business address, as listed on the dealer's original license, in all advertisements associated with such sale.

Digital Proof of Driver License

Current Situation

Section 322.059, F.S., requires that any person whose driver license or registration has been suspended must return that driver license immediately to the DHSMV. If he or she fails to return their license or registration, a law enforcement agent may seize the driver's license.

Section 322.15, F.S., requires that every licensee must have his or her driver license in their possession at all times while operating a motor vehicle and shall display that license upon demand of a law enforcement officer or an authorized representative of the DHSMV.

Effect of Proposed Changes

Section 16 creates s. 322.032, F.S., to require the DHSMV to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license and to authorize the DHSMV to contract with private entities to develop the system. The digital proof of driver license system must be in such a format that will allow law enforcement to verify the authenticity of digital driver licenses. A digital proof of driver license is available only after a person has satisfied all requirements of ch. 322, F.S., and has received a physical driver license. The DHSMV is authorized to promulgate rules to ensure valid authentication of the digital driver licenses by law enforcement.

Manufacturing a false digital proof of driver license is a felony of the third degree, punishable by a term of imprisonment not exceeding five years,[15] a possible additional fine not exceeding $5,000,[16] or imposition under certain circumstances of an extended term of imprisonment for habitual felony offenders, habitual violent felony offenders, three-time felony offenders, and violent career criminals.[17] Possession of a false digital proof of driver license is a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days.[18]

Section 19 amends s. 322.059, F.S., to require the DHSMV to invalidate the digital proof of driver license issued under this chapter if the motor vehicle operator was driving on a suspended license or registration.

Section 21 amends s. 322.15, F.S., to provide that a digital proof of driver license as provided in this chapter may be displayed in lieu of a physical driver license.

[15] Section 775.082, F.S.
[16] Section 775.083, F.S.
[17] Section 775.084, F.S.
[18] See supra note 9.

Driver License Fees/Tax Collectors

Current Situation

Current law requires that driver license issuance services be assumed by the tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution by June 30, 2015.[19] The implementation of this provision is directed to be according to the schedule outlined in the Driver License Transition Plan submitted to the Legislature on February 1, 2011. The DHSMV prepared the report in cooperation with the Florida Tax Collectors and the Florida Association of Counties.

An applicant for an original driver license must pass an initial knowledge test and an initial skills test.[20] A $10 fee is assessed for each subsequent knowledge test and a $20 fee for each subsequent skills test, when an applicant has failed to pass the initial test. The revenues collected from these fees are deposited in the Highway Safety Operating Trust Fund.

Driver license fees are authorized in s. 322.21, F.S. An original or renewal commercial driver license is $78; and, an original, renewal or extension of a Class E driver license is $48. The revenues from these fees are deposited into the General Revenue Fund. Other fees established include replacement driver licenses and original, replacement, and renewal identification cards. A replacement driver license is $25. Of this amount, $7 is deposited into the Highway Safety Operating Trust Fund and $18 is deposited into the General Revenue Fund.

An identification card is $25.[21] Of this amount, the fee distribution varies depending on the type of issuance. The fee for an original identification card is deposited into the General Revenue Fund. From the fee for a renewal identification card, $6 is deposited into the Highway Safety Operating Trust Fund and $19 into the General Revenue Fund; and for a replacement identification card, $9 into the Highway Safety Operating Trust Fund and $16 is deposited into the General Revenue Fund.

County tax collectors who provide driver license services are authorized to charge a service fee of $6.25 in addition to other fees set forth in ch. 322, F.S., relating to driver license issuance. Beginning July 1, 2015, or upon completion of the transition of driver license issuance services, a tax collector who issues a replacement driver license or replacement identification card may retain the portion the fee that is currently deposited in the Highway Safety Operating Trust Fund, $7 or $9 respectively.

Effect of Proposed Changes

Section 20 amends s. 322.12, F.S., to revise the distribution of fees related to driver license examinations fees to allow the tax collector who conducts the examination to retain a portion of the fee as follows:

- Of the $10 fee for each subsequent initial knowledge test, $6 is retained by the tax collector if the tax collector conducted the test, and the remaining $4 is deposited into the Highway Safety Operating Trust Fund.

[19] Section 322.135(5), F.S.
[20] Section 322.12, F.S.
[21] Section 322.051, F.S.

- Of the $20 fee for each subsequent initial skills test, $15 is retained by the tax collector if the tax collector conducted the test, and the remaining $5 is deposited into the Highway Safety Operating Trust Fund.
- In both cases, all fees incurred by an applicant with a third-party provider or administered at a state facility are deposited into the Highway Safety Operating Trust Fund.

Section 22 amends s. 322.21, F.S., to authorize county tax collectors to retain $7 of the $25 fee for a replacement driver license, and $9 of the $25 fee for a replacement identification card, otherwise deposited into the Highway Safety Operating Trust Fund, if the tax collector has completed the transition of driver licensing services.

The bill also exempts an applicant who presents satisfactory evidence that he or she is homeless or that his or her annual income is at or below 100 percent of the federal poverty level[22] from the $25 fee for an original, renewal, or replacement identification card issued pursuant to s. 322.051, F.S.

Disposal and Lease of Real and Personal Property

Current Situation

The FDOT is authorized to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings or other improvements necessary for rights-of-way for existing or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in an FDOT designated rail or transportation corridor. The FDOT may also accept donations of land, building, or other improvements for transportation rights-of-way and may compensate an entity by providing replacement facilities when the land, building, or other improvements are needed for transportation purposes but are held by a federal, state, or local governmental entity and used for public purposes other than transportation.[23]

The FDOT is required to conduct a complete inventory of all real or personal property immediately upon acquisition, including an itemized listing of all appliances, fixtures, and other severable items, a statement of the location or site of each piece of realty, structure, or severable item; and the serial number assigned to each.[24] The FDOT must evaluate the inventory of real property which has been owned for at least 10 years and which is not within a transportation corridor or the right-of-way of a transportation facility. If the property is not located within a transportation corridor or is not needed for a transportation facility, the FDOT is authorized to dispose of the property.[25] According to the FDOT, 85 percent of its currently-owned surplus property is valued at under $50,000.

Sale of Property: The FDOT is authorized to sell any land, building, or other real or personal property it acquired if the FDOT determines the property is not needed for a transportation facility.[26] The FDOT is required to first offer the property ("first right of refusal") to the local

[22] https://www.healthcare.gov/glossary/federal-poverty-level-FPL/ (last visited 2/27/14)
[23] Section 337.25(1), F.S.
[24] Section 337.25(2), F.S.
[25] Section 337.25(3), F.S.
[26] Section 337.25(4), F.S.

government in whose jurisdiction the property is located, with the exception of the following parcels:

- The FDOT may negotiate the sale of property, at no less than fair market value as determined by an independent appraisal, to the owner holding title to abutting property, if in the FDOT's discretion public sale would be inequitable.[27]
- The FDOT may sell property acquired for use as a borrow pit, at no less than fair market value, to the owner of abutting land from which the pit was originally acquired, if the pit is no longer needed.[28]
- The FDOT may convey to a county without consideration any property acquired by a county or by the FDOT using constitutional gas tax funds for a right-of-way or borrow pit for a road on the State Highway System, State Park Road System, or county road system if the property is no longer used or needed by the FDOT; and the county may sell the property on receipt of competitive bids.[29]
- A governmental entity may authorize re-conveyance to the original donor of property donated to the state for transportation purposes if the facility has not been constructed for at least five years, no plans have been prepared for construction of the facility, and the property is not located within a transportation corridor.[30]
- The FDOT may negotiate the sale of property as replacement housing if the property was originally acquired for persons displaced by transportation projects and if the state receives no less than its investment in such properties or fair market value, whichever is lower. This benefit extends only to persons actually displaced by a project, and dispositions to any other person must be for fair market value. [31]

Once the FDOT determines the property is not needed for a transportation facility and has extended and received rejection of required first rights of refusal, FDOT is also authorized to:

- Negotiate the sale of property if its value is $10,000 or less as determined by FDOT estimate;[32]
- Sell the property to the highest bidder through "due advertisement" of receipt of sealed competitive bids or by public auction if its value exceeds $10,000 as determined by the FDOT estimate;[33]
- Determine the fair market value of property through appraisal conducted by an FDOT appraiser, if the FDOT begins the process for disposing of property on its own initiative, either by authorized negotiation or by authorized receipt of sealed competitive bids or public auction;[34]
- Convey the property without consideration to a governmental entity if the property is to be used for a public purpose;[35]and
- Use the projected maintenance costs of the property over the next five years to offset the market value in establishing a value for disposal of the property, even if that value is zero, if

[27] Section 337.25(4)(c), F.S.
[28] Section 337.25(4)(d), F.S.
[29] Section 337.25(4)(f), F.S.
[30] Section 337.25(4)(g), F.S.
[31] Section 337.25(4)(i), F.S.
[32] Section 337.25(4)(a), F.S.
[33] Section 337.25(4)(b), F.S.
[34] Section 337.25(4)(e), F.S.
[35] Section 337.25(4)(h), F.S.

the FDOT determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the FDOT to significant liability risks.[36]

Lease of Property: The FDOT is further authorized to convey a leasehold interest for commercial or other purposes to any acquired land, building, or other property, real or personal, subject to the following:[37]

- The FDOT may negotiate such a lease at the prevailing market value with the owner from whom the property was acquired; with the holders of leasehold estates existing at the time of the FDOT's acquisition; or, if public bidding would be inequitable, with the owner of privately owned abutting property, after reasonable notice to all other abutting property owners.[38]
- All other leases must be by competitive bid.[39]
- Such leases are limited to five years in duration, but the FDOT may renegotiate a lease for an additional five-year term without rebidding.[40]
- Each lease must require that any improvements made to the property during the lease term be removed at the lessee's expense.[41]
- If property is to be used for a public purpose, including a fair, art show, or other educational, cultural, or fundraising activity, the property may be leased without consideration to a governmental entity or school board.[42]
- No lease may be used by the lessee to establish the four years' standing required by eminent domain law if the business had not been established for four years on the date title passed to the FDOT.[43]
- The FDOT may enter into a long-term lease without compensation with certain public ports for rail corridors used for the operation of a short-line railroad to the port.[44]

The appraisals currently required under s. 337.25(4)(c) and (d), F.S., must be prepared in accordance with the FDOT guidelines and rules by an independent appraiser certified by the FDOT.[45] When "due advertisement" is required, an advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which a public auction is to be held satisfies the requirement.[46]

Effect of Proposed Changes

Section 23 amends s. 337.25, F.S., to revise the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way and to authorize the FDOT to contract for auction services used in the conveyance of real or personal property or leasehold

[36] Section 337.25(4)(j), F.S.
[37] Section 337.25(5), F.S.
[38] Section 337.25(5)(a), F.S.
[39] Section 337.25(5)(b), F.S.
[40] Section 337.25(5)(c), F.S.
[41] Section 337.25(5)(d), F.S.
[42] Section 337.25(5)(e), F.S.
[43] Section 337.25(5)(g), F.S.
[44] Section 337.25(5)(h), F.S.
[45] Section 337.25(7), F.S.
[46] Section 337.25(8), F.S.

interests and to authorize such contracts to allow the contractor to retain a portion of the proceeds as compensation.

The FDOT is authorized to "convey", rather than "sell" land, buildings, or other real or personal property after determining the property isn't needed for a transportation facility and to dispose of property through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the FDOT's best interest. Due advertisement is required for property valued at more than $10,000, and no property may be sold at less than fair market value except as specified. The FDOT is authorized, rather than required, to afford a right of first refusal to a political subdivision, or local government in which the parcel is located, except in conveyances when the property has been donated to the state for transportation purposes and a facility has not been constructed for at least 5 years, the property was originally required for replacement housing for persons displaced by transportation projects, or property which the FDOT has determined a sale to anyone other than the abutting land owner would be inequitable.

The FDOT is prohibited from conveying a leasehold interest at a price less than the FDOT's current estimate of value and specifies that a lease may be created through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the best interest by the FDOT. A lease shall not be for a period of more than 5 years, however, the FDOT may extend the lease for an additional 5 years without rebidding.

The FDOT is required to publish a notice when a proposal to lease property has been received, stating that a proposal has been received and that FDOT will accept other proposals for 120 days after the date of publication for lease of the property. The FDOT is authorized to establish, by rule, an application fee for the submission of the proposals.

The FDOT's estimate of value must be prepared in accordance with department procedures, guidelines, and rules for valuation of real property. If the value of the property exceeds $50,000, the sale or lease must be negotiated at a price not less than the estimated value determined by the FDOT.

This section does not modify the eminent domain requirement of s. 73.013, F.S.

Unsolicited Lease Proposals

Current Situation

Section 337.251, F.S., *Lease of property for joint public-private development and areas above or below department property*, authorizes the FDOT to request proposals for the lease of the FDOT property for joint public-private development or commercial development. The FDOT may also receive and consider unsolicited proposals for such uses. If the FDOT receives an unsolicited proposal to negotiate a lease, the FDOT must publish a notice in a newspaper of general circulation at least once a week for two weeks, stating that it has received the proposal and will accept, for 60 days after the date of publication, other proposals for use of the space. The FDOT must also mail a copy of the notice to each local government in the affected area.

Any unsolicited lease proposal must be selected based on competitive bidding, and the FDOT is authorized to consider such factors as the value of property exchanges, the cost of construction,

and other recurring costs for the benefit of the FDOT by the lessee in lieu of direct revenue to the FDOT if such other factors are of equal value including innovative proposals to involve minority businesses. Before entering into any lease, the FDOT must determine that the property subject to the lease has a permanent transportation use related to the FDOT responsibilities, has the potential for such future transportation uses, or constitutes airspace or subsurface rights attached to property having such uses, and is therefore not available for sale as surplus property.

Section 334.30, F.S., *Public-private transportation facilities,* authorizes the FDOT to lease certain toll facilities through public-private partnerships and also authorizes the FDOT to receive unsolicited proposals. That section directs the FDOT to establish by rule an application fee sufficient to pay the costs of evaluating a proposal. The FDOT is further authorized to engage the services of private consultants to assist in the evaluation.

Unlike s. 337.251, F.S., before approving a proposal, the FDOT must determine that the proposed project is in the public's best interest; would not require state funds to be used unless the project is on the State Highway System; would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default or cancellation of the agreement by the FDOT; would have adequate safeguards in place to ensure that the FDOT or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and would be owned by the FDOT upon completion or termination of the agreement.[47] In addition, before awarding a contract for lease of an existing toll facility through a public-private partnership, the FDOT is required to provide an independent analysis of the proposed lease that demonstrates the cost-effectiveness and overall public benefit.

If the FDOT receives an unsolicited proposal for a lease through a public-private partnership, the FDOT must publish a notice in the Florida Administrative Weekly and a newspaper of general circulation at least once a week for two weeks stating that the FDOT has received the proposal and will accept, for 120 days after the initial date of publication, other proposals for the same project purpose. The FDOT must also mail a copy of the notice to each local government in the affected area.

Effect of Proposed Changes

Section 24 amends s. 337.251(2), F.S., relating to the lease of property for joint public-private development, to:

- Require that if the FDOT receives a proposal for a lease (rather than to negotiate a lease) of particular property the FDOT desires to consider, it shall publish the currently required newspaper notice stating that the FDOT will accept for 120 (rather than 60) days other proposals for lease of the particular property;
- Direct the FDOT to establish by rule an application fee for the submission of proposals under s. 337.251, F.S., sufficient to pay the anticipated costs of evaluating the proposals;
- Authorize the FDOT to engage the services of private consultants to assist in the evaluations;
- Require the FDOT, before approval of any proposal, to determine that the proposed lease is in the public's best interest, does not require state funds to be used, and has adequate

[47] The ownership requirement in s. 334.30, F.S., would not, of course, apply to a lease arrangement under s. 337.251, F.S.

safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease; and

- Require the FDOT to provide an independent analysis of a proposed lease that demonstrates the cost-effectiveness and overall public benefit before moving forward with the procurement and before awarding the contract if the procurement moves forward.

These revisions make the process under s. 337.251, F.S., more similar to that under s. 334.30, F.S.

Metropolitan Planning Organizations

Current Situation

Based on census data, the U.S. Bureau of the Census designates urbanized areas throughout the state. Federal law and rule (23 U.S.C. 134 and 23 C.F.R 450 Part C) require a metropolitan planning organization (MPO) to be designated for each urbanized area[48] or group of contiguous urbanized areas. In addition, federal law and rules specify the requirements for a MPO transportation planning and programming activities. These requirements are updated after each federal transportation reauthorization bill enacted by Congress. State law also includes provisions governing MPO activities. Section 339.175, F.S., paraphrases or restates some key federal requirements. In addition, state law includes provisions that go beyond the federal requirements. For example, federal requirements regarding MPO membership are very general, while state law is more specific.

Section 339.175(2)(a)2., F.S., currently provides that designation of an MPO be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the population of the urbanized area; however, the unit of general-purpose local government that represents the central city or cities within the MPO jurisdiction, as defined by the United State Bureau of the Census, must be a party to such agreement. This language has been superseded by revisions to 23 U.S.C. 134(d) and 23 C.F.R. 450.310(b), which now require designation to be accomplished by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

An existing MPO may be re-designated by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the existing population in the area served, including the largest incorporated city.[49] Re-designation of an MPO is required whenever the existing MPO proposes to make a substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general-purpose local government served by the MPO, and the State; or a substantial change in the decision-making authority or responsibility of the MPO, or in decision-making procedures established under the MPO bylaws.[50]

[48] An urbanized area is defined by the U.S. Bureau of the Census and has a population of 50,000 or more.
[49] 23 C.F.R. 450.301(h) (2012).
[50] 23 C.F.R. 450.301(k) (2012).

Current law does not authorize more than 19 members on an MPO in cases when the MPO is re-designated as a result of the expansion of an MPO to include a new urbanized area or the consolidation of two or more MPOs, even if the membership is already at 19 members.

For both multicounty and single-county MPOs, current law requires that county commission members compose not less than one-third of the MPO governing board membership. All voting members must be elected officials of general-purpose local government.

MPOs are currently required to establish bylaws and adopt rules pursuant to the Administrative Procedures Act.

Effect of Proposed Changes

Section 25 amends s. 339.175, F.S., to:

- Revise state law superseded by federal law and rule by requiring that MPO designation occur by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the population, including the largest incorporated city, based on population, as named by the Bureau of the Census.
- Increase the voting membership from 19 to 25 members, which may provide more flexibility when membership apportionment plans are revised based on updated census data and new or expanded urbanized area boundaries, and could potentially benefit MPO consolidation.
- Provide that, with the exception of instances in which all of the county commissioners in a single-county MPO are members of the MPO governing board, county commissioners must compose at least one-third of the MPO governing board membership.
- Provide that a multicounty MPO may satisfy the one-third requirement by any combination of county commissioners from each of the counties constituting the MPO.
- Authorize general purpose local governments serving on an MPO to include one member who represents a group of general purpose local governments through an entity created by an MPO for that purpose. This would allow an entity created by an MPO that is composed of local government officials, such as an MPO-created committee consisting of local governments not on the MPO, to serve on an MPO.
- Authorize, rather than require, provision of governing board voting membership to authorities or other agencies that perform transportation functions but which are not under the jurisdiction of a general purpose local government. This provides MPO discretion to determine which authorities or other agencies should serve on an MPO governing board.
- Provide that each MPO is to review the composition of its membership after each decennial census and, as necessary, reapportion its membership with the Governor, to clarify that the MPO initiates the review and reapportionment of its governing board membership.
- Authorize MPOs to establish bylaws by action of its governing board providing procedural rules to guide its proceedings and consideration of matters before the council or, alternatively, adopt rules pursuant to the Administrative Procedures Act.

Economic Development Transportation Projects

Current Situation

Florida has a number of economic development incentive programs used to recruit industry to Florida or to persuade existing businesses to expand their operations. One such incentive exists in what is commonly referred to as the Road Fund, which is funded by the State Transportation Trust Fund and used to assist local government in paying for highway or other transportation infrastructure improvements that will benefit a relocating or expanding company. The amount appropriated for this transfer varies from year to year. The Legislature in 2012 repealed s. 288.063, F.S., in which the Road Fund was statutorily placed, and created s. 339.2821, F.S. The revisions did not change the purpose of the Road Fund but simply moved oversight of the fund from the Florida Department of Economic Opportunity (FDEO) to the FDOT.[51]

The FDOT, in consultation with the FDEO, is authorized under the new section to make and approve expenditures and contract with the appropriate government body for the direct costs of transportation projects. Current law specifies that as part of the contractual agreement between the FDOT and a governmental body, the governmental body must provide FDOT with specified quarterly reports, the FDOT may only transfer funds on a quarterly basis, the governmental body must expend funds received in a timely manner, and the FDOT may only transfer funds after construction has begun on the facility of a business on whose behalf the award was made.

Effect of Proposed Changes

Section 26 amends s. 339.2821, F.S., to include Enterprise Florida, Inc., as an FDOT consultant in making and approving economic development transportation project contracts; provides authority for the FDOT to terminate a grant award if construction of the transportation project does not begin within four years after the date of the initial grant award; and expands the type of authorized transportation facility projects to include spaceports.

Gasoline Stations/Accessibility/Preemption of Regulation

Current Situation

People with disabilities may find it difficult or impossible to use the controls, hose, or nozzle of a self-serve gas pump. As a result, at stations that offer both self and full service, people with disabilities might have no choice but to purchase the more expensive gas from a full-serve pump. At locations with only self-serve pumps, people with disabilities might be unable to purchase gas at all. The Americans with Disabilities Act (ADA) requires self-serve gas stations to provide equal access to their customers with disabilities. If necessary to provide access, gas stations must:

- Provide refueling assistance upon the request of an individual with a disability. A service station or convenience store is not required to provide such service at any time that it is operating on a remote control basis with a single employee**,** but is encouraged to do so, if feasible.

[51] Budget Committee Final Analysis of SB 1998: http://www.flsenate.gov/Session/Bill/2012/1998/Analyses/M6TO2qtoNCs60=PL=Y=PL=DT9BT2bnWNo=%7C11/Public/Bills/1900-1999/1998/Analysis/s1998z2.TEDAS.PDF.

- Let patrons know (e.g., through appropriate signs) that customers with disabilities can obtain refueling assistance by either honking or otherwise signaling an employee.
- Provide the refueling assistance without any charge beyond the self-serve price.[52]

Section 526.141, F.S., requires every full-service gasoline station that offers gasoline at a lower price to provide an attendant to dispense gasoline from the self-service portion of the station to any motorist properly displaying an exemption parking permit as provided in s. 316.1958, F.S.,[53] or a license plate bearing the international accessibility symbol, and the operator is the person to whom such permit was issued. Such stations shall prominently display a decal no larger than 8 square inches on the front of all self-service pumps clearly stating the requirements and applicable penalties for violations. Violation of this section is a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days[54] or by a $500 fine.[55]

Effect of Proposed Changes

Section 27 amends s. 526.141, F.S., to require, by July 1, 2016, a full-service gas station offering self-service at a lesser cost to prominently display, in addition to the above-described decal, a blue decal at least 15 square inches in size that clearly displays the international symbol of accessibility, the station's telephone number, and the words "Call for Assistance." The Department of Agriculture and Consumer Services is directed to adopt rules to implement and enforce these provisions, and local government laws and regulations pertaining to the provision of fueling assistance by a self-service gas station are preempted and superseded.

Pinellas Bayway/Maintenance Costs

Current Situation

The FDOT-owned, tolled Pinellas Bayway System is a series of causeways and bridges providing a connection between St. Petersburg Beach, Fort DeSoto Park, and I-275:

> The east-west section of the facility (SR 682) provides a connection between I-275 (via 54th Avenue) on the east and Gulf Boulevard (SR 699) on the west. This section crosses the Bayway Isles and Isle Del Sol. The north-south section of the facility (SR 679) extends from Isle Del Sol through Tierra Verde to Mullet Key and Fort DeSoto Park. The facility was opened to traffic in December 1962.[56]

The 1985 Legislature directed that all tolls collected shall first be used for the payment of annual operating costs, second to discharge the current bond indebtedness,[57] and thereafter to establish a reserve construction account to be used for certain Pinellas Bayway improvements. Maintenance

[52] http://www.ada.gov/gasserve.htm (last visited 2/26/14)
[53] Out-of-state vehicles bearing identification of issuance to persons who have disabilities.
[54] Section 775.082, F.S.
[55] Section 775.083, F.S.
[56] Traffic Engineer's Annual Report for Fiscal Year Ended June 30, 2012, p. 51, on file in the Senate Transportation Committee.
[57] The FDOT advises no current bond indebtedness exists. The FDOT email, February 4, 2014, on file in the Senate Transportation Committee.

costs were not included in the directive. Instead, the FDOT was required, upon completion of those certain improvements, to continue to collect tolls on the Pinellas Bayway to reimburse the FDOT for all accrued maintenance costs for the Pinellas Bayway.

The 1995 Legislature amended the 1985 law to remove reference to completed improvements and modify references to future improvements but did not change the directive regarding maintenance costs. Consequently, amounts paid by the FDOT for maintenance costs accrue as long-term debt due the State Transportation Trust Fund (STTF), as opposed to the FDOT paying the maintenance costs from toll revenues. As of December 20, 2013, the long-term debt due the STTF as a result of maintenance costs paid by the FDOT is projected to be approximately $66 million in Fiscal Year 2022-2023.[58]

Effect of Proposed Changes

Section 31 amends s. 2 of ch. 85-364, L.O.F., as amended by s. 2 of ch. 95-382, L.O.F., to authorize the FDOT to use tolls first for the payment of annual operating *and maintenance* costs. This will allow the FDOT to pay the costs from the toll revenues and no longer accrue those costs as long-term debt. Users of the facility will pay maintenance costs, rather than having the costs subsidized by revenues deposited into the STTF. The bill also removes references to completed improvements.

Section 33 provides the bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

PCS/CS/SB 1272 redirects existing fees from the Highway Safety Operating Trust Fund in the Department of Highway Safety and Motor Vehicles (DHSMV) to county tax collectors who provide licensing issuance services.

[58] The FDOT Pinellas Bayway Toll Facility Revenue and Expenditure Report, on file in the Senate Transportation Committee.

B. Private Sector Impact:

Section 6: Individuals who start their vehicles by remote control while the ignition, transmission, and doors are locked will no longer by subject to a $30 penalty.

Sections 9 and 14: Individuals will be subject to withholding of registration *only* of the motor vehicle identified in a notice to surrender, which may avoid economic loss for some.

Section 24: Those wishing to submit proposals for lease of the Florida Department of Transportation (FDOT) property that the FDOT wishes to consider will be subject to an application fee sufficient to pay the anticipated cost of evaluation the proposal, to be established by the FDOT rule. Opportunities for private consultant contracts with the FDOT are authorized.

Section 27: Full-service gas stations that offer gasoline at a lower price will incur what is expected to be insignificant expenses associated with displaying the required decal.

C. Government Sector Impact:

Section 1: The Florida Transportation Commission (FTC) will incur additional expenditures associated with monitoring the Mid-Bay Bridge Authority (MBBA) and any publicly funded passenger rail system. These expenses are expected to be absorbed within existing resources, as the FTC already monitors the South Florida Regional Transportation Authority, which operates Tri-Rail, and will only add monitoring of the SunRail system to its duties.

Sections 2 and 18. The DHSMV may incur an indeterminate revenue reduction in the Highway Safety Operating Trust Fund related to a reduced number of driver license suspensions for failure to comply with child support responsibilities.

Section 4: The Department of State and the Department of Law Enforcement may incur costs associated with establishing a retention schedule for records containing images and data generated through the use of an automated license plate recognition system, which are expected to be absorbed within existing resources.

Section 6: The $30 penalty previously applicable to individuals who start their vehicles by remote control while the ignition, transmission, and doors are locked will no longer be collected.

Section 16: The DHSMV will incur expenses associated with developing a secure and uniform system for issuing an optional digital proof of driver license, which are expected to be absorbed within existing resources.

Sections 20 and 22: Deposits into the Highway Safety Operating Trust Fund will be reduced by, and the tax collectors will retain, the specified dollar amounts for initial knowledge and skills tests conducted by tax collectors, and for replacement driver

licenses and replacement identification cards issued by tax collectors. The General Revenue Fund will be reduced due to the fee exemption for identification cards for persons at 100% of the poverty level. The fiscal impact below was provided by the DHSMV based on the Highway Safety Fees Estimating Conference held in February, 2014.

	FY 2014-15 Revenue	FY 2015-16 Revenue	FY 2016-17 Revenue	FY 2017-18 Revenue
General Revenue	(1,578,539)	(1,604,086)	(1,824,483)	(2,288,446)
Highway Safety Operating Trust Fund	(5,653,028)	(8,369,422)	(8,550,671)	(8,808,677)
Tax Collectors	5,450,846	8,163,379	8,279,267	8,394,963

The DHSMV has indicated that there will be programming cost of 420 hours incurred at $100 per hour. This includes:

- Issuance of Identification Cards to Homeless at 100% of poverty level will require 20 hours of programming.
- Fee redirection to tax collectors will require 400 hours of programming.

The remaining cost to develop and implement a uniform and secure system for an optional digital proof of driver license is indeterminate but potentially significant. The development of this system will increase the total cost of the contract for driver license issuance in future years.

Section 23: The fiscal impact of the modified terms and conditions governing the FDOT's sale or lease of surplus property is indeterminate. However, according to the FDOT, a net positive impact to local revenue is expected as properties are returned to the ad valorem tax roll. In addition, an indeterminate savings to the state is expected as a result of reduced appraisal expenses, especially in cases when such costs approach and even exceed the price received by the FDOT.

Section 24: The FDOT's costs associated with evaluating lease proposals pursuant to s. 337.251, F.S., would presumably be covered by the application fee the FDOT is required to establish by rule, particularly if the fee includes the cost of private consultants the FDOT is authorized to engage to assist in its evaluations.

Section 27: The Department of Agriculture and Consumer Services will incur expenses to adopt rules relating to decal display at full-service gas stations offering self-service at a lower cost, which are expected to be absorbed within existing resources.

Section 32: The DHSMV will incur expenses associated with developing a plan of action that addresses motor vehicle registration holds for outstanding tolls, parking tickets, and fines, which are expected to be absorbed within existing resources.

VI. Technical Deficiencies:

The DHSMV is concerned that the creation of a digital driver license does not guarantee acceptance or the same level of acceptance as a physical license. It is the agency's belief that the Transportation Safety Administration and other federal agencies will not accept it in lieu of the actual physical card. Privacy and search and seizure issues could possibly be implicated in a digital driver license verification. First responders may face digital driver license identification challenges when individuals are non-responsive. In addition, digital driver license verifications would be subject to an individual's smart phone operating properly which could result in time intensive digital verifications in the field by law enforcement agencies.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 20.23, 61.13016, 110.205, 316.1975, 316.2952, 316.86, 320.02, 320.08056, 320.08062, 320.083, 320.1316, 320.771, 322.055, 322.058, 322.059, 322.12, 322.15, 322.21, 337.25, 337.251, 339.175, 339.2821, 526.141, 562.11, 812.0155, and 832.09.

This bill amends section 2 of chapter 85-364, Laws of Florida, as amended by section 2 of chapter 95-382, Laws of Florida; and amends section 45 of chapter 2008-176, Laws of Florida, as amended by section 21 of chapter 2010-233, Laws of Florida.

This bill creates the following sections of the Florida Statutes: 316.0778, 316.0817, and 322.032.

This bill creates an undesignated section of Florida Law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by the Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 9, 2014:
The CS/CS differs as follows:

- Language prohibiting the enforcement of State Uniform Traffic Laws by any means other than the direct observation of a law enforcement officer or other duly appointed individual, unless expressly authorized, is removed from the bill.
- Reinstatement of driving privileges for certain cases regarding suspensions due to unpaid child support is allowed.
- The court is required to make a specific determination of whether a driver license can be issued for business purposes only (BPO) when the suspension is for unpaid child support and convictions of certain drug offenses.

- The requirement that a court order the driver license suspension of persons who fail to appear on worthless check charges is repealed. Driver license suspension is permitted and applied only to persons previously found guilty of bad check charges.
- Designation of a testing roadway for autonomous vehicles by an authority with roadway jurisdiction in a given location is required, in addition to designation by the Florida Department of Transportation.
- The moratorium on specialty license plates is extended to 2016, and provisions relating to accountability of specialty license plate organizations are revised.
- Licensed recreational vehicle dealers conducting off-premise sales are required to meet certain notice, staffing, property owner permission, and local permit requirements.

CS by Transportation on March 6, 2014:
The CS revises provisions relating to the testing of autonomous vehicle technology to remove the requirement that a human be present in the vehicle and capable of intervening, if necessary, unless the vehicle is being tested on a closed course. Instead, the bill provides that a human operator must retain the ability to monitor the vehicle and intervene, if necessary, unless the vehicle is being tested on a closed course *or any other testing roadway designated by the FDOT and applicable local or county government*. The CS also expands those authorized to conduct testing to include research organizations associated with accredited educational institutions. The CS also removes obsolete language requiring a DHSMV report, as the report has already been submitted. Lastly, the CS removes the date certain by which the DHSMV is to develop an optional digital proof of driver license (10/1/16) and instead directs the department to begin to review and prepare for the development.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

390854

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 547 and 548
insert:

Section 4. Paragraph (a) of subsection (1) and subsection (2) of section 316.0083, Florida Statutes, are amended to read:

316.0083 Mark Wandall Traffic Safety Program; administration; report.—

(1)(a) For purposes of administering this section, the department, a county, or a municipality may authorize a traffic

390854

infraction enforcement officer under s. 316.640 to issue a traffic citation for a violation of s. 316.074(1) or s. 316.075(1)(c)1. A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn ~~in a careful and prudent manner~~ at an intersection where right-hand turns are permissible. ~~A notice of violation and a traffic citation may not be issued under this section if the driver of the vehicle came to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required.~~ This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer. This paragraph does not prohibit the department, a county, or a municipality from issuing notification as provided in paragraph (b) to the registered owner of the motor vehicle involved in the violation of s. 316.074(1) or s. 316.075(1) (c) 1.

(2) A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn ~~in a careful and prudent manner~~ at an intersection where right-hand turns are permissible.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 13

and insert:

390854

references; amending s. 316.0083, F.S.; deleting provisions relating to when a notice of violation and a traffic citation may be issued for failure to stop at a red light at an intersection where right-hand turns are permissible; creating s. 316.0778, F.S.; defining the

316646

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 547 and 548
insert:

Section 4. Paragraph (a) of subsection (2) of section 316.0776, Florida Statutes, is amended to read:

316.0776 Traffic infraction detectors; placement and installation.—

(2)(a) If the department, county, or municipality installs a traffic infraction detector at an intersection, the

316646

department, county, or municipality shall notify the public that a traffic infraction device may be in use at that intersection and must specifically include notification of camera enforcement of violations concerning right turns. The department, county, or municipality must post:

1. ~~such~~ Signage used to notify the public which meets ~~must meet~~ the specifications for uniform signals and devices adopted by the Department of Transportation pursuant to s. 316.0745; and

2. Additional signage that is:

a. Four feet wide and two feet tall and displays visible, prominent letters stating "Photo Enforced";

b. Located in a position visible to approaching traffic over the intersection and parallel to the red light signal; and

c. Installed on or before November 30, 2014. The traffic infraction detector company shall be responsible for any costs associated with the manufacture and installation of the signs specified in this subparagraph.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 13

and insert:

references; amending s. 316.0776, F.S.; requiring additional traffic infraction detector notification signage that meets certain specifications; requiring such signage to be placed at an intersection with a traffic infraction detector by a certain date; requiring that the traffic infraction detector company

316646

be responsible for the costs of such signage; creating s. 316.0778, F.S.; defining the

501294

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (316646) (with title amendment)

Delete lines 15 - 27
and insert:
municipality must post ~~such~~ signage used to notify the public which meets ~~must meet~~ the specifications for uniform signals and devices adopted by the Department of Transportation pursuant to s. 316.0745; which displays visible, prominent letters stating "Photo Enforced"; and which is in a position visible to

501294

approaching traffic over the intersection and parallel to the red light signal. Such signage must be installed on or before November 30, 2014. The traffic infraction detector company shall be responsible for any costs associated with the manufacture and installation of the signs specified in this paragraph.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 35 - 36

and insert:

traffic infraction detector notification signage that meets certain specifications; requiring

489780

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 575 and 576
insert:

Section 6. Paragraphs (j) and (k) of subsection (6) of section 316.193, Florida Statutes, are redesignated as paragraphs (k) and (l), respectively, and a new paragraph (j) is added to that subsection, to read:

316.193 Driving under the influence; penalties.—

(6) With respect to any person convicted of a violation of

489780

subsection (1), regardless of any penalty imposed pursuant to subsection (2), subsection (3), or subsection (4):

(j)1. Notwithstanding the provisions of this section, s. 316.1937, and s. 322.2715 relating to ignition interlock devices required for second or subsequent offenders, in order to strengthen the pretrial and posttrial options available to prosecutors and judges, the court may order, if deemed appropriate, that a person participate in a qualified sobriety and drug monitoring program, as defined in subparagraph 2., in lieu of the ignition interlock device requirement. Participation shall be at the person's sole expense.

2. As used in this paragraph, the term "qualified sobriety and drug monitoring program" means an evidence-based program, approved by the department, in which participants are regularly tested for alcohol and drug use. As the court deems appropriate, the program may monitor alcohol or drugs through one or more of the following modalities: breath testing twice a day; continuous transdermal alcohol monitoring in cases of hardship; or random blood, breath, urine, or oral fluid testing. Testing modalities that provide the best ability to sanction a violation as close in time as reasonably feasible to the occurrence of the violation should be given preference. This paragraph does not preclude a court from ordering an ignition interlock device as a testing modality.

3. For purposes of this paragraph, the term "evidence-based program" means a program that satisfies the requirements of at least two of the following:

a. The program is included in the federal registry of evidence-based programs and practices.

b. The program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome.

c. The program has been documented as effective by informed experts and other sources.

For the purposes of this section, any conviction for a violation of s. 327.35; a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028; or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section. However, in satisfaction of the fine imposed pursuant to this section, the court may, upon a finding that the defendant is financially unable to pay either all or part of the fine, order that the defendant participate for a specified additional period of time in public service or a community work project in lieu of payment of that portion of the fine which the court determines the defendant is unable to pay. In determining such additional sentence, the court shall consider the amount of the unpaid portion of the fine and the reasonable value of the services to be ordered; however, the court may not compute the reasonable value of services at a rate less than the federal minimum wage at the time of sentencing.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 22 and 23

489780

insert:

amending s. 316.193, F.S.; authorizing the court to order sobriety and drug monitoring in lieu of specified ignition interlock device requirements; defining terms;

594154

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 866 - 896.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 78 - 84

and insert:

costs;

156168

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 1125 and 1126
insert:

Section 21. Subsection (3) of section 322.141, Florida Statutes, is amended to read:

322.141 Color or markings of certain licenses or identification cards.—

(3) All licenses for the operation of motor vehicles or identification cards originally issued or reissued by the

156168

department to persons who are designated as sexual predators under s. 775.21, ~~or~~ subject to registration as sexual offenders under s. 943.0435 or s. 944.607, or who have a similar designation or are subject to a similar registration under the laws of another jurisdiction, shall have on the front of the license or identification card the following:

(a) For a person designated as a sexual predator under s. 775.21 or who has a similar designation under the laws of another jurisdiction, the marking "SEXUAL PREDATOR." ~~"775.21, F.S."~~

(b) For a person subject to registration as a sexual offender under s. 943.0435 or s. 944.607 or subject to a similar registration under the laws of another jurisdiction, the marking "SEXUAL OFFENDER." ~~"943.0435, F.S."~~

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 112

and insert:

the tax collector; amending s. 322.141, F.S.; revising requirements for special markings on driver licenses and state identification cards for persons designated as sexual predators or subject to registration as sexual offenders to include persons so designated or subject to registration under the laws of another jurisdiction; amending s. 322.15, F.S.;

119252

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (156168)

Delete line 24
and insert:
943.0435,F.S.

797362

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1733 - 1736

and insert:

this paragraph. This paragraph does not bar a county or municipality from adopting an ordinance, or enforcing an existing ordinance, that expands the accessibility, safety, or availability of fueling assistance to a motor vehicle operator described in paragraph (a).

797362

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 185 - 186
and insert:
implement and enforce this requirement; providing an exception for certain county or municipal regulations pertaining to fueling

417534

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 1895 and 1896
insert:

Section 33. The Department of Highway Safety and Motor Vehicles is appropriated the nonrecurring sum of $100,000 from the Highway Safety Operating Trust Fund. These funds shall be used for expenditures incurred to issue or reissue a driver license with the marking "SEXUAL OFFENDER" on the front of the license to persons designated and required to register as a

417534

sexual predator in accordance with this act.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 206

and insert:

certain vehicle registration holds; providing an appropriation; providing an

516902

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (417534)

Delete line 9
and insert:
license with the marking "SEXUAL OFFENDER" or "SEXUAL PREDATOR" on the front of the

755202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (417534)

Delete line 9
and insert:
license with the marking "SEXUAL PREDATOR" on the front of the

376118

576-04081A-14

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to transportation and motor vehicles; amending s. 20.23, F.S.; requiring the Florida Transportation Commission to monitor the Mid-Bay Bridge Authority; repealing the Florida Statewide Passenger Rail Commission; amending s. 61.13016, F.S.; revising notification requirements with respect to the suspension of the driver license of a child support obligor; requiring delinquent child support obligors to provide certain documentation within a specified period in order to prevent the suspension of a driver license; amending s. 110.205, F.S.; conforming cross-references; creating s. 316.0778, F.S.; defining the term "automated license plate recognition system"; requiring the Department of State to consult with the Department of Law Enforcement in establishing a retention schedule for records generated by the use of an automated license plate recognition system; creating s. 316.0817, F.S.; prohibiting a bus from stopping to load or unload passengers in a manner that impedes, blocks, or otherwise restricts the progression of traffic under certain circumstances; amending s. 316.1975, F.S.; authorizing an operator of a vehicle that is started by remote control to let the vehicle stand unattended under certain circumstances; amending s. 316.2952, F.S.; revising a provision

376118

576-04081A-14

exempting a global position system device or similar satellite receiver device from the prohibition of attachments on windshields; amending s. 316.86, F.S.; revising provisions relating to the operation of vehicles equipped with autonomous technology on state roads for testing purposes; authorizing research organizations associated with accredited educational institutions to operate such vehicles; authorizing the testing of such vehicles on certain roadways designated by the Department of Transportation and the applicable local government or authority; deleting an obsolete provision; amending s. 320.02, F.S.; requiring, rather than authorizing, the Department of Highway Safety and Motor Vehicles to withhold the renewal of registration or replacement registration of a motor vehicle identified in a notice submitted by a lienor for failure to surrender the vehicle if the applicant's name is on the list of persons who may not be issued a license plate or revalidation sticker; revising the conditions under which a revalidation sticker or replacement license plate may be issued; amending s. 320.08056, F.S.; defining the terms "administrative costs" and "administrative expenses" for purposes of the section and s. 320.08058, F.S.; amending s. 320.08062, F.S.; revising provisions relating to audit and attestation requirements for annual use fee proceeds; requiring the Department of Highway Safety and Motor Vehicles to discontinue the distribution of revenues to an organization that does

not meet specified requirements; authorizing the department to resume the distribution of revenue under certain conditions; requiring a report to the Legislature; requiring the discontinuance of a specialty plate under certain circumstances; amending chapter 2008-176, Laws of Florida, as amended; extending the prohibition on the issuance of new specialty license plates; amending s. 320.083, F.S.; revising the requirements for a special license plate; amending s. 320.1316, F.S.; prohibiting the department from issuing a license plate, revalidation sticker, or replacement license plate for a vehicle or vessel identified in a notice from a lienor; requiring that a notice to surrender a vehicle or vessel be signed under oath by the lienor; authorizing a registered owner of a vehicle to bring a civil action, rather than to notify the department and present certain proof, to dispute a notice to surrender a vehicle or vessel or his or her inclusion on the list of persons who may not be issued a license plate or revalidation sticker; providing a procedure for such a civil action; providing for the award of attorney fees and costs; amending s. 320.771, F.S.; requiring a licensed recreational vehicle dealer who applies for a supplemental license to hold certain off-premises sales to notify the local Department of Highway Safety and Motor Vehicles office of the dates and location for such sales; specifying requirements for licensed recreational vehicle dealers to hold such sales;

creating s. 322.032, F.S.; requiring the Department of Highway Safety and Motor Vehicles to begin to review and prepare for the development of a system for issuing an optional digital proof of driver license; authorizing the Department of Highway Safety and Motor Vehicles to contract with private entities to develop the system; providing requirements for digital proof of driver license; providing criminal penalties for manufacturing or possessing a false digital proof of driver license; amending s. 322.055, F.S.; reducing the mandatory period of revocation or suspension of, or delay in eligibility for, a driver license for persons convicted of certain drug offenses; requiring the court to make a determination as to whether a restricted license would be appropriate for persons convicted of certain drug offenses; amending s. 322.058, F.S.; requiring the Department of Highway Safety and Motor Vehicles to reinstate the driving privilege and allow registration of a motor vehicle of a child support obligor upon receipt of an affidavit containing specified information; amending s. 322.059, F.S.; requiring the Department of Highway Safety and Motor Vehicles to invalidate the digital proof of driver license for a person whose license or registration has been suspended; amending s. 322.12, F.S.; requiring that certain test fees incurred by certain applicants for a driver license be retained by the tax collector; amending s. 322.15, F.S.; authorizing a digital proof of driver license to be

576-04081A-14

accepted in lieu of a physical driver license; amending s. 322.21, F.S.; authorizing certain tax collectors to retain a replacement driver license or identification card fee under certain circumstances; exempting certain individuals who are homeless or whose annual income is at or below a certain percentage of the federal poverty level from paying a fee for an original, renewal, or replacement identification card; amending s. 337.25, F.S.; authorizing the Department of Transportation to use auction services in the conveyance of certain property or leasehold interests; revising certain inventory requirements; revising provisions relating to, and providing criteria for, the disposition of certain excess property by the Department of Transportation; providing criteria for the disposition of donated property, property used for a public purpose, or property acquired to provide replacement housing for certain displaced persons; providing value offsets for property that requires significant maintenance costs or exposes the Department of Transportation to significant liability; providing procedures for the sale of property to abutting property owners; deleting provisions to conform to changes made by the act; providing monetary restrictions and criteria for the conveyance of certain leasehold interests; providing exceptions to restrictions for leases entered into for a public purpose; providing criteria for the preparation of estimates of value prepared by the

576-04081A-14

Department of Transportation; providing that the requirements of s. 73.013, F.S., relating to eminent domain are not modified; amending s. 337.251, F.S.; revising criteria for leasing certain Department of Transportation property; increasing the time for the Department of Transportation to accept proposals for lease after a notice is published; directing the Department of Transportation to establish an application fee by rule; providing criteria for the fee; providing criteria for a proposed lease; requiring the Department of Transportation to provide an independent analysis of a proposed lease; amending s. 339.175, F.S.; increasing the maximum number of apportioned members that may compose the voting membership of a metropolitan planning organization (M.P.O.); providing that the governing board of a multicounty M.P.O. may be made up of any combination of county commissioners from the counties constituting the M.P.O; providing that a voting member of an M.P.O may represent a group of general-purpose local governments through an entity created by the M.P.O.; requiring each M.P.O. to review and reapportion its membership as necessary in conjunction with the decennial census, the agreement of the affected units of the M.P.O., and the agreement of the Governor; removing provisions requiring the Governor to apportion, review, and reapportion the composition of an M.P.O. membership; revising a provision regarding bylaws to allow the M.P.O. governing board to

576-04081A-14

establish bylaws; amending s. 339.2821, F.S.; authorizing Enterprise Florida, Inc., to be a consultant to the Department of Transportation for consideration of expenditures associated with and contracts for transportation projects; revising the requirements for economic development transportation project contracts between the Department of Transportation and a governmental entity; amending s. 526.141, F.S.; requiring full-service gasoline stations offering self-service at a lesser cost to display an additional decal; requiring the decal to contain certain information; requiring the Department of Agriculture and Consumer Services to adopt rules to implement and enforce this requirement; providing for preemption of local regulations pertaining to fueling assistance for certain motor vehicle operators; amending s. 562.11, F.S.; authorizing the court to direct the Department of Highway Safety and Motor Vehicles to issue a restricted driver license to certain persons; amending s. 812.0155, F.S.; deleting a provision requiring the suspension of the driver license of a person adjudicated guilty of certain offenses; authorizing the court to direct the Department of Highway Safety and Motor Vehicles to issue a restricted driver license to certain persons; amending s. 832.09, F.S.; providing that the suspension of a driver license of a person being prosecuted for passing a worthless check is discretionary; amending chapter 85-364, Laws of

576-04081A-14

Florida, as amended; providing that maintenance costs are eligible for payment from certain toll revenues as specified; removing references to certain completed projects; directing the Department of Highway Safety and Motor Vehicles to develop a plan that addresses certain vehicle registration holds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) and subsection (3) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(2)

(b) The commission shall ~~have the primary functions to~~:

1. Recommend major transportation policies for the Governor's approval~~,~~ and assure that approved policies and any revisions ~~thereto~~ are properly executed.

2. Periodically review the status of the state transportation system including highway, transit, rail, seaport, intermodal development, and aviation components of the system and recommend improvements ~~therein~~ to the Governor and the Legislature.

3. Perform an in-depth evaluation of the annual department budget request, the Florida Transportation Plan, and the tentative work program for compliance with all applicable laws and established departmental policies. Except as specifically

provided in s. 339.135(4)(c)2., (d), and (f), the commission may not consider individual construction projects, but shall consider methods of accomplishing the goals of the department in the most effective, efficient, and businesslike manner.

4. Monitor the financial status of the department on a regular basis to assure that the department is managing revenue and bond proceeds responsibly and in accordance with law and established policy.

5. Monitor on at least a quarterly basis, the efficiency, productivity, and management of the department~~,~~ using performance and production standards developed by the commission pursuant to s. 334.045.

6. Perform an in-depth evaluation of the factors causing disruption of project schedules in the adopted work program and recommend to the Governor ~~Legislature~~ and the Legislature ~~Governor~~ methods to eliminate or reduce the disruptive effects of these factors.

7. Recommend to the Governor and the Legislature improvements to the department's organization in order to streamline and optimize the efficiency of the department. In reviewing the department's organization, the commission shall determine if the current district organizational structure is responsive to this state's ~~Florida's~~ changing economic and demographic development patterns. The initial report by the commission must be delivered to the Governor and the Legislature by December 15, 2000, and each year thereafter, as appropriate. The commission may retain ~~such~~ experts as ~~are reasonably~~ necessary to carry out ~~effectuate~~ this subparagraph, and the department shall pay the expenses of the ~~such~~ experts.

8. Monitor the efficiency, productivity, and management of the authorities created under chapters 348 and 349, including any authority formed using ~~the provisions of~~ part I of chapter 348; the Mid-Bay Bridge Authority re-created pursuant to chapter 2000-411, Laws of Florida; and any authority formed under chapter 343 ~~which is not monitored under subsection (3)~~. The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

~~(3) There is created the Florida Statewide Passenger Rail Commission.~~

~~(a)1. The commission shall consist of nine voting members appointed as follows:~~

~~a. Three members shall be appointed by the Governor, one of whom must have a background in the area of environmental concerns, one of whom must have a legislative background, and one of whom must have a general business background.~~

~~b. Three members shall be appointed by the President of the Senate, one of whom must have a background in civil engineering, one of whom must have a background in transportation construction, and one of whom must have a general business background.~~

~~c. Three members shall be appointed by the Speaker of the House of Representatives, one of whom must have a legal background, one of whom must have a background in financial matters, and one of whom must have a general business background.~~

~~2. The initial term of each member appointed by the~~

~~Governor shall be for 4 years. The initial term of each member appointed by the President of the Senate shall be for 3 years. The initial term of each member appointed by the Speaker of the House of Representatives shall be for 2 years. Succeeding terms for all members shall be for 4 years.~~

~~3. A vacancy occurring during a term shall be filled by the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term. An appointment to fill a vacancy shall be made within 60 days after the occurrence of the vacancy.~~

~~4. The commission shall elect one of its members as chair of the commission. The chair shall hold office at the will of the commission. Five members of the commission shall constitute a quorum, and the vote of five members shall be necessary for any action taken by the commission. The commission may meet upon the constitution of a quorum. A vacancy in the commission does not impair the right of a quorum to exercise all rights and perform all duties of the commission.~~

~~5. The members of the commission are not entitled to compensation but are entitled to reimbursement for travel and other necessary expenses as provided in s. 112.061.~~

~~(b) The commission shall have the primary functions of:~~

~~1. Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also~~

~~conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.~~

~~2. Advising the department on policies and strategies used in planning, designing, building, operating, financing, and maintaining a coordinated statewide system of passenger rail services.~~

~~3. Evaluating passenger rail policies and providing advice and recommendations to the Legislature on passenger rail operations in the state.~~

~~(c) The commission or a member of the commission may not enter into the day-to-day operation of the department or a monitored authority and is specifically prohibited from taking part in:~~

~~1. The awarding of contracts.~~

~~2. The selection of a consultant or contractor or the prequalification of any individual consultant or contractor. However, the commission may recommend to the secretary standards and policies governing the procedure for selection and prequalification of consultants and contractors.~~

~~3. The selection of a route for a specific project.~~

~~4. The specific location of a transportation facility.~~

~~5. The acquisition of rights-of-way.~~

~~6. The employment, promotion, demotion, suspension, transfer, or discharge of any department personnel.~~

~~7. The granting, denial, suspension, or revocation of any license or permit issued by the department.~~

~~(d) The commission is assigned to the Office of the Secretary of the Department of Transportation for administrative and fiscal accountability purposes, but it shall otherwise function independently of the control and direction of the department except that reasonable expenses of the commission shall be subject to approval by the Secretary of Transportation. The department shall provide administrative support and service to the commission.~~

Section 2. Section 61.13016, Florida Statutes, is amended to read:

61.13016 Suspension of driver ~~driver's~~ licenses and motor vehicle registrations.—

(1) The driver ~~driver's~~ license and motor vehicle registration of a support obligor who is delinquent in payment or who has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support proceedings may be suspended. When an obligor is 15 days delinquent making a payment in support or failure to comply with a subpoena, order to appear, order to show cause, or similar order in IV-D cases, the Title IV-D agency may provide notice to the obligor of the delinquency or failure to comply with a subpoena, order to appear, order to show cause, or similar order and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the

Department of Highway Safety and Motor Vehicles. When an obligor is 15 days delinquent in making a payment in support in non-IV-D cases, and upon the request of the obligee, the depository or the clerk of the court must provide notice to the obligor of the delinquency and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. In either case, the notice must state:

(a) The terms of the order creating the support obligation;

(b) The period of the delinquency and the total amount of the delinquency as of the date of the notice or describe the subpoena, order to appear, order to show cause, or other similar order that ~~which~~ has not been complied with;

(c) That notification will be given to the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver ~~driver's~~ license and motor vehicle registration unless, within 20 days after the date that the notice is mailed, the obligor:

1.a. Pays the delinquency in full and any other costs and fees accrued between the date of the notice and the date the delinquency is paid;

b. Enters into a written agreement for payment with the obligee in non-IV-D cases or with the Title IV-D agency in IV-D cases; or in IV-D cases, complies with a subpoena or order to appear, order to show cause, or a similar order; ~~or~~

c. Files a petition with the circuit court to contest the delinquency action; ~~and~~

d. Demonstrates that he or she receives reemployment assistance or unemployment compensation pursuant to chapter 443;

e. Demonstrates that he or she is disabled and incapable of self-support or that he or she receives benefits under the federal Supplemental Security Income or Social Security Disability Insurance programs;

f. Demonstrates that he or she receives temporary cash assistance pursuant to chapter 414; or

g. Demonstrates that he or she is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.; and

2. Pays any applicable delinquency fees.

If an ~~the~~ obligor in a non-IV-D case ~~cases~~ enters into a written agreement for payment before the expiration of the 20-day period, the obligor must provide a copy of the signed written agreement to the depository or the clerk of the court. If an obligor seeks to satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-subparagraph 1.f., or sub-subparagraph 1.g. before expiration of the 20-day period, the obligor must provide the applicable documentation or proof to the depository or the clerk of the court.

(2)(a) Upon petition filed by the obligor in the circuit court within 20 days after the mailing date of the notice, the court may, in its discretion, direct the department to issue a license for driving privilege ~~privileges~~ restricted to business purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. As a condition for the court to exercise its discretion under this subsection, the obligor must agree to a schedule of payment on any child support

arrearages and to maintain current child support obligations. If the obligor fails to comply with the schedule of payment, the court shall direct the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver ~~driver's~~ license.

(b) The obligor must serve a copy of the petition on the Title IV-D agency in IV-D cases or on the depository or the clerk of the court in non-IV-D cases. When an obligor timely files a petition to set aside a suspension, the court must hear the matter within 15 days after the petition is filed. The court must enter an order resolving the matter within 10 days after the hearing, and a copy of the order must be served on the parties. The timely filing of a petition under this subsection stays the intent to suspend until the entry of a court order resolving the matter.

(3) If the obligor does not, within 20 days after the mailing date on the notice, pay the delinquency;~~,~~ enter into a written ~~payment~~ agreement;~~,~~ comply with the subpoena, order to appear, order to show cause, or other similar order;~~, or~~ file a motion to contest; or satisfy sub-subparagraph (1)(c)1.d., sub-subparagraph (1)(c)1.e., sub-subparagraph (1)(c)1.f., or sub-subparagraph (1)(c)1.g., the Title IV-D agency in IV-D cases, or the depository or clerk of the court in non-IV-D cases, may ~~shall~~ file the notice with the Department of Highway Safety and Motor Vehicles and request the suspension of the obligor's driver ~~driver's~~ license and motor vehicle registration in accordance with s. 322.058.

(4) The obligor may, within 20 days after the mailing date on the notice of delinquency or noncompliance and intent to suspend, file in the circuit court a petition to contest the

notice of delinquency or noncompliance and intent to suspend on the ground of mistake of fact regarding the existence of a delinquency or the identity of the obligor. The obligor must serve a copy of the petition on the Title IV-D agency in IV-D cases or depository or clerk of the court in non-IV-D cases. When an obligor timely files a petition to contest, the court must hear the matter within 15 days after the petition is filed. The court must enter an order resolving the matter within 10 days after the hearing, and a copy of the order must be served on the parties. The timely filing of a petition to contest stays the notice of delinquency and intent to suspend until the entry of a court order resolving the matter.

(5) The procedures prescribed in this section and s. 322.058 may be used to enforce compliance with an order to appear for genetic testing.

Section 3. Paragraphs (j), (m), and (q) of subsection (2) of section 110.205, Florida Statutes, are amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(j) The appointed secretaries and the State Surgeon General, assistant secretaries, deputy secretaries, and deputy assistant secretaries of all departments; the executive directors, assistant executive directors, deputy executive directors, and deputy assistant executive directors of all departments; the directors of all divisions and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, program directors, assistant program directors,

district administrators, deputy district administrators, the Director of Central Operations Services of the Department of Children and Families ~~Family Services~~, the State Transportation Development Administrator, the State Public Transportation and Modal Administrator, district secretaries, district directors of transportation development, transportation operations, transportation support, and the managers of the offices of the Department of Transportation specified in s. 20.23(3)(b) ~~s. 20.23(4)(b), of the Department of Transportation~~. Unless otherwise fixed by law, the department shall set the salary and benefits of these positions ~~in accordance with the rules of the Senior Management Service;~~ and the positions of county health department directors and county health department administrators of the Department of Health in accordance with the rules of the Senior Management Service.

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which include, but are not limited to:

1. Positions in the Department of Health and the Department of Children and Families which ~~Family Services that~~ are assigned primary duties of serving as the superintendent or assistant superintendent of an institution.

2. Positions in the Department of Corrections which ~~that~~ are assigned primary duties of serving as the warden, assistant warden, colonel, or major of an institution or that are assigned primary duties of serving as the circuit administrator or deputy circuit administrator.

3. Positions in the Department of Transportation which ~~that~~ are assigned primary duties of serving as regional toll managers and managers of offices, as specified ~~defined~~ in s. 20.23(3)(b) and (4)(c) ~~s. 20.23(4)(b) and (5)(c)~~.

4. Positions in the Department of Environmental Protection which ~~that~~ are assigned the duty of an Environmental Administrator or program administrator.

5. Positions in the Department of Health which ~~that~~ are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator.

6. Positions in the Department of Highway Safety and Motor Vehicles which ~~that~~ are assigned primary duties of serving as captains in the Florida Highway Patrol.

Unless otherwise fixed by law, the department shall set the salary and benefits of the positions listed in this paragraph in accordance with the rules established for the Selected Exempt Service.

(q) The staff directors, assistant staff directors, district program managers, district program coordinators, district subdistrict administrators, district administrative services directors, district attorneys, and the Deputy Director of Central Operations Services of the Department of Children and Families ~~Family Services~~. Unless otherwise fixed by law, the department shall establish the salary ~~pay band~~ and benefits for these positions in accordance with the rules of the Selected Exempt Service.

Section 4. Section 316.0778, Florida Statutes, is created

to read:

316.0778 Automated license plate recognition systems; records retention.—

(1) As used in this section, the term "automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.

(2) In consultation with the Department of Law Enforcement, the Department of State shall establish a retention schedule for records containing images and data generated through the use of an automated license plate recognition system. The retention schedule must establish a maximum period that the records may be retained.

Section 5. Section 316.0817, Florida Statutes, is created to read:

316.0817 Loading and unloading of bus passengers.—

(1) Notwithstanding any other law, a bus may not stop to load or unload passengers in a manner that impedes, blocks, or otherwise restricts the progression of traffic on the main-traveled portion of a roadway if there is another reasonable means for the bus to stop parallel to the travel lane and safely load and unload passengers. As used in this section, the term "reasonable means" means sufficient unobstructed pavement or a designated turn lane that is sufficient in length to allow the safe loading and unloading of passengers parallel to the travel lane.

(2) This section does not apply to a school bus.

Section 6. Paragraph (d) is added to subsection (2) of section 316.1975, Florida Statutes, to read:

316.1975 Unattended motor vehicle.—

(2) This section does not apply to the operator of:

(d) A vehicle that is started by remote control while the ignition, transmission, and doors are locked.

Section 7. Paragraph (d) of subsection (2) of section 316.2952, Florida Statutes, is amended to read:

316.2952 Windshields; requirements; restrictions.—

(2) A person shall not operate any motor vehicle on any public highway, road, or street with any sign, sunscreening material, product, or covering attached to, or located in or upon, the windshield, except the following:

(d) A global positioning system device or similar satellite receiver device that ~~which~~ uses the global positioning system operated pursuant to 10 U.S.C. s. 2281 to obtain ~~for the purpose of obtaining~~ navigation, to improve driver safety as a component of safety monitoring equipment capable of providing driver feedback, or to otherwise route ~~routing~~ information while the motor vehicle is being operated.

Section 8. Subsections (1) and (3) of section 316.86, Florida Statutes, are amended to read:

316.86 Operation of vehicles equipped with autonomous technology on roads for testing purposes; financial responsibility; exemption from liability for manufacturer when third party converts vehicle; report.—

(1) Vehicles equipped with autonomous technology may be operated on roads in this state by employees, contractors, or other persons designated by manufacturers of autonomous technology, or by research organizations associated with accredited educational institutions, for the purpose of testing

the technology. For testing purposes, a human operator must retain ~~shall be present in the autonomous vehicle such that he or she has~~ the ability to monitor the vehicle's performance and intervene, if necessary, unless the vehicle is being tested or demonstrated on a closed course or any other autonomous vehicle testing roadway as designated by the Department of Transportation and the applicable local government or authority. Before ~~Prior to~~ the start of testing in this state, the entity performing the testing must submit to the Department of Highway Safety and Motor Vehicles an instrument of insurance, surety bond, or proof of self-insurance acceptable to the department in the amount of $5 million.

~~(3) By February 12, 2014, the Department of Highway Safety and Motor Vehicles shall submit a report to the President of the Senate and the Speaker of the House of Representatives recommending additional legislative or regulatory action that may be required for the safe testing and operation of motor vehicles equipped with autonomous technology.~~

Section 9. Subsection (17) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(17) If an ~~any~~ applicant's name appears on a list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate after a written notice to surrender a vehicle was submitted to the department by a lienor as provided in s. 320.1316, the department shall ~~may~~ withhold renewal of registration or replacement registration of the ~~any~~ motor vehicle identified in ~~owned by the applicant at the time~~

the notice ~~was~~ submitted by the lienor. The lienor must maintain proof that written notice to surrender the vehicle was sent to each registered owner pursuant to s. 320.1316(1). A revalidation sticker or replacement license plate may not be issued for the identified vehicle until the ~~that~~ person's name no longer appears on the list, ~~or until~~ the person presents documentation from the lienor that the vehicle has been surrendered to the lienor, or a court orders the person's name removed from the list as provided in s. 320.1316. The department may ~~shall~~ not withhold an initial registration in connection with an applicant's purchase or lease of a motor vehicle solely because the applicant's name is on the list created by s. 320.1316.

Section 10. Subsection (10) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(10) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1).

(a) As used in this section and s. 320.08058, the terms "administrative costs" and "administrative expenses" mean those expenditures which are considered as direct operating costs of the organization. These costs include but are not limited to the following:

1. Administrative salaries of employees and officers of the organization who do not, or cannot prove, via detailed daily time sheets, that they actively participate in program

activities;

2. Bookkeeping and support services of the organization;

3. Office supplies and equipment not directly utilized for the specified program(s);

4. Travel time, per diem, mileage reimbursement, and lodging expenses not directly associated with a specified program purpose;

5. Paper, printing, envelopes, and postage not directly associated with a specified program purpose; or

6. Miscellaneous expenses such as food, beverage, entertainment, and conventions.

Section 11. Section 320.08062, Florida Statutes, is amended to read:

320.08062 Audits and attestations required; annual use fees of specialty license plates.—

(1)(a) All organizations that receive annual use fee proceeds from the department are responsible for ensuring that proceeds are used in accordance with ss. 320.08056 and 320.08058.

(b) Any organization not subject to audit pursuant to s. 215.97 shall annually attest, under penalties of perjury, that such proceeds were used in compliance with ss. 320.08056 and 320.08058. The attestation shall be made annually in a form and format determined by the department.

(c) Any organization subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules promulgated by the Auditor General. The annual attestation shall be submitted to the department for review within 9 months after the end of the organization's fiscal year.

(2) ~~(a)~~ Within 120 ~~90~~ days after receiving an organization's audit or attestation, the department shall determine which recipients of revenues from specialty license plate annual use fees have not complied with subsection (1). In determining compliance, the department may commission an independent actuarial consultant, or an independent certified public accountant, who has expertise in nonprofit and charitable organizations.

(a) The department must discontinue the distribution of revenues to an organization that fails to submit the documentation required in subsection (1), but may resume distribution of the revenues upon receipt of the required documentation.

(b) If the department or its designee determines that an organization has not complied or has failed to use the revenues in accordance with ss. 320.08056 and 320.08058, the department must discontinue the distribution of the revenues to the organization. The department must notify the organization of its findings and direct the organization to make the changes necessary in order to comply with this chapter. If the officers of the organization sign under penalties of perjury that they acknowledge the findings of the department and attest that they have taken corrective action and attest that the organization will submit to a follow-up review by the department, the department may resume the distribution of revenues ~~until the department determines that the organization has complied~~.

(c) If an organization fails to comply with the department's directive requiring corrective actions as outlined in paragraph (b), the revenue distributions must be discontinued

until completion of the next regular session of the Legislature. The department must notify the Legislature by the first day of the regular session of an organization whose revenues have been withheld pursuant to this paragraph. If the Legislature does not provide direction to the organization and the department regarding the status of the undistributed revenues, the department shall discontinue the plate, and undistributed revenues must ~~within 12 months after the annual use fee proceeds are withheld by the department, the proceeds shall~~ be immediately deposited into the Highway Safety Operating Trust Fund ~~to offset department costs related to the issuance of specialty license plates~~.

~~(b) In lieu of discontinuing revenue disbursement pursuant to this subsection, upon determining that a recipient has not complied or has failed to use the revenues in accordance with ss. 320.08056 and 320.08058, and with the approval of the Legislative Budget Commission, the department is authorized to redirect previously collected and future revenues to an organization that is able to perform the same or similar purposes as the original recipient.~~

(3) The department or its designee has the authority to examine all records pertaining to the use of funds from the sale of specialty license plates.

Section 12. Section 45 of chapter 2008-176, Laws of Florida, as amended by section 21 of chapter 2010-223, Laws of Florida, is amended to read:

Section 45. Except for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles before ~~prior to~~ May 2, 2008,

and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, Florida Statutes, before October 1, 2008 ~~prior to the effective date of this act~~, or which was included in a bill filed during the 2008 Legislative Session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, Florida Statutes, between July 1, 2008, and July 1, 2016 ~~2011~~.

Section 13. Subsection (1) of section 320.083, Florida Statutes, is amended to read:

320.083 Amateur radio operators; special license plates; fees.—

(1) A person who is the owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use; who is a resident of the state; and who holds a valid official amateur radio station license recognized ~~issued~~ by the Federal Communications Commission shall be issued a special license plate upon application, accompanied by proof of ownership of such radio station license, and payment of the following tax and fees:

(a) The license tax required for the vehicle, as prescribed by s. 320.08(2), (3)(a), (b), or (c), (4)(a), (b), (c), (d), (e), or (f), or (9); and

(b) An initial additional fee of $5, and an additional fee of $1.50 thereafter.

Section 14. Section 320.1316, Florida Statutes, is amended to read:

320.1316 Failure to surrender vehicle or vessel.—

(1) Upon receipt from a lienor who claims a lien on a vehicle pursuant to s. 319.27 by the Department of Highway Safety and Motor Vehicles of written notice to surrender a vehicle or vessel that has been disposed of, concealed, removed, or destroyed by the lienee, the department shall place the name of the registered owner of that vehicle on the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate ~~for any motor vehicle under s. 320.03(8) owned by the licnee at the time the notice was given by the lienor~~. Pursuant to s. 320.03(8), the department may not issue a license plate or revalidation sticker for the vehicle or vessel owned by the lienee which is identified in the claim by the lienor. If the vehicle is owned jointly ~~by more than one person~~, the name of each registered owner shall be placed on the list.

(2) The notice to surrender the vehicle shall be signed under oath by the lienor and submitted on forms developed by the department, which must include:

(a) The name, address, and telephone number of the lienor.

(b) The name of the registered owner of the vehicle and the address to which the lienor provided notice to surrender the vehicle to the registered owner.

(c) A general description of the vehicle, including its color, make, model, body style, and year.

(d) The vehicle identification number, registration license plate number, if known, or other identification number, as applicable.

(3) The registered owner of the vehicle may dispute a

notice to surrender the vehicle or his or her inclusion on the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate under s. 320.03(8) by bringing a civil action in the county in which he or she resides ~~by notifying the department of the dispute in writing on forms provided by the department and presenting proof that the vehicle was sold to a motor vehicle dealer licensed under s. 320.27, a mobile home dealer licensed under s. 320.77, or a recreational vehicle dealer licensed under s. 320.771~~.

(4) In an action brought pursuant to subsection (3), the petitioner is entitled to the summary procedure specified in s. 51.011, and the court shall advance the cause on its calendar if requested by the petitioner.

(5) At a hearing challenging the refusal to issue a license plate, revalidation sticker, or replacement license plate under s. 320.03(8), the court shall first determine whether the lienor has a recorded lien on the vehicle or vessel and whether the lienor properly made a demand for the surrender of the vehicle or vessel in accordance with this section. If the court determines that the lien was recorded and that such a demand was properly made, the court shall determine whether good cause exists for the lienee's failure to surrender the vehicle or vessel. As used in this section, the term "good cause" is limited to proof that:

(a) The vehicle that was the subject of the demand for surrender was traded in to a licensed motor vehicle dealer before the date of the surrender demand;

(b) The lien giving rise to the inclusion on the list has been paid in full or otherwise satisfied;

(c) There is ongoing litigation relating to the validity or enforceability of the lien;

(d) The petitioner was in compliance with all of his or her contractual obligations with the lienholder at the time of the demand for surrender;

(e) The vehicle or vessel was reported to law enforcement as stolen by the registered owner of the vehicle or vessel before the demand for surrender; or

(f) The petitioner no longer has possession of the vehicle or vessel, and the loss of possession occurred pursuant to operation of law. If the petitioner's loss of possession did not occur pursuant to operation of law, the fact that a third party has physical possession of the vehicle or vessel does not constitute good cause for the failure to surrender the vehicle or vessel.

(6) If the petitioner establishes good cause for his or her failure to surrender the vehicle or vessel, the court shall enter an order removing the petitioner's name from the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate under s. 320.03(8) and shall award the petitioner reasonable attorney fees and costs actually incurred for the proceeding.

(7) If the court finds that the demand for surrender was properly made by the lienor and the petitioner fails to establish good cause for the failure to surrender the vehicle or vessel, the court shall award the lienor reasonable attorney fees and costs actually incurred for the proceeding.

Section 15. Subsection (7) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

(7) SUPPLEMENTAL LICENSE.—A ~~Any~~ person licensed under ~~pursuant to~~ this section shall be entitled to operate one or more additional places of business under a supplemental license for each such business if the ownership of each business is identical to that of the principal business for which the original license is issued. Each supplemental license shall run concurrently with the original license and shall be issued upon application by the licensee on a form to be furnished by the department and payment of a fee of $50 for each such license. Only one licensed dealer shall operate at the same place of business. A supplemental license authorizing off-premises sales shall be issued, at no charge to the dealer, for a period not to exceed 10 consecutive ~~calendar~~ days. A licensed dealer who conducts an off-premises sale not in conjunction with a public vehicle show, as defined in s. 320.3203(5)(c), shall:

(a) Notify the applicable local department office of the specific dates and location for which such license is requested.

(b) Provide staff to work at the temporary location for the duration of the off-premises sale.

(c) Meet all local government permit requirements.

(d) Have the permission of the property owner to operate at that location.

(e) Conspicuously display a sign at the licensed location which clearly identifies the dealer's name and business address as listed on the dealer's original license.

(f) Prominently include the dealer's name and business address, as listed on the dealer's original license, in all advertisements associated with such sale.

Section 16. Section 322.032, Florida Statutes, is created to read:

322.032 Digital proof of driver license.—

(1) The department shall begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. The department may contract with one or more private entities to develop a digital proof of driver license system.

(2) The digital proof of driver license developed by the department or by an entity contracted by the department must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license. The department may promulgate rules to ensure valid authentication of digital driver licenses by law enforcement.

(3) A person may not be issued a digital proof of driver license until he or she has satisfied all the requirements of this chapter and has received a physical driver license as provided in this chapter.

(4) A person who:

(a) Manufactures a false digital proof of driver license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable as provided in s. 775.082.

Section 17. Section 322.055, Florida Statutes, is amended to read:

322.055 Revocation or suspension of, or delay of eligibility for, driver ~~driver's~~ license for persons 18 years of

age or older convicted of certain drug offenses.—

(1) Notwithstanding the provisions of s. 322.28, upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court shall direct the department to revoke the driver ~~driver's~~ license or driving privilege of the person. The period of such revocation shall be 1 year ~~2 years~~ or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families ~~Family Services~~. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege ~~privileges~~ restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(2) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is eligible by reason of age for a driver ~~driver's~~ license or privilege, the court shall direct the department to withhold issuance of such person's driver ~~driver's~~ license or

driving privilege for a period of 1 year ~~2 years~~ after the date the person was convicted or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families ~~Family Services~~. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege ~~privileges~~ restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(3) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person's driver ~~driver's~~ license or driving privilege is already under suspension or revocation for any reason, the court shall direct the department to extend the period of such suspension or revocation by an additional period of 1 year ~~2 years~~ or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families ~~Family Services~~. However, the court may, in its sound discretion, direct the department to issue a license for driving

privilege ~~privileges~~ restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(4) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is ineligible by reason of age for a driver ~~driver's~~ license or driving privilege, the court shall direct the department to withhold issuance of such person's driver ~~driver's~~ license or driving privilege for a period of 1 year ~~2 years~~ after the date that he or she would otherwise have become eligible or until he or she becomes eligible by reason of age for a driver ~~driver's~~ license and is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families ~~Family Services~~. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege ~~privileges~~ restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon

the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(5) A court that orders the revocation or suspension of, or delay in eligibility for, a driver license pursuant to this section shall make a specific, articulated determination as to whether the issuance of a license for driving privilege restricted to business purposes only, as defined in s. 322.271, is appropriate in each case.

(6) ~~(5)~~ Each clerk of court shall promptly report to the department each conviction for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance.

Section 18. Section 322.058, Florida Statutes, is amended to read:

322.058 Suspension of driving privilege ~~privileges~~ due to support delinquency; reinstatement.—

(1) When the department receives notice from the Title IV-D agency or depository or the clerk of the court that any person licensed to operate a motor vehicle in the State of Florida under the provisions of this chapter has a delinquent support obligation or has failed to comply with a subpoena, order to appear, order to show cause, or similar order, the department shall suspend the driver ~~driver's~~ license of the person named in the notice and the registration of all motor vehicles owned by that person.

(2) The department must reinstate the driving privilege and allow registration of a motor vehicle when the Title IV-D agency in IV-D cases or the depository or the clerk of the court in non-IV-D cases provides to the department an affidavit stating that:

(a) The person has paid the delinquency;

(b) The person has reached a written agreement for payment with the Title IV-D agency or the obligee in non-IV-D cases;

(c) A court has entered an order granting relief to the obligor ordering the reinstatement of the license and motor vehicle registration; ~~or~~

(d) The person has complied with the subpoena, order to appear, order to show cause, or similar order;

(e) The person receives reemployment assistance or unemployment compensation pursuant to chapter 443;

(f) The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income or Social Security Disability Insurance programs;

(g) The person receives temporary cash assistance pursuant to chapter 414; or

(h) The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.

(3) The department shall not be held liable for any license or vehicle registration suspension resulting from the discharge of its duties under this section.

(4) This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not

apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under chapter 320, except for the transfer of registrations which includes the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(8)(b).

Section 19. Section 322.059, Florida Statutes, is amended to read:

322.059 Mandatory surrender of suspended driver ~~driver's~~ license and registration.—A ~~Any~~ person whose driver ~~driver's~~ license or registration has been suspended as provided in s. 322.058 must immediately return his or her driver ~~driver's~~ license and registration to the Department of Highway Safety and Motor Vehicles. The department shall invalidate the digital proof of driver license issued pursuant to s. 322.032 for such person. If such person fails to return his or her driver ~~driver's~~ license or registration, a ~~any~~ law enforcement agent may seize the license or registration while the driver ~~driver's~~ license or registration is suspended.

Section 20. Subsection (1) of section 322.12, Florida Statutes, is amended to read:

322.12 Examination of applicants.—

(1) It is the intent of the Legislature that each ~~every~~ applicant for an original driver ~~driver's~~ license in this state be required to pass an examination pursuant to this section. However, the department may waive the knowledge, endorsement, and skills tests for an applicant who is otherwise qualified and who surrenders a valid driver ~~driver's~~ license from another state or a province of Canada, or a valid driver ~~driver's~~ license issued by the United States Armed Forces, if the driver

applies for a Florida license of an equal or lesser classification. An ~~Any~~ applicant who:

(a) ~~Who~~ Fails to pass the initial knowledge test incurs a $10 fee for each subsequent test. Of the $10 fee, $6 shall be retained by the tax collector if the knowledge test is conducted by the tax collector, and the remaining $4 shall~~, to~~ be deposited into the Highway Safety Operating Trust Fund. All knowledge test fees incurred by an applicant taking the knowledge test with a third-party provider or administered at a state facility shall be deposited into the Highway Safety Operating Trust Fund. ~~Any applicant~~

(b) ~~Who~~ Fails to pass the initial skills test incurs a $20 fee for each subsequent test. Of the $20 fee, $15 shall be retained by the tax collector if the skills test is conducted by the tax collector, and the remaining $5 shall~~, to~~ be deposited into the Highway Safety Operating Trust Fund. All skills test fees incurred by an applicant taking the skills test with a third-party provider or administered at a state facility shall be deposited into the Highway Safety Operating Trust Fund. ~~A person who~~

(c) Seeks to retain a hazardous-materials endorsement, pursuant to s. 322.57(1)(d), must pass the hazardous-materials test~~,~~ upon surrendering his or her commercial driver ~~driver's~~ license~~,~~ if the person has not taken and passed the hazardous-materials test within 2 years before applying for a commercial driver ~~driver's~~ license in this state.

Section 21. Subsection (1) of section 322.15, Florida Statutes, is amended to read:

322.15 License to be carried and exhibited on demand;

fingerprint to be imprinted upon a citation.—

(1) Every licensee shall have his or her driver ~~driver's~~ license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon the demand of a law enforcement officer or an authorized representative of the department. A licensee may display digital proof of driver license as provided in s. 322.032 in lieu of a physical driver license.

Section 22. Paragraphs (e) and (f) of subsection (1) of section 322.21, Florida Statutes, are amended to read:

322.21 License fees; procedure for handling and collecting fees.—

(1) Except as otherwise provided herein, the fee for:

(e) A replacement driver license issued pursuant to s. 322.17 is $25. Of this amount, $7 shall be deposited into the Highway Safety Operating Trust Fund or retained by the tax collector if issued by a tax collector that has completed the transition of driver licensing services, and $18 shall be deposited into the General Revenue Fund. ~~Beginning July 1, 2015, or upon completion of the transition of driver license issuance services, if the replacement driver license is issued by the tax collector, the tax collector shall retain the $7 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the General Revenue Fund.~~

(f) An original, renewal, or replacement identification card issued pursuant to s. 322.051 is $25, except that an applicant who presents evidence satisfactory to the department

that he or she is homeless as defined in s. 414.0252(7) or his or her annual income is at or below 100 percent of the federal poverty level is exempt from such fee. Funds collected from ~~these~~ fees for original, renewal, or replacement identification cards shall be distributed as follows:

1. For an original identification card issued pursuant to s. 322.051, the fee ~~is $25. This amount~~ shall be deposited into the General Revenue Fund.

2. For a renewal identification card issued pursuant to s. 322.051 ~~the fee is $25. Of this amount~~, $6 shall be deposited into the Highway Safety Operating Trust Fund, and $19 shall be deposited into the General Revenue Fund.

3. For a replacement identification card issued pursuant to s. 322.051, the fee is $25. Of this amount, $9 shall be deposited into the Highway Safety Operating Trust Fund or retained by the tax collector if issued by a tax collector that has completed the transition of driver licensing services, and $16 shall be deposited into the General Revenue Fund. ~~Beginning July 1, 2015, or upon completion of the transition of the driver license issuance services, if the replacement identification card is issued by the tax collector, the tax collector shall retain the $9 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the General Revenue Fund.~~

Section 23. Section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(1)(a) The department may purchase, lease, exchange, or

otherwise acquire any land, property interests, ~~or~~ buildings, or other improvements, including personal property within such buildings or on such lands, necessary to secure or use ~~utilize~~ transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System, on the State Park Road System, in a rail corridor, or in a transportation corridor designated by the department. Such property shall be held in the name of the state.

(b) The department may accept donations of any land, ~~or~~ buildings, or other improvements, including personal property within such buildings or on such lands with or without such conditions, reservations, or reverter provisions as are acceptable to the department. Such donations may be used as transportation rights-of-way or to secure or use ~~utilize~~ transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in a transportation corridor designated by the department.

(c) If ~~When~~ lands, buildings, or other improvements are needed for transportation purposes, but are held by a federal, state, or local governmental entity and used ~~utilized~~ for public purposes other than transportation, the department may compensate the entity for such properties by providing functionally equivalent replacement facilities. The provision ~~providing~~ of replacement facilities under this subsection may only be undertaken with the agreement of the governmental entity affected.

(d) The department may contract pursuant to s. 287.055 for auction services used in the conveyance of real or personal

property or the conveyance of leasehold interests under subsections (4) and (5). The contract may allow for the contractor to retain a portion of the proceeds as compensation for the contractor's services.

(2) A complete inventory shall be made of all real or personal property immediately upon possession or acquisition. Such inventory must ~~shall~~ include ~~an itemized listing of all appliances, fixtures, and other severable items;~~ a statement of the location or site of each piece of realty, structure, or severable item~~; and the serial number assigned to each~~. Copies of each inventory shall be filed in the district office in which the property is located. Such inventory shall be carried forward to show the final disposition of each item of property, both real and personal.

(3) The inventory of real property that ~~which~~ was acquired by the state after December 31, 1988, that ~~which~~ has been owned by the state for 10 or more years, and that ~~which~~ is not within a transportation corridor or within the right-of-way of a transportation facility shall be evaluated to determine the necessity for retaining the property. If the property is not needed for the construction, operation, and maintenance of a transportation facility~~,~~ or is not located within a transportation corridor, the department may dispose of the property pursuant to subsection (4).

(4) The department may convey ~~sell~~, in the name of the state, any land, building, or other property, real or personal, which was acquired under ~~the provisions of~~ subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation

facility. ~~With the exception of any parcel governed by paragraph (c), paragraph (d), paragraph (f), paragraph (g), or paragraph (i), the department shall afford first right of refusal to the local government in the jurisdiction of which the parcel is situated.~~ When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than $10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). ~~in the following manner:~~

(a) If the ~~value of the~~ property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives ~~is $10,000 or less as determined by department estimate, the department may negotiate the sale~~.

(b) If ~~the value of~~ the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity ~~exceeds $10,000 as determined by department estimate, such property may be sold to the highest bidder~~

~~through receipt of sealed competitive bids, after due advertisement, or by public auction held at the site of the improvement which is being sold~~.

(c) If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive at least its investment in such property or the department's current estimate of value, whichever is lower. It is expressly intended that this benefit be extended only to persons actually displaced by the project. Dispositions to any other person must be for at least the department's current estimate of value~~, in the discretion of the department, public sale would be inequitable, properties may be sold by negotiation to the owner holding title to the property abutting the property to be sold, provided such sale is at a negotiated price not less than fair market value as determined by an independent appraisal, the cost of which shall be paid by the owner of the abutting land. If negotiations do not result in the sale of the property to the owner of the abutting land and the property is sold to someone else, the cost of the independent appraisal shall be borne by the purchaser; and the owner of the abutting land shall have the cost of the appraisal refunded to him or her. If, however, no purchase takes place, the owner of the abutting land shall forfeit the sum paid by him or her for the independent appraisal. If, due to action of the department, the property is removed from eligibility for sale, the cost of any appraisal prepared shall be refunded to the owner of the abutting land~~.

(d) If the department determines that the property requires significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero ~~property acquired for use as a borrow pit is no longer needed, the department may sell such property to the owner of the parcel of abutting land from which the borrow pit was originally acquired, provided the sale is at a negotiated price not less than fair market value as determined by an independent appraisal, the cost of which shall be paid by the owner of such abutting land~~.

(e) If, at the discretion of the department, a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the department's current estimate of value ~~the department begins the process for disposing of the property on its own initiative, either by negotiation under the provisions of paragraph (a), paragraph (c), paragraph (d), or paragraph (i), or by receipt of sealed competitive bids or public auction under the provisions of paragraph (b) or paragraph (i), a department staff appraiser may determine the fair market value of the property by an appraisal~~.

~~(f) Any property which was acquired by a county or by the department using constitutional gas tax funds for the purpose of a right-of-way or borrow pit for a road on the State Highway System, State Park Road System, or county road system and which is no longer used or needed by the department may be conveyed~~

~~without consideration to that county. The county may then sell such surplus property upon receipt of competitive bids in the same manner prescribed in this section.~~

~~(g) If a property has been donated to the state for transportation purposes and the facility has not been constructed for a period of at least 5 years and no plans have been prepared for the construction of such facility and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.~~

~~(h) If property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.~~

~~(i) If property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive no less than its investment in such properties or fair market value, whichever is lower. It is expressly intended that this benefit be extended only to those persons actually displaced by such project. Dispositions to any other persons must be for fair market value.~~

~~(j) If the department determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 5 years to offset the market value in establishing a value for disposal of the property, even~~

~~if that value is zero.~~

(5) The department may convey a leasehold interest for commercial or other purposes, in the name of the state, to any land, building, or other property, real or personal, which was acquired under ~~the provisions of~~ subsection (1). However, a lease may not be entered into at a price less than the department's current estimate of value. The department's estimate of value shall be prepared in accordance with department procedures, guidelines, and rules for valuation of real property, the cost of which shall be paid by the party seeking the lease of the property.

(a) A lease may be through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest ~~The department may negotiate such a lease at the prevailing market value with the owner from whom the property was acquired; with the holders of leasehold estates existing at the time of the department's acquisition; or, if public bidding would be inequitable, with the owner holding title to privately owned abutting property, if reasonable notice is provided to all other owners of abutting property~~. The department may allow an outdoor advertising sign to remain on the property acquired~~,~~ or be relocated on department property, and such sign is ~~shall~~ not ~~be considered~~ a nonconforming sign pursuant to chapter 479.

(b) If, at the discretion of the department, a lease to a person other than an abutting property owner or tenant with a leasehold interest in the abutting property would be inequitable, the property may be leased to the abutting owner or tenant for at least the department's current estimate of value

~~All other leases shall be by competitive bid~~.

(c) A ~~No~~ lease signed pursuant to paragraph (a) may not ~~or paragraph (b) shall~~ be for ~~a period of~~ more than 5 years; however, the department may renegotiate or extend such a lease for an additional ~~term of~~ 5 years as the department deems appropriate ~~without rebidding~~.

(d) Each lease shall provide that, unless otherwise directed by the lessor, any improvements made to the property during ~~the term of~~ the lease shall be removed at the lessee's expense.

(e) If property is to be used for a public purpose, ~~including a fair, art show, or other educational, cultural, or fundraising activity,~~ the property may be leased without consideration to a governmental entity ~~or school board~~. A lease for a public purpose is exempt from the term limits in paragraph (c).

(f) Paragraphs (c) and (e) ~~(d)~~ do not apply to leases entered into pursuant to s. 260.0161(3), except as provided in such a lease.

(g) A ~~No~~ lease executed under this subsection may not be used ~~utilized~~ by the lessee to establish the ~~4 years'~~ standing required under ~~by~~ s. 73.071(3)(b) if the business had not been established for the specified number of ~~4~~ years on the date title passed to the department.

(h) The department may enter into a long-term lease without compensation with a public port listed in s. 403.021(9)(b) for rail corridors used for the operation of a short-line railroad to the port.

(6) ~~Nothing in~~ This chapter does not prevent ~~prevents~~ the

joint use of right-of-way for alternative modes of transportation if~~; provided that~~ the joint use does not impair the integrity and safety of the transportation facility.

(7) The department shall prepare the estimate of value provided under subsection (4) in accordance with department procedures, guidelines, and rules for valuation of real property. If the value of the property is greater than $50,000, as determined by the department estimate, the sale must be at a negotiated price of at least the estimate of value as determined by an appraisal prepared in accordance with department procedures, guidelines, and rules for valuation of real property, the cost of which shall be paid by the party seeking the purchase of the property. If the estimated value is $50,000 or less, the department may use a department staff appraiser or obtain an independent appraisal ~~required by paragraphs (4)(c) and (d) shall be prepared in accordance with department guidelines and rules by an independent appraiser who has been certified by the department. If federal funds were used in the acquisition of the property, the appraisal shall also be subject to the approval of the Federal Highway Administration.~~

(8) As used in this section, the term ~~A~~ "due advertisement" means ~~under this section is~~ an advertisement in a newspaper of general circulation in the area of the improvements of at least ~~not less than~~ 14 calendar days before ~~prior to~~ the date of the receipt of bids or the date on which a public auction is to be held.

(9) The department, with the approval of the Chief Financial Officer, may ~~is authorized to~~ disburse state funds for real estate closings in a manner consistent with good business

practices and in a manner minimizing costs and risks to the state.

(10) The department may ~~is authorized to~~ purchase title insurance if ~~in those instances where~~ it determines ~~is determined~~ that such insurance is necessary to protect the public's investment in property being acquired for transportation purposes. The department shall adopt procedures to be followed in making the determination to purchase title insurance for a particular parcel or group of parcels which, at a minimum, shall specify ~~set forth~~ criteria that ~~which~~ the parcels must meet.

(11) This section does not modify the requirements of s. 73.013.

Section 24. Subsection (2) of section 337.251, Florida Statutes, is amended, present subsections (3) through (10) of that section are redesignated as subsections (4) through (11), respectively, and a new subsection (3) is added to that section, to read:

337.251 Lease of property for joint public-private development and areas above or below department property.—

(2) The department may request proposals for the lease of such property or, if the department receives a proposal for ~~to negotiate~~ a lease of a particular department property which it desires to consider, the department ~~it~~ shall publish a notice in a newspaper of general circulation at least once a week for 2 weeks~~,~~ stating that it has received the proposal and will accept~~, for 60 days after the date of publication,~~ other proposals for lease of such property for 120 days after the date of publication ~~use of the space~~. A copy of the notice must be

mailed to each local government in the affected area. The department shall establish by rule an application fee for the submission of proposals pursuant to this section. The fee must be sufficient to pay the anticipated costs of evaluating the proposals. The department may engage the services of private consultants to assist in the evaluations. Before approval, the department shall determine that the proposed lease:

(a) Is in the public's best interest;

(b) Does not require that state funds be used; and

(c) Has adequate safeguards in place to ensure that additional costs are not borne and service disruptions are not experienced by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease.

(3) The department shall provide an independent analysis of a proposed lease which demonstrates the cost-effectiveness and overall public benefit at the following times:

(a) Before moving forward with the procurement; and

(b) Before awarding the contract if the procurement moves forward.

Section 25. Paragraphs (a) and (b) of subsection (3), paragraph (a) of subsection (4), and paragraph (c) of subsection (11) of section 339.175, Florida Statutes, are amended to read:

339.175 Metropolitan planning organization.—

(3) VOTING MEMBERSHIP.—

(a) The voting membership of an M.P.O. shall consist of at least ~~not fewer than~~ 5 but not ~~or~~ more than 25 ~~19~~ apportioned members, with the exact number ~~to be~~ determined on an equitable geographic-population ratio basis ~~by the Governor~~, based on an

agreement among the affected units of general-purpose local government and the Governor, as required by federal ~~rules and~~ regulations. ~~The Governor,~~ In accordance with 23 U.S.C. s. 134, the Governor may also allow ~~provide for~~ M.P.O. members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area which ~~that~~ do not have members on the M.P.O. With the exception of instances in which all of the county commissioners in a single-county M.P.O. are members of the M.P.O. governing board, county commissioners ~~commission members~~ shall compose at least ~~not less than~~ one-third of the M.P.O. governing board membership. A multicounty M.P.O. may satisfy this requirement by any combination of county commissioners from each of the counties constituting the M.P.O.~~, except for an M.P.O. with more than 15 members located in a county with a 5-member county commission or an M.P.O. with 19 members located in a county with no more than 6 county commissioners, in which case county commission members may compose less than one-third percent of the M.P.O. membership, but all county commissioners must be members. All~~ Voting members shall be elected officials of general-purpose local governments, one of whom may represent a group of general-purpose local governments through an entity created by an M.P.O. for that purpose. ~~except that~~ An M.P.O. may include, as part of its apportioned voting members, a member of a statutorily authorized planning board, an official of an agency that operates or administers a major mode of transportation, or an official of Space Florida. As used in this section, the term "elected officials of a general-purpose local government" excludes ~~shall exclude~~ constitutional officers, including

sheriffs, tax collectors, supervisors of elections, property appraisers, clerks of the court, and similar types of officials. County commissioners shall compose not less than 20 percent of the M.P.O. membership if an official of an agency that operates or administers a major mode of transportation has been appointed to an M.P.O.

(b) In metropolitan areas in which authorities or other agencies have been or may be created by law to perform transportation functions and are or will be performing transportation functions that are not under the jurisdiction of a general-purpose local government represented on the M.P.O., such authorities or other agencies may ~~they shall~~ be provided voting membership on the M.P.O. In all other M.P.O.s in which ~~M.P.O.'s where~~ transportation authorities or agencies are to be represented by elected officials from general-purpose local governments, the M.P.O. shall establish a process by which the collective interests of such authorities or other agencies are expressed and conveyed.

(4) APPORTIONMENT.—

(a) Each M.P.O. shall review the composition of its membership in conjunction with the decennial census, as prepared by the United States Department of Commerce, Bureau of the Census, and with the agreement of the Governor and the affected general-purpose local government units that constitute the existing M.P.O., reapportion the membership as necessary to comply with subsection (3) ~~The Governor shall, with the agreement of the affected units of general-purpose local government as required by federal rules and regulations, apportion the membership on the applicable M.P.O. among the~~

~~various governmental entities within the area~~. At the request of a majority of the affected units of general-purpose local government comprising an M.P.O., the Governor and a majority of units of general-purpose local government serving on an M.P.O. shall cooperatively agree upon and prescribe who may serve as an alternate member and a method for appointing alternate members, who may vote at any M.P.O. meeting that he or she ~~an alternate member~~ attends in place of a regular member. The method must ~~shall~~ be set forth as a part of the interlocal agreement describing the M.P.O. ~~M.P.O.'s~~ membership or in the ~~M.P.O.'s~~ operating procedures and bylaws of the M.P.O. The governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting advisers to the M.P.O. governing board. Additional nonvoting advisers may be appointed by the M.P.O. as deemed necessary; however, to the maximum extent feasible, each M.P.O. shall seek to appoint nonvoting representatives of various multimodal forms of transportation not otherwise represented by voting members of the M.P.O. An M.P.O. shall appoint nonvoting advisers representing major military installations located within the jurisdictional boundaries of the M.P.O. upon the request of the aforesaid major military installations and subject to the agreement of the M.P.O. All nonvoting advisers may attend and participate fully in governing board meetings but may not vote or be members of the governing board. ~~The Governor shall review the composition of the M.P.O. membership in conjunction with the decennial census as prepared by the United States Department of Commerce, Bureau of the Census, and reapportion it as necessary~~

~~to comply with subsection (3).~~

(11) METROPOLITAN PLANNING ORGANIZATION ADVISORY COUNCIL.—

(c) The powers and duties of the Metropolitan Planning Organization Advisory Council are to:

1. Enter into contracts with individuals, private corporations, and public agencies.

2. Acquire, own, operate, maintain, sell, or lease personal property essential for the conduct of business.

3. Accept funds, grants, assistance, gifts, or bequests from private, local, state, or federal sources.

4. Establish bylaws by action of its governing board providing procedural rules to guide its proceedings and consideration of matters before the council, or, alternatively, ~~and~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring powers or duties upon it.

5. Assist M.P.O.s ~~M.P.O.'s~~ in carrying out the urbanized area transportation planning process by serving as the principal forum for collective policy discussion pursuant to law.

6. Serve as a clearinghouse for review and comment by M.P.O.s ~~M.P.O.'s~~ on the Florida Transportation Plan and on other issues required to comply with federal or state law in carrying out the urbanized area transportation and systematic planning processes instituted pursuant to s. 339.155.

7. Employ an executive director and such other staff as necessary to perform adequately the functions of the council, within budgetary limitations. The executive director and staff are exempt from part II of chapter 110 and serve at the direction and control of the council. The council is assigned to the Office of the Secretary of the Department of Transportation

for fiscal and accountability purposes, but it shall otherwise function independently of the control and direction of the department.

8. Adopt an agency strategic plan that prioritizes steps ~~provides the priority directions~~ the agency will take to carry out its mission within the context of the state comprehensive plan and any other statutory mandates and directives ~~directions given to the agency~~.

Section 26. Paragraph (a) of subsection (1) and subsections (4) and (5) of section 339.2821, Florida Statutes, are amended to read:

339.2821 Economic development transportation projects.—

(1)(a) The department, in consultation with the Department of Economic Opportunity and Enterprise Florida, Inc., may make and approve expenditures and contract with the appropriate governmental body for the direct costs of transportation projects. The Department of Economic Opportunity and the Department of Environmental Protection may formally review and comment on recommended transportation projects, although the department has final approval authority for any project authorized under this section.

(4) A contract between the department and a governmental body for a transportation project must:

(a) Specify that the transportation project is for the construction of a new or expanding business and specify the number of full-time permanent jobs that will result from the project.

(b) Identify the governmental body and require that the governmental body award the construction of the particular

transportation project to the lowest and best bidder in accordance with applicable state and federal statutes or rules unless the transportation project can be constructed using existing local governmental employees within the contract period specified by the department.

(c) Require that the governmental body provide the department with ~~quarterly~~ progress reports. Each ~~quarterly~~ progress report must contain:

1. A narrative description of the work completed and whether the work is proceeding according to the transportation project schedule;

2. A description of each change order executed by the governmental body;

3. A budget summary detailing planned expenditures compared to actual expenditures; and

4. The identity of each small or minority business used as a contractor or subcontractor.

(d) Require that the governmental body make and maintain records in accordance with accepted governmental accounting principles and practices for each progress payment made for work performed in connection with the transportation project, each change order executed by the governmental body, and each payment made pursuant to a change order. The records are subject to financial audit as required by law.

(e) Require that the governmental body, upon completion and acceptance of the transportation project, certify to the department that the transportation project has been completed in compliance with the terms and conditions of the contract between the department and the governmental body and meets the minimum

construction standards established in accordance with s. 336.045.

(f) Specify that ~~the department transfer~~ funds will not be transferred to the governmental body unless construction has begun on the facility of the ~~not more often than quarterly, upon receipt of a request for funds from the governmental body and consistent with the needs of the transportation project. The governmental body shall expend funds received from the department in a timely manner. The department may not transfer funds unless construction has begun on the facility of a~~ business on whose behalf the award was made. The grant award shall be terminated if construction of the transportation project does not begin within 4 years after the date of the initial grant award ~~A contract totaling less than $200,000 is exempt from the transfer requirement~~.

(g) Require that funds be used only on a transportation project that has been properly reviewed and approved in accordance with the criteria provided ~~set forth~~ in this section.

(h) Require that the governing board of the governmental body adopt a resolution accepting future maintenance and other attendant costs occurring after completion of the transportation project if the transportation project is constructed on a county or municipal system.

(5) For purposes of this section, Space Florida may serve as the governmental body or as the contracting agency for a ~~transportation~~ project within a spaceport territory as defined by s. 331.304.

Section 27. Subsection (5) of section 526.141, Florida Statutes, is amended to read:

526.141 Self-service gasoline stations; attendants; regulations.—

(5)(a) Every full-service gasoline station offering self-service at a lesser cost shall require an attendant employed by the station to dispense gasoline from the self-service portion of the station to any motor vehicle properly displaying an exemption parking permit as provided in s. 316.1958 or s. 320.0848 or a license plate issued pursuant to s. 320.084, s. 320.0842, s. 320.0843, or s. 320.0845 when the person to whom such permit has been issued is the operator of the vehicle and such service is requested. Such stations shall prominently display a decal no larger than 8 square inches on the front of all self-service pumps clearly stating the requirements of this subsection and the penalties applicable to violations of this subsection. The Department of Agriculture and Consumer Services shall enforce this requirement.

(b) By July 1, 2016, a full-service gasoline station offering self-service at a lesser cost shall prominently display, in addition to the decal required under paragraph (a), a decal that is blue, is at least 15 square inches in size, and clearly displays the international symbol of accessibility shown in s. 320.0842, the telephone number of the station, and the words “Call for Assistance.” The Department of Agriculture and Consumer Services shall adopt rules to implement and enforce this paragraph. This paragraph preempts and supersedes local government laws and regulations pertaining to the provision of fueling assistance by a self-service gasoline station to a motor vehicle operator described in paragraph (a).

(c) ~~(b)~~ Violation of paragraph (a) is a misdemeanor of the

second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 28. Paragraph (a) of subsection (1) of section 562.11, Florida Statutes, is amended to read:

562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.—

(1)(a)1. A ~~It is unlawful for any~~ person may not ~~to~~ sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this subparagraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this subparagraph a second or subsequent time within 1 year after a prior conviction commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. In addition to any other penalty imposed for a violation of subparagraph 1., the court may order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver ~~driver's~~ license or driving privilege, as provided in s. 322.057, of any person who violates subparagraph 1. This subparagraph does not apply to a licensee, as defined in s. 561.01, who violates subparagraph 1. while acting within the scope of his or her license or an employee or agent of a licensee, as defined in s. 561.01, who violates subparagraph 1. while engaged within the scope of his or her employment or agency.

3. A court that withholds the issuance of, or suspends or revokes, the driver license or driving privilege of a person pursuant to subparagraph 2. may direct the Department of Highway Safety and Motor Vehicles to issue the person a license for driving privilege restricted to business purposes only, as defined in s. 322.271, if he or she is otherwise qualified.

Section 29. Section 812.0155, Florida Statutes, is amended to read:

812.0155 Suspension of driver ~~driver's~~ license following an adjudication of guilt for theft.—

(1) Except as provided in subsections (2) and (3), the court may order the suspension of the driver ~~driver's~~ license of each person adjudicated guilty of any misdemeanor violation of s. 812.014 or s. 812.015, regardless of the value of the property stolen. ~~The court shall order the suspension of the driver's license of each person adjudicated guilty of any misdemeanor violation of s. 812.014 or s. 812.015 who has previously been convicted of such an offense.~~ Upon ordering the suspension of the driver ~~driver's~~ license of the person adjudicated guilty, the court shall forward the driver ~~driver's~~ license of the person adjudicated guilty to the Department of Highway Safety and Motor Vehicles in accordance with s. 322.25.

(a) The first suspension of a driver ~~driver's~~ license under this subsection shall be for a period of up to 6 months.

(b) A second or subsequent suspension of a driver ~~driver's~~ license under this subsection shall be for 1 year.

(2) The court may revoke, suspend, or withhold issuance of a driver ~~driver's~~ license of a person less than 18 years of age who violates s. 812.014 or s. 812.015 as an alternative to

sentencing the person to:

(a) Probation as defined in s. 985.03 or commitment to the Department of Juvenile Justice, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

(b) Probation as defined in s. 985.03, commitment to the Department of Juvenile Justice, probation as defined in chapter 948, community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

(3) As used in this subsection, the term "department" means the Department of Highway Safety and Motor Vehicles. A court that revokes, suspends, or withholds issuance of a driver ~~driver's~~ license under subsection (2) shall:

(a) If the person is eligible by reason of age for a driver ~~driver's~~ license or driving privilege, direct the department to revoke or withhold issuance of the person's driver ~~driver's~~ license or driving privilege for not less than 6 months and not more than 1 year;

(b) If the person's driver ~~driver's~~ license is under suspension or revocation for any reason, direct the department to extend the period of suspension or revocation by not less than 6 months and not more than 1 year; or

(c) If the person is ineligible by reason of age for a driver ~~driver's~~ license or driving privilege, direct the department to withhold issuance of the person's driver ~~driver's~~ license or driving privilege for not less than 6 months and not

more than 1 year after the date on which the person would otherwise become eligible.

(4) Subsections (2) and (3) do not preclude the court from imposing any sanction specified or not specified in subsection (2) or subsection (3).

(5) A court that suspends the driver license of a person pursuant to subsection (1) may direct the Department of Highway Safety and Motor Vehicles to issue the person a license for driving privilege restricted to business purposes only, as defined in s. 322.271, if he or she is otherwise qualified.

Section 30. Section 832.09, Florida Statutes, is amended to read:

832.09 Suspension of driver license after warrant or capias is issued in worthless check case.—

(1) The court may order the suspension or revocation of the driver license of a ~~Any~~ person who is being prosecuted for passing a worthless check in violation of s. 832.05, who fails to appear before the court and against whom a warrant or capias for failure to appear is issued by the court if the person has previously been adjudicated guilty of a violation of s. 832.05 ~~shall have his or her driver's license suspended or revoked pursuant to s. 322.251~~.

(2) Within 5 working days after the court orders the suspension of a driver license pursuant to subsection (1) ~~issuance of a warrant or capias for failure to appear~~, the clerk of the court in the county where the warrant or capias is issued shall notify the Department of Highway Safety and Motor Vehicles by the most efficient method available of the action of the court.

Section 31. Section 2 of chapter 85-364, Laws of Florida, as amended by section 2 of chapter 95-382, Laws of Florida, is amended to read:

Section 2. All tolls collected shall ~~first~~ be used first for the payment of annual operating and maintenance costs and second to discharge the current bond indebtedness related to the Pinellas Bayway. Thereafter, tolls collected shall be used to establish a reserve construction account to be used, together with interest earned thereon, by the department ~~for the construction of Blind Pass Road, State Road 699 improvements, and~~ for Phase II of the Pinellas Bayway improvements. ~~A portion of the tolls collected shall first be used specifically for the construction of the Blind Pass Road improvements, which improvements consist of widening to four lanes the Blind Pass Road, State Road 699, from 75th Avenue north to the approach of the Blind Pass Bridge, including necessary right-of-way acquisition along said portion of Blind Pass Road, and intersection improvements at 75th Avenue and Blind Pass Road in Pinellas County. Said improvements shall be included in the department's current 5-year work program. Upon completion of the Blind Pass Road improvements, the tolls collected shall be used, together with interest earned thereon, by the department for~~ Phase II of the Pinellas Bayway improvements consists~~, which improvements consist~~ of widening to four lanes the Pinellas Bayway from State Road 679 west to Gulf Boulevard, including necessary approaches, bridges, and avenues of access. Upon completion of the Phase II improvements, the department shall continue to collect tolls on the Pinellas Bayway for purposes of reimbursing the department for all accrued maintenance costs for

the Pinellas Bayway.

Section 32. The Department of Highway Safety and Motor Vehicles is directed to develop a plan of action that addresses motor vehicle registration holds placed pursuant to ss. 316.1001, 316.1967, and 318.15, Florida Statutes, for presentation to the Legislature by February 1, 2015. The plan must, at a minimum, include a methodology for applicants whose names have been placed on the list of persons who may not be issued a license plate or revalidation sticker under s. 320.03(8), Florida Statutes, to rectify the cause of the hold through the payment of any outstanding toll, parking ticket, fine, and any other fee at the point of collection of the registration fee.

Section 33. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations	
BILL:	CS/CS/SB 1272
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Brandes
SUBJECT:	Transportation and Motor Vehicles
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/CS**
2.	Carey	Martin	ATD	**Fav/CS**
3.	Carey	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1272 makes a number of revisions to transportation laws administered by the Florida Department of Transportation (FDOT) and to motor vehicle laws administered by the Department of Highway Safety & Motor Vehicles (DHSMV). More specifically, the bill:

- Extends the Florida Transportation Commission's (FTC) oversight of expressway and bridge authorities to the Mid-Bay Bridge Authority (MBBA) and repeals provisions relating to the Florida Statewide Passenger Rail Commission (FSPRC).
- Revises provisions to allow for reinstatement of driving privileges for certain cases regarding driver license suspensions due to unpaid child support.
- Requires the court to make a specific determination of whether a driver license can be issued for business purposes only (BPO) when suspending a driver license for unpaid child support and convictions of certain drug offenses.
- Repeals the requirement that a court order the driver license suspension of persons who fail to appear on worthless check charges, and permits and applies the suspension only to persons previously found guilty of bad check charges.
- Requires the Department of State, in consultation with the Department of Law Enforcement, to establish a retention schedule for records generated through the use of an automated license plate recognition system.
- Prohibits a bus from stopping to load or unload passengers in a manner that restricts the progression of traffic on a roadway.

- Provides that the prohibition against unattended vehicles left with the engine running does not apply to a vehicle started by remote control while the ignition, transmission, and doors are locked.
- Includes devices used to improve driver safety in the current exception for devices that may be mounted on windshields.
- Expands those authorized to conduct testing of autonomous vehicle technology, expands potential testing locations, and removes the requirement that a human operator be in the vehicle when testing on a closed course or designated testing roadways.
- Limits the DHSMV's authority to withhold the issuance of a vehicle registration when a notice to surrender has been submitted by a lienor to the DHSMV to the vehicle identified the notice. The bill allows the registered owner to dispute a notice to surrender by bringing a civil action and provides procedural requirements for disposition of a challenge.
- Directs the DHSMV to develop a plan of action that addresses motor vehicle registration holds for outstanding tolls, parking tickets, and fines.
- Enhances accountability of organizations receiving specialty license plate revenues by:
  - Providing guidelines for revenue use and compliance determinations;
  - Extending the DHSMV's period within which to determine compliance with the guidelines from 90 to 120 days;
  - Providing guidelines for corrective actions; and
  - Authorizing the DHSMV to commission an independent consultant to assist in determining compliance.
- Extends the moratorium on issuance of new specialty license plates from July 1, 2014, to July 1, 2016.
- Authorizes individuals with amateur radio licenses recognized, as opposed to issued, by the Federal Communications Commission (FCC) to apply for a special license plate.
- Requires the DHSMV to develop an optional digital proof of driver license.
- Authorizes tax collectors who have completed the transition of driver license services to retain certain fees related to license issuance that are currently deposited into the Highway Safety Operating Trust Fund.
- Exempts applicants who are homeless or whose annual income is at or below 100% of the federal poverty level from the $25 fee for an identification card.
- Revises the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way.
- Amends the process that the FDOT must follow relating to proposals to enter into a lease of FDOT property for joint public-private development.
- Revises state law relating to the designation, voting membership, and reapportionment of metropolitan planning organizations (MPOs).
- Authorizes Enterprise Florida, Inc., to be a consultant to the FDOT for consideration of economic development transportation projects.
- Requires full-service gasoline stations offering self-service at a lesser cost to meet certain decal display requirements and preempts local government laws and regulations relating to the provision of fueling assistance by a self-service gas station.
- Authorizes the FDOT to program and pay maintenance costs related to the Pinellas Bayway.
- Revises the requirements for special markings on driver licenses and state identification cards for persons designated as sexual predators or sexual offenders, including persons so designated or subject to registration under the laws of another jurisdiction.

- Provides a $100,000 appropriation to the DHSMV for costs incurred with the issuance or reissuance of driver licenses and identification cards with a special marking of "SEXUAL PREDATOR".
- Removes a preemption barring a county or municipality from adopting or enforcing ordinances to expand accessibility, safety or availability of fueling assistance for persons displaying the international symbol of accessibility at full-service gas stations offering self-service .Makes various editorial and grammatical changes and corrects cross-references necessitated by changes made elsewhere in the bill.

The bill has not been reviewed by the Revenue Estimating Conference. However, staff estimates a recurring negative impact to the General Revenue Fund, a recurring negative impact to the Highway Safety Operating Trust Fund, and a positive fiscal impact to county Tax Collectors beginning in Fiscal Year 2014-15. See Section V.

II. Present Situation:

The present situation is discussed below in Effect of Proposed Changes in this bill analysis.

III. Effect of Proposed Changes:

Florida Transportation Commission Oversight of Mid-Bay Bridge Authority and Passenger Rail Systems

Current Situation

The Florida Transportation Commission (FTC) is charged with periodically reviewing the status of the state transportation system, including rail and other component modes, and with recommending improvements to the system to the Governor and the Legislature. In 2007, the Legislature passed HB 985 amending s. 20.23(2)(b)8, F.S., to expand the oversight role of the FTC to include monitoring the efficiency, productivity, and management of the various tolling authorities created under ch. 348 and ch. 349, F.S. The Commission conducts periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

The Mid-Bay Bridge Authority (MBBA)[1] is the governing body of an independent special district in Okaloosa County for the purpose of planning, constructing, operating, and maintaining a bridge over the Choctawhatchee Bay. The MBBA operates the tolled, 3.6-mile long Mid-Bay Bridge across the Choctawhatchee Bay and approaches (SR 293) on the northern and southern sides of the bridge. The facility, which connects SR 20 with U.S. 98 east of Destin, is a link between Interstate 10 and U.S. 98 and provides a more direct route to tourists and residents between northern and southern Okaloosa and Walton Counties.[2] No state entity is currently charged with monitoring the efficiency, productivity, and management of the MBBA.

[1] Re-created by special act, ch. 2000-411, L.O.F.
[2] Senate Issue Brief 2012-208, *Cost Effectiveness of Regional Expressway and Bridge Authorities,* (September 2011).

In 2009, the Florida Legislature created the Florida Statewide Passenger Rail Commission (FSPRC) to monitor, advise, and review publicly-funded passenger rail systems[3], resulting in oversight responsibilities that overlap with or are redundant to those of the FTC. Specifically, and similar to the duty of the FTC, the Legislature charged the FSPRC in s. 20.23(3)(b)1., F.S., with the function of:

> Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. …This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.

The Florida Department of Transportation (FDOT) provides administrative support and service to the FSPRC. The commission last met in July 2012. Six of the nine seats on the FSPRC are currently vacant. The remaining three seats expire in August of 2014. [4]

Effect of Proposed Changes

Section 1 amends s. 20.23, F.S., expanding the FTC oversight responsibilities to include monitoring the efficiency, productivity, and management of the MBBA. The bill also amends s. 20.23, F.S., to repeal the Florida Statewide Passenger Rail Commission. Overlapping oversight of publicly-funded passenger rail systems is eliminated and remains solely with the FTC.

Section 3 of the bill revises s. 110.205, F.S., to modernize terms and correct cross-references required by statutory changes made in section 1 of the bill.

Non-Driving-Related Driver License Suspensions

Current Situation

Driver license revocations and suspensions either terminate or temporarily, respectively, withdraw one's driving privilege.[5] Initially, specific provisions addressed poor driving behavior. Driver's license suspensions and revocations are now commonly used as a means to punish individuals engaged in illegal behavior unrelated to the operation of a motor vehicle. Consequently, a substantial amount of time and resources are expended by state and local entities to deal with and process non-driving-related suspensions and revocations.

Current law provides penalties for driving with a suspended, revoked, or canceled license. Unknowing infractions are a moving violation, punishable as provided in ch. 318, F.S. Knowing infractions are punishable as a second degree misdemeanor on the first conviction (up to 30 days

[3] The only publicly funded passenger rail system in the state (Tri-Rail) then and now existing is operated by the South Florida Regional Transportation Authority, which is established in ch. 343, F.S. However, the first phase (31 miles) of a commuter rail project, SunRail,– an eventual 61-mile stretch of existing rail freight tracks through Orange, Seminole, Volusia and Osceola counties and the City of Orlando -- is under construction, and service could begin as early as 2014.
[4] The FDOT email, February 24, 2014, on file in the Senate Transportation Committee.
[5] Section 322.01, F.S., *Definitions.*

in jail and a $500 fine); a first degree misdemeanor on the second conviction (up to 60 days in jail and a $1,000 fine); and a third degree felony on the third or subsequent conviction (up to five years in prison and a $5,000 fine). Additionally, the arresting officer is authorized to impound the vehicle of a driver arrested for criminal violations under certain conditions.[6]

Failure to Appear in Court for Worthless Checks: Section 832.09, F.S., provides for the suspension of a driver license after a warrant or capias is issued in a worthless check case. A person prosecuted for passing a worthless check who fails to appear before the court and against whom a warrant or capias for failure to appear is issued by the court must have his or her driver license suspended or revoked. Within five working days after issuance of the warrant or capias, the DHSMV has to be notified of the court's action.

Misdemeanor Theft: Section 812.0155, F.S., provides for the suspension of a driver license for misdemeanor theft. For a first time offender, the court is required to order suspension of the driver's license of a person adjudicated guilty of a misdemeanor violation, regardless of the value of property stolen. The first suspension for misdemeanor theft is for six months and subsequent suspensions are for one year each.

Drug Offenses: Section 322.055, F.S., provides for the automatic suspension of the driver license for conviction of drug related offenses, including when a motor vehicle is involved. The clerks of court are required to report to the DHSMV all convictions for the possession or sale of, trafficking, or conspiracy to possess, sell, or traffic controlled substances. This includes persons:

- 18 years of age or older;
- 18 years of age or older and eligible by reason of age for a driver's license or privilege;
- 18 years or older driver already under suspension or revocation for any reason; and
- 18 years of age or older and ineligible by reason of age for a driver's license.

Federal Child Support Enforcement: The Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, also known as the Welfare Reform Act of 1996, enacted section 466(a)(16) of the Social Security Act, which requires states to have (and use in appropriate cases) the authority to withhold, suspend or restrict the use of driver licenses of individuals owing past due child support. The United States Department of Health and Human Services Office of Child Support Enforcement (OCSE) administers a federal-state program that provides funding to child support agencies in the states to help develop, manage and operate their programs effectively and according to federal law.

State and Local Entities: At the state level, the DHSMV is responsible for issuing driver licenses and administering driver license examinations. The department is also responsible for suspending and revoking driver licenses, which includes providing notice required by law and communicating license reinstatement requirements. The role of other state agencies is to notify the department when individuals violate laws that can be sanctioned by driver license suspension. For example, if a parent is delinquent on child support payments, the Department of Revenue (DOR) notifies DHSMV to start the process of driver license suspension.

[6] Section 322.34(8)(b), F.S.

At the local level, clerks of court are responsible for collecting financial obligations imposed by the court for criminal and traffic offenses, as well as maintaining court records and ensuring that court orders are carried out. Section 322.245, F.S., requires clerks of court to notify the DHSMV when a driver fails to pay court-imposed financial obligations for criminal offenses. Failure to pay can result in a license suspension. In addition, clerks of court provide information to the DHSMV about any court actions that require the suspension or revocation of driver licenses. On behalf of DHSMV, clerks of court and county tax collectors may reinstate driving privileges and collect reinstatement fees.

The Office of Program Policy Analysis & Government Accountability (OPPAGA) completed a report on non-driver related suspensions and revocations in February 2014, which indicates that most suspensions for delinquent child support and truancy are reinstated fairly quickly, usually within the year. The DOR officials maintain that the threat of losing a driver license is one of the best compliance tools it has to enforce child support orders. The DOR collected approximately $101.8 million in delinquent child support payments in Fiscal Year 2012-2013 from parents who received a notice of suspension or whose license was suspended.[7]

Common Reasons for Non-Driving-Related Driver License Suspensions or Revocations[8]

Fiscal Year 2012-2013 Non-Driving-Related Suspensions or Revocations	**Number**
Failure to pay court financial obligations	70,216
Failure to pay child support	68,223
Conviction of drug-related offense	19,024
Non-compliance with school attendance	4,020
Failure to appear-worthless check	1,829
Conviction of theft offense	462
Other non-driving suspensions or revocations	3,493
Total	167,267

The OPPAGA report further states legislative alternatives based on its findings for non-driving-related suspensions or revocations:

- Leave driver license suspension for failure to appear in court on a worthless check, and for a conviction of misdemeanor theft offense charge, at the court's discretion;
- Explore modifying or opting out of Florida's implementation of the federal mandate requiring driver license suspension for drug convictions;
- Codify current DOR child support enforcement practices regarding the use of driver license suspensions;
- Evaluate the effectiveness of driver license suspension for school truancy.

Effect of Proposed Changes

Section 2 amends s. 61.13016, F.S., to provide additional justifications available to a person whose driver license has been suspended for failure to comply with child support responsibilities

[7] Office of Program Policy Analysis & Government Accountability, Florida Legislature, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, Report No.14-07 (Feb. 2014).
[8] Id,

to delay the court's order of driver license suspension. The bill allows the court to withhold suspension of the driver license of persons who can demonstrate any of the following:

- The receipt of reemployment assistance or unemployment compensation;
- The receipt of benefits under the federal Supplemental Security Income or Social Security Disability Insurance program;
- The receipt of temporary cash assistance pursuant to ch. 414, F.S.; or
- That he or she is making payments in accordance with a confirmed bankruptcy plan under chapters 11, 12, or 13, F.S., of the U. S. Bankruptcy Code, 11 U.S.C. ss. 101 et seq.

Section 16 amends s. 322.055, F.S., to reduce the allowable driver license revocation or suspension period of a person convicted of possession, sale, or trafficking in a controlled substance from two years to one year. When a court orders such a revocation or suspension, the court must specifically make a determination as to whether a license may be issued allowing driving for business purposes only.

Section 17 amends s. 322.058, F.S., authorizing the DHSMV to reinstate the driver license of a person whose license was suspended for failure to comply with child support responsibilities upon proof of the additional justifications as provided in Section 2 of the bill.

Section 28 of the bill amends s. 562.11, F.S., to require a court ordering the suspension or revocation of the driver license of a person convicted of selling, giving, or serving alcohol to a person under 21, to specifically make a determination as to whether a license may be issued allowing driving for business purposes only.

Section 29 of the bill amends s. 812.0155, F.S., to require a court ordering the suspension or revocation of the driver license of a person adjudicated guilty of theft, to specifically make a determination as to whether a license may be issued allowing driving for business purposes only.

Section 30 of the bill amends s. 832.09, F.S., to allow, rather than mandate, a court to order suspension or revocation of the driver license of a person who is being prosecuted for passing a worthless check, failing to appear before the court and against whom a warrant or capias for failure to appear is issued by the court, if such person has previously been adjudicated guilty passing worthless checks under s. 832.05, F.S.

Automated License Plate Recognition Systems

Current Situation

An automated license plate recognition system (ALPRS) uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. The extracted information can be used with or without a database for many applications, such as electronic payment systems (toll payment, parking fee payment), and freeway and arterial monitoring systems for real-time traffic speed projections. This captured information (i.e., license plate number, date, time, and location) is collected, and may be matched to personal identifying databases and sometimes pooled into regional sharing systems. As a result, enormous

databases may house the location and travel patterns of thousands, if not millions of individual motorists.

As an operational tool for law enforcement, ALPRSs scan the license plates of moving or parked vehicles while either mounted on a moving patrol car or attached to a fixed location, such as a toll plaza or free-standing installation. Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features.

Effect of Proposed Changes

Section 4 creates s. 316.0778, F.S., to define "automated license plate recognition system" to mean "a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data." The Department of State, in consultation with the Department of Law Enforcement, is directed to establish a retention schedule for records containing images and data generated through the use of an automated license plate recognition system, including a maximum period that records may be retained. Entities in possession of such records will be required to retain them in compliance with the schedule.

Loading and Unloading of Bus Passengers

Current Situation

Section 316.0815, F.S., requires that a driver of a vehicle yield the right-of-way to a publicly owned transit bus traveling in the same direction when the bus driver has signaled and the bus is reentering the traffic flow from a specifically designated pullout bay. However, specifically designated pullout bays are not available at every location at which such buses stop for the purpose of loading and unloading bus passengers, and stops are routinely made in the main-traveled portion of a roadway.

Section 316.083, F.S., authorizes drivers to overtake and pass a vehicle proceeding in the same direction and requires the driver of the overtaken vehicle to give way to the right in favor of the overtaking vehicle, without increasing vehicle speed, until completely passed by the overtaking vehicle. This requirement applies to the drivers of buses stopped in the main-traveled portion of a roadway to load and unload passengers.

Effect of Proposed Changes

Section 5 creates s. 316.0817, F.S., notwithstanding any other law, to prohibit a bus from stopping to load or unload passengers in a manner that impedes, blocks, or otherwise restricts the progression of traffic on the main-traveled portion of a roadway if there is another reasonable means for the bus to stop parallel to the travel lane and safely load and unload passengers. "Reasonable means" is defined for purposes of the new section to mean "sufficient unobstructed pavement or a designated turn lane that is sufficient in length to allow the safe loading and unloading of passengers parallel to the travel lane." These provisions do not apply to school

buses. Enforcement of these provisions may be difficult, as the definition of "reasonable means" may be subject to differing interpretations. Private owners of "sufficient unobstructed pavement" that may be adjacent and parallel to the travel lane may object to damage incurred to the pavement should use of the owner's pavement occur.

Unattended Motor Vehicles/Remote Starters

Current Situation

Section 316.1975(2)(d), F.S., prohibits a vehicle from standing unattended with the engine running and ignition not in locked position with the key removed. A violation of this section is a noncriminal traffic infraction punishable as a nonmoving violation.[9] This section does not apply to the operator of:

- An authorized emergency vehicle equipped with antitheft device prohibiting the vehicle from being driven;
- A licensed delivery truck being used for business; or
- A solid waste or recovered materials collection vehicle.

Remote keyless systems are devices that allow a vehicle to be started up without requiring either the driver or the key to be physically inside the automobile. This is accomplished through a component that is connected to the ignition system and fitted with a radio receiver. When that component receives a signal from a paired transmitter, which typically takes the form of a key fob, it activates the starter motor. Through the advancement of technology, some newer vehicle models can be started by way of Smartphones.

Many vehicle models currently on the market and in use on the roadways are capable of being started by remote control. The current exceptions from the prohibition against allowing a vehicle to stand unattended without first stopping the engine, locking the ignition, and removing the key do not include a vehicle that is started by remote control while the ignition, transmission, and doors are locked.

Effect of Proposed Changes

Section 6 amends s. 316.1975, F.S., to provide that the prohibition of leaving a vehicle unattended with the engine running does not apply to a vehicle started by remote control while the ignition, transmission, and doors are locked.

Vehicle Windshields/Global Positioning System Devices

Current Situation

Current law requires that every motor vehicle, except a motorcycle or implement of husbandry, be equipped with a windshield.[10] Operation of a vehicle with any sign, sun-screening material, product, or covering attached to, in, or on the windshield is prohibited, except for the following:

- A certificate or other paper required to be displayed by law.

[9] Section 318.18, F.S. The penalty for a nonmoving violation is $30.
[10] Section 316.2952(1), F.S.

- Sun-screening material along a strip at the top of the windshield, if the material is transparent and does not encroach upon the driver's direct forward viewing area.
- A device, issued by a governmental entity or its designee, used for electronic toll payments.
- A global positioning system (GPS) or similar device used to obtain navigation or routing information while the motor vehicle is being operated.[11]

Many public and private entities utilize GPS and camera-based devices to monitor fleet operations and provide additional sensory-based safety features.[12] Suppliers of such devices report multiple benefits, such as improved vehicle maintenance, driver safety, and delivery times, as well as reduced insurance costs and overall reduction in operational expenses. Concern exists that the current exception for GPS or similar devices on vehicle windshields for purposes other than navigation or routing may not allow these devices to be placed on windshields.

Effect of Proposed Changes

Section 7 amends s. 316.2952(2), F.S., to specifically include in the current exception for GPS devices on windshields, those devices used to improve driver safety as a component of safety or provide driver feedback.

Autonomous Vehicle Testing

Current Situation

Section 316.86, F.S., currently authorizes operation of autonomous, or "self-driving," vehicles on roads in this state by employees, contractors, or other persons designated by manufacturers of autonomous technology for the purpose of testing the technology. The law requires that a human operator be present in the autonomous vehicle with the ability to monitor the vehicle's performance and if necessary to intervene. This provision does not apply when the autonomous vehicle is being tested on a closed course. An entity is required to submit to the DHSMV an instrument of insurance, surety bond, or proof of self-insurance in the amount of $5 million before performing testing in this state.

Effect of Proposed Changes

Section 8 amends s. 316.86, F.S., to expand those authorized to conduct testing to research organizations associated with accredited educational institutions. The requirement that a human be present in the vehicle is removed in certain circumstances and testing locations are expanded. A human operator must retain the ability to monitor the vehicle's performance and intervene, if necessary, unless the vehicle is being tested or demonstrated on a closed course *or any other testing roadway as designated by the FDOT and the applicable local government or authority.*

[11] Section 316.2952(2), F.S.
[12] See, *e.g.*, the following supplier websites: http://www.networkfleet.com/; http://www.fleetistics.com/; http://www.fmsgps.com/frontend/.

Motor Vehicle Registration Holds

Current Situation

Section 320.02, F.S., requires every owner or operator of a motor vehicle, driving on roads of Florida to register his or her vehicle in this state with the DHSMV or its authorized agent.

Section 320.1316, F.S., allows a lienor to notify the DHSMV when a liened vehicle is not surrendered as ordered and has otherwise been disposed of, concealed, removed, or destroyed by the registered owner (lienee.) When the DHSMV receives notice from a lienor, the registered vehicle's owners name is placed on the list of persons who may not be issued a license plate or revalidation sticker for any vehicle. If the unsurrendered vehicle is jointly-owned, the name of each registered owner is placed on the list and no vehicle may be registered by any of the named individuals.

The lienor must maintain proof that written notice to surrender the vehicle was sent to each registered owner pursuant to s. 320.1316(1), F.S. A revalidation sticker or replacement license plate may not be issued for any vehicle until that person's name is no longer on the list or until the person presents documentation from the lienor that the unsurrendered vehicle has been surrendered to the lienor.

Citing insufficient due process to the affected registered owners, the DHSMV has declined to enforce the provisions of s. 320.1316, F.S., since its revision in 2010.

Effect of Proposed Changes

Sections 9 and 14 amend ss. 320.02 and 320.1316, F.S., respectively, to require that when an applicant's name appears on a list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate after a written notice to surrender a vehicle or vessel was submitted to the DHSMV by a lienor as provided in s. 320.1316, F.S., the DHSMV shall withhold renewal of registration or replacement registration of *only* the motor vehicle identified in the notice.

The registered owner of the vehicle may dispute a notice to surrender or his or her inclusion on the list by bringing a civil action in the county in which he or she resides. If the registered owner challenges the refusal to issue a license plate under s. 320.03(8), F.S., the court shall determine whether the lienor has a recorded lien on the vehicle or vessel and whether the lienor properly made a demand for the surrender in accordance with this section. The court shall determine whether good cause exists, which is limited to proof that:

- The vehicle was traded in to a licensed motor vehicle dealer before the date of the surrender demand;
- The lien of the vehicle in question has been paid in full, and demand satisfied;
- There is ongoing litigation relating to the validity or enforceability of the lien;
- The petitioner no longer has possession of the vehicle or vessel, and the loss of possession occurred under the operation of law (if the loss of possession did not occur under the operation of law, and a third party has physical possession of the vehicle or vessel, good cause is not proven).

If the petitioner establishes good cause for failure to surrender the vehicle or vessel, the court shall order removal of the petitioner's name(s) from the list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate, and reasonable attorney fees and costs shall be awarded.

However, if the court finds that the demand for surrender was properly made by the lienor and the petitioner fails to establish good cause for the failure to surrender the vehicle or vessel, the court shall award the lienor reasonable attorney fees and costs.

The lienor must maintain proof that written notice to surrender the vehicle or vessel was sent to each registered owner pursuant to s. 320.1316(1), F.S. Only the vehicle identified on the notice to surrender may be denied issuance of a revalidation sticker or replacement license plate, until the person's name no longer appears on the list, having presented the proper documentation from the lienor informing that the vehicle or vessel has been surrendered to the lienor, or a court orders that person's name removed from the list.

S**ection 32** of the bill also directs the DHSMV to develop a plan of action that addresses motor vehicle registration holds placed pursuant to ss. 316.1001 (toll violations), 316.1967 (parking violations), and 318.15, F.S., (civil penalty compliance), for presentation to the Legislature by February 1, 2015. The plan must include a methodology for applicants whose names have been placed on the list of persons who may be issued a license plate or revalidation sticker to rectify the cause of the hold through the payment of any outstanding toll, parking ticket, fine, and any other fee at the point of collection of the registration fee.

Specialty License Plates/Organization Accountability/Moratorium

Current Situation

Presently, there are 120 specialty license plates available for purchase, and four in the pre-sale phase. Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Pre-Sale Requirements: The approved specialty license plate organization must presell a minimum of 1,000 vouchers within 24 months before the DHSMV can begin manufacturing the specialty license plate. If, at the end of the 24-month presale period, the minimum sales requirement has not been met, the DHSMV will de-authorize the specialty plate, discontinue development, and discontinue issuance of the presale voucher.

Department Costs Defrayed: The DHSMV collects annual use fees from the sale of the specialty license plates and from these proceeds retains a sufficient amount to defray costs for inventory, distribution, and other direct costs associated with the specialty license plate program. The remainder of the proceeds collected are distributed as provided by law.[13]

[13] Section 320.08056(7), F.S.

Discontinuance of Specialty Plates: The DHSMV is required to discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter must be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates (collegiate plates are not included).[14]

Audits and Attestation of Specialty Plates: Any organization that receives specialty license plate revenue and does not have an annual financial audit must attest annually, under penalties of perjury, that the annual use fee proceeds were used as stipulated under the law. The attestation report must be submitted in accordance with rules promulgated by the Auditor General. An organization's annual attestation must be submitted to the DHSMV within nine months after the end of each fiscal year. The DHSMV has 90 days after receiving an organization's audit or attestation to determine which recipients of revenues have not complied. If the determination is made that an organization has not complied or has failed to use revenues as stipulated, the DHSMV must discontinue the distribution of that organization's revenues. If the organization fails to comply within 12 months after the revenue is withheld, the proceeds from the relevant specialty license plate are deposited into the Highway Safety Operating Trust Fund to offset the DHSMV's cost of issuing the plate. In lieu of discontinuing an organization's revenue, the DHSMV may opt to request the Legislative Budget Commission to approve redirecting previously collected and future revenues to an organization capable of performing the same or similar purposes as the original recipient.

Moratorium: Currently, there is a statutory moratorium on the issuance of new specialty license plates. Section 45, ch. 2008-176, L.O.F., as amended by s. 21, ch. 2010-223, L.O.F., provides that "[e]except for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, F. S., prior to October 1, 2008, or which was included in a bill filed during the 2008 legislative session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2014.

Effect of Proposed Changes

Section 10 amends s. 320.08056(10), F.S., to define the terms "administrative costs" and "administrative expenses," for purposes of that section and s. 320.08058, F.S., to mean those expenditures which are considered as direct operating costs of the organization. These costs include but are not limited to:

- Administrative salaries of employees and officers of the organization who do not, or cannot prove, via detailed daily time sheets, that they actively participate in program activities;
- Bookkeeping and support services of the organization;
- Office supplies and equipment not directly utilized for the specified programs(s);
- Travel time, per diem, mileage reimbursement, and lodging expenses not directly associated with a specified program purpose;

[14] Section 320.08056(8)(a), F.S.

- Paper, printing, envelopes, and postage not directly associated with a specified program purpose; or
- Miscellaneous expenses such as food, beverage, entertainment, and conventions.

Utilization of annual use fees from specialty license plates for these costs and expenses are limited by the provisions of s. 320.08058, F.S., which establish maximum percentages of the use fees that may be applied to such costs and expenses for each plate.

Section 11 amends s. 320.08062, F.S., to provide the DHSMV 120 days after receiving an organization's audit or attestation to determine whether recipients are in compliance, and authorizes the DHSMV to commission an independent actuarial consultant, or an independent certified public accountant, who has expertise in nonprofit and charitable organizations, to determine compliance. The DHSMV is required to discontinue the distribution of revenues to an organization that fails to submit the required documentation, but may resume distribution of the revenues upon receipt of the required documentation.

The bill requires the DHSMV to inform such organizations of its findings and direct the changes necessary to bring the organization into compliance. If the organization's officers sign under penalties of perjury that they acknowledge the findings of the DHSMV and attest that they have taken corrective action and will submit to a follow-up review, the DHSMV may resume the distribution of revenues. However, if an organization fails to comply with the directives of the DHSMV to correct actions as outlined, the revenue distributions must be discontinued until completion of the next regular session of the Legislature.

The DHSMV is required to notify the Legislature by the first day of the regular session of noncompliant organizations. If the Legislature does not provide direction to the organization and the DHSMV regarding the status of the undistributed revenues, the DHSMV must discontinue the plate, and the revenue from the plate must be immediately deposited into the Highway Safety Operating Trust Fund.

Section 12 amends s. 45 of ch. 2008-176, L.O.F., as amended by s. 21 of ch. 2010-223, L.O.F., to extend the current moratorium on issuance of new specialty license plates to July 1, 2016.

Amateur Radio Operators/Special License Plate

Current Situation

Amateur radio or ham radio call signs are unique identifiers for licensed amateur radio operators. In the United States, amateur radio licensing is governed by the Federal Communications Commission (FCC) which issues licenses to operate amateur stations for personal use to individuals once they demonstrate an understanding of both pertinent FCC regulations and knowledge of radio station operation and safety considerations. Canadian call signs are regulated internationally by the International Telecommunication Union (ITU) as well as nationally by Industry Canada, which regulates all aspects of amateur radio in the country. It assigns call signs, issues amateur radio licenses, conducts exams, allots frequency spectrum, and monitors the radio waves.

In 1952, Canada and the United States signed a Reciprocal Operating Agreement treaty. In the terms of the agreement, visiting amateurs may operate in the host country in accordance with the rules and regulations of the host country.

Under s. 320.083, F.S., persons who hold a valid amateur radio license *issued* by the FCC, may have their radio's call sign assigned to a special license plate for an additional fee. However, persons whose call sign was assigned in Canada by the ITU, may not.

Effect of Proposed Changes

Section 13 amends s. 320.083(1), F.S., to allow persons with amateur radio licenses *recognized* by the FCC to apply for a special license plate with their call sign assigned. This will allow Canadian, and potentially other long term visitors who register vehicles in the state to display their amateur radio call signs on their Florida license plate.

Digital Proof of Driver License

Current Situation

Section 322.059, F.S., requires that any person whose driver license or registration has been suspended must return that driver license immediately to the DHSMV. If he or she fails to return their license or registration, a law enforcement agent may seize the driver's license.

Section 322.15, F.S., requires that every licensee must have his or her driver license in their possession at all times while operating a motor vehicle and shall display that license upon demand of a law enforcement officer or an authorized representative of the DHSMV.

Effect of Proposed Changes

Section 15 creates s. 322.032, F.S., to require the DHSMV to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license and to authorize the DHSMV to contract with private entities to develop the system. The digital proof of driver license system must be in such a format that will allow law enforcement to verify the authenticity of digital driver licenses. A digital proof of driver license is available only after a person has satisfied all requirements of ch. 322, F.S., and has received a physical driver license. The DHSMV is authorized to promulgate rules to ensure valid authentication of the digital driver licenses by law enforcement.

Manufacturing a false digital proof of driver license is a felony of the third degree, punishable by a term of imprisonment not exceeding five years,[15] a possible additional fine not exceeding $5,000,[16] or imposition under certain circumstances of an extended term of imprisonment for habitual felony offenders, habitual violent felony offenders, three-time felony offenders, and violent career criminals.[17] Possession of a false digital proof of driver license is a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days.[18]

[15] Section 775.082, F.S.
[16] Section 775.083, F.S.
[17] Section 775.084, F.S.
[18] See supra note 9.

Section 18 amends s. 322.059, F.S., to require the DHSMV to invalidate the digital proof of driver license issued under this chapter if the motor vehicle operator was driving on a suspended license or registration.

Section 21 amends s. 322.15, F.S., to provide that a digital proof of driver license as provided in this chapter may be displayed in lieu of a physical driver license.

Driver License Fees/Tax Collectors

Current Situation

Current law requires that driver license issuance services be assumed by the tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution by June 30, 2015.[19] The implementation of this provision is directed to be according to the schedule outlined in the Driver License Transition Plan submitted to the Legislature on February 1, 2011. The DHSMV prepared the report in cooperation with the Florida Tax Collectors and the Florida Association of Counties.

An applicant for an original driver license must pass an initial knowledge test and an initial skills test.[20] A $10 fee is assessed for each subsequent knowledge test and a $20 fee for each subsequent skills test, when an applicant has failed to pass the initial test. The revenues collected from these fees are deposited in the Highway Safety Operating Trust Fund.

Driver license fees are authorized in s. 322.21, F.S. An original or renewal commercial driver license is $78; and, an original, renewal or extension of a Class E driver license is $48. The revenues from these fees are deposited into the General Revenue Fund. Other fees established include replacement driver licenses and original, replacement, and renewal identification cards. A replacement driver license is $25. Of this amount, $7 is deposited into the Highway Safety Operating Trust Fund and $18 is deposited into the General Revenue Fund.

An identification card is $25.[21] Of this amount, the fee distribution varies depending on the type of issuance. The fee for an original identification card is deposited into the General Revenue Fund. From the fee for a renewal identification card, $6 is deposited into the Highway Safety Operating Trust Fund and $19 into the General Revenue Fund; and for a replacement identification card, $9 into the Highway Safety Operating Trust Fund and $16 is deposited into the General Revenue Fund.

County tax collectors who provide driver license services are authorized to charge a service fee of $6.25 in addition to other fees set forth in ch. 322, F.S., relating to driver license issuance. Beginning July 1, 2015, or upon completion of the transition of driver license issuance services, a tax collector who issues a replacement driver license or replacement identification card may retain the portion the fee that is currently deposited in the Highway Safety Operating Trust Fund, $7 or $9 respectively.

[19] Section 322.135(5), F.S.
[20] Section 322.12, F.S.
[21] Section 322.051, F.S.

Effect of Proposed Changes

Section 19 amends s. 322.12, F.S., to revise the distribution of fees related to driver license examinations fees to allow the tax collector who conducts the examination to retain a portion of the fee as follows:

- Of the $10 fee for each subsequent initial knowledge test, $6 is retained by the tax collector if the tax collector conducted the test, and the remaining $4 is deposited into the Highway Safety Operating Trust Fund.
- Of the $20 fee for each subsequent initial skills test, $15 is retained by the tax collector if the tax collector conducted the test, and the remaining $5 is deposited into the Highway Safety Operating Trust Fund.
- In both cases, all fees incurred by an applicant with a third-party provider or administered at a state facility are deposited into the Highway Safety Operating Trust Fund.

Section 22 amends s. 322.21, F.S., to authorize county tax collectors to retain $7 of the $25 fee for a replacement driver license, and $9 of the $25 fee for a replacement identification card, otherwise deposited into the Highway Safety Operating Trust Fund, if the tax collector has completed the transition of driver licensing services.

The bill also exempts an applicant who presents satisfactory evidence that he or she is homeless or that his or her annual income is at or below 100 percent of the federal poverty level[22] from the $25 fee for an original, renewal, or replacement identification card issued pursuant to s. 322.051, F.S.

Sexual Predator/Offender Registration

Current Situation

Florida's registry laws subject sexual predators and offenders to registration and notification requirements. All qualifying sexual predators or offenders are listed on a public registry web site maintained by the Florida Department of Law Enforcement (FDLE).[23] The web site can also provide the public with email notifications when an offender moves nearby.

The sexual predator designation in Florida is reserved for relatively few sex offenders. As of September 11, 2013, a total of 43,640 persons located in Florida were required to register as a sexual predator or sexual offender. Of that number, courts designated 21 percent as sexual predators.

Designation of a Sexual Predator or Sexual Offender

A person is designated a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or

[22] https://www.healthcare.gov/glossary/federal-poverty-level-FPL/ (last visited 2/27/14)
[23] The web site is located online at: http://offender.fdle.state.fl.us/offender/homepage.do

- Is subject to civil commitment.[24]

A person is designated as a sexual offender by the FDLE if the person:

- Has been convicted of a qualifying sex offense and released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Is a Florida resident and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the victim was 14 years of age or older.[25]

Registration Obligations of Sexual Predators/offenders

- Registrants must report to their local sheriff's office and provide a photograph, personal identifying information, driver's license/state ID number, social security number, residence address (including transient addresses), employer information, email addresses, instant message names, and crime information.[26]
- Sexual predators and some sexual offenders must report to the local sheriff's office quarterly; other sexual offenders report bi-annually.[27]
- Sexual predators and offenders must update their driver's license or identification card within 48 hours after any change of residence or name change.[28]
- Generally, sexual predators and offenders are subject to lifetime registration. Some sexual offenders may petition for removal of registration requirements if they have been released from the latest sanction for at least 25 years, remain arrest-free, and do not have an adult conviction for a disqualifying offense. Persons convicted of a qualifying sex offense as a young adult may also petition for removal of registration requirements.[29]
- Sexual predators are prohibited from working or volunteering at any place where children regularly congregate.[30]

Licensing for Sexual Predators

A driver license or identification card issued by the DHSMV to persons designated as sexual predators under s. 775.21, F.S.,[31] is required to have the marking "775.21, F.S.", on the front of his or her license or card.

[24] Section 775.21(4), F.S.
[25] Section 943.0435(1), F.S.
[26] Sections 775.21(6) and 943.0435(2), F.S.
[27] Sections 775.21(8)(a) and 943.0435(14)(a), F.S.
[28] Sections 775.21(6)(g)1. and 943.0435(4)(a), F.S.
[29] Sections 775.21(6)(l) and 943.0435(11), F.S.
[30] Section 775.21(3)(b)5., F.S.
[31] The Florida Sexual Predators Act.

Effect of Proposed Changes

Section 20 amends s. 322.141, F.S., to revise the required special markings on driver licenses or identification cards issued to persons designated as sexual predators or subject to registration as sexual offenders, including persons designated or subject to registration as such under the laws of another jurisdiction. A driver license or identification card issued to a person designated as a sexual predator under s. 775.21, F.S., is required to be marked on the front side of the card with "SEXUAL PREDATOR".

Disposal and Lease of Real and Personal Property

Current Situation

The FDOT is authorized to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings or other improvements necessary for rights-of-way for existing or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in an FDOT designated rail or transportation corridor. The FDOT may also accept donations of land, building, or other improvements for transportation rights-of-way and may compensate an entity by providing replacement facilities when the land, building, or other improvements are needed for transportation purposes but are held by a federal, state, or local governmental entity and used for public purposes other than transportation.[32]

The FDOT is required to conduct a complete inventory of all real or personal property immediately upon acquisition, including an itemized listing of all appliances, fixtures, and other severable items, a statement of the location or site of each piece of realty, structure, or severable item; and the serial number assigned to each.[33] The FDOT must evaluate the inventory of real property which has been owned for at least 10 years and which is not within a transportation corridor or the right-of-way of a transportation facility. If the property is not located within a transportation corridor or is not needed for a transportation facility, the FDOT is authorized to dispose of the property.[34] According to the FDOT, 85 percent of its currently-owned surplus property is valued at under $50,000.

Sale of Property: The FDOT is authorized to sell any land, building, or other real or personal property it acquired if the FDOT determines the property is not needed for a transportation facility.[35] The FDOT is required to first offer the property ("first right of refusal") to the local government in whose jurisdiction the property is located, with the exception of the following parcels:

- The FDOT may negotiate the sale of property, at no less than fair market value as determined by an independent appraisal, to the owner holding title to abutting property, if in the FDOT's discretion public sale would be inequitable.[36]

[32] Section 337.25(1), F.S.
[33] Section 337.25(2), F.S.
[34] Section 337.25(3), F.S.
[35] Section 337.25(4), F.S.
[36] Section 337.25(4)(c), F.S.

- The FDOT may sell property acquired for use as a borrow pit, at no less than fair market value, to the owner of abutting land from which the pit was originally acquired, if the pit is no longer needed.[37]
- The FDOT may convey to a county without consideration any property acquired by a county or by the FDOT using constitutional gas tax funds for a right-of-way or borrow pit for a road on the State Highway System, State Park Road System, or county road system if the property is no longer used or needed by the FDOT; and the county may sell the property on receipt of competitive bids.[38]
- A governmental entity may authorize re-conveyance to the original donor of property donated to the state for transportation purposes if the facility has not been constructed for at least five years, no plans have been prepared for construction of the facility, and the property is not located within a transportation corridor.[39]
- The FDOT may negotiate the sale of property as replacement housing if the property was originally acquired for persons displaced by transportation projects and if the state receives no less than its investment in such properties or fair market value, whichever is lower. This benefit extends only to persons actually displaced by a project, and dispositions to any other person must be for fair market value. [40]

Once the FDOT determines the property is not needed for a transportation facility and has extended and received rejection of required first rights of refusal, FDOT is also authorized to:

- Negotiate the sale of property if its value is $10,000 or less as determined by FDOT estimate;[41]
- Sell the property to the highest bidder through "due advertisement" of receipt of sealed competitive bids or by public auction if its value exceeds $10,000 as determined by the FDOT estimate;[42]
- Determine the fair market value of property through appraisal conducted by an FDOT appraiser, if the FDOT begins the process for disposing of property on its own initiative, either by authorized negotiation or by authorized receipt of sealed competitive bids or public auction;[43]
- Convey the property without consideration to a governmental entity if the property is to be used for a public purpose;[44]and
- Use the projected maintenance costs of the property over the next five years to offset the market value in establishing a value for disposal of the property, even if that value is zero, if the FDOT determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the FDOT to significant liability risks.[45]

[37] Section 337.25(4)(d), F.S.
[38] Section 337.25(4)(f), F.S.
[39] Section 337.25(4)(g), F.S.
[40] Section 337.25(4)(i), F.S.
[41] Section 337.25(4)(a), F.S.
[42] Section 337.25(4)(b), F.S.
[43] Section 337.25(4)(e), F.S.
[44] Section 337.25(4)(h), F.S.
[45] Section 337.25(4)(j), F.S.

Lease of Property: The FDOT is further authorized to convey a leasehold interest for commercial or other purposes to any acquired land, building, or other property, real or personal, subject to the following:[46]

- The FDOT may negotiate such a lease at the prevailing market value with the owner from whom the property was acquired; with the holders of leasehold estates existing at the time of the FDOT's acquisition; or, if public bidding would be inequitable, with the owner of privately owned abutting property, after reasonable notice to all other abutting property owners.[47]
- All other leases must be by competitive bid.[48]
- Such leases are limited to five years in duration, but the FDOT may renegotiate a lease for an additional five-year term without rebidding.[49]
- Each lease must require that any improvements made to the property during the lease term be removed at the lessee's expense.[50]
- If property is to be used for a public purpose, including a fair, art show, or other educational, cultural, or fundraising activity, the property may be leased without consideration to a governmental entity or school board.[51]
- No lease may be used by the lessee to establish the four years' standing required by eminent domain law if the business had not been established for four years on the date title passed to the FDOT.[52]
- The FDOT may enter into a long-term lease without compensation with certain public ports for rail corridors used for the operation of a short-line railroad to the port.[53]

The appraisals currently required under s. 337.25(4)(c) and (d), F.S., must be prepared in accordance with the FDOT guidelines and rules by an independent appraiser certified by the FDOT.[54] When "due advertisement" is required, an advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which a public auction is to be held satisfies the requirement.[55]

Effect of Proposed Changes

Section 23 amends s. 337.25, F.S., to revise the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way and to authorize the FDOT to contract for auction services used in the conveyance of real or personal property or leasehold interests and to authorize such contracts to allow the contractor to retain a portion of the proceeds as compensation.

The FDOT is authorized to "convey", rather than "sell" land, buildings, or other real or personal property after determining the property isn't needed for a transportation facility and to dispose of

[46] Section 337.25(5), F.S.
[47] Section 337.25(5)(a), F.S.
[48] Section 337.25(5)(b), F.S.
[49] Section 337.25(5)(c), F.S.
[50] Section 337.25(5)(d), F.S.
[51] Section 337.25(5)(e), F.S.
[52] Section 337.25(5)(g), F.S.
[53] Section 337.25(5)(h), F.S.
[54] Section 337.25(7), F.S.
[55] Section 337.25(8), F.S.

property through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the FDOT's best interest. Due advertisement is required for property valued at more than $10,000, and no property may be sold at less than fair market value except as specified. The FDOT is authorized, rather than required, to afford a right of first refusal to a political subdivision, or local government in which the parcel is located, except in conveyances when the property has been donated to the state for transportation purposes and a facility has not been constructed for at least 5 years, the property was originally required for replacement housing for persons displaced by transportation projects, or property which the FDOT has determined a sale to anyone other than the abutting land owner would be inequitable.

The FDOT is prohibited from conveying a leasehold interest at a price less than the FDOT's current estimate of value and specifies that a lease may be created through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the best interest by the FDOT. A lease shall not be for a period of more than 5 years, however, the FDOT may extend the lease for an additional 5 years without rebidding.

The FDOT is required to publish a notice when a proposal to lease property has been received, stating that a proposal has been received and that FDOT will accept other proposals for 120 days after the date of publication for lease of the property. The FDOT is authorized to establish, by rule, an application fee for the submission of the proposals.

The FDOT's estimate of value must be prepared in accordance with department procedures, guidelines, and rules for valuation of real property. If the value of the property exceeds $50,000, the sale or lease must be negotiated at a price not less than the estimated value determined by the FDOT.

This section does not modify the eminent domain requirement of s. 73.013, F.S.

Unsolicited Lease Proposals

Current Situation

Section 337.251, F.S., *Lease of property for joint public-private development and areas above or below department property*, authorizes the FDOT to request proposals for the lease of the FDOT property for joint public-private development or commercial development. The FDOT may also receive and consider unsolicited proposals for such uses. If the FDOT receives an unsolicited proposal to negotiate a lease, the FDOT must publish a notice in a newspaper of general circulation at least once a week for two weeks, stating that it has received the proposal and will accept, for 60 days after the date of publication, other proposals for use of the space. The FDOT must also mail a copy of the notice to each local government in the affected area.

Any unsolicited lease proposal must be selected based on competitive bidding, and the FDOT is authorized to consider such factors as the value of property exchanges, the cost of construction, and other recurring costs for the benefit of the FDOT by the lessee in lieu of direct revenue to the FDOT if such other factors are of equal value including innovative proposals to involve minority businesses. Before entering into any lease, the FDOT must determine that the property subject to the lease has a permanent transportation use related to the FDOT responsibilities, has the

potential for such future transportation uses, or constitutes airspace or subsurface rights attached to property having such uses, and is therefore not available for sale as surplus property.

Section 334.30, F.S., *Public-private transportation facilities*, authorizes the FDOT to lease certain toll facilities through public-private partnerships and also authorizes the FDOT to receive unsolicited proposals. That section directs the FDOT to establish by rule an application fee sufficient to pay the costs of evaluating a proposal. The FDOT is further authorized to engage the services of private consultants to assist in the evaluation.

Unlike s. 337.251, F.S., before approving a proposal, the FDOT must determine that the proposed project is in the public's best interest; would not require state funds to be used unless the project is on the State Highway System; would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default or cancellation of the agreement by the FDOT; would have adequate safeguards in place to ensure that the FDOT or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and would be owned by the FDOT upon completion or termination of the agreement.[56] In addition, before awarding a contract for lease of an existing toll facility through a public-private partnership, the FDOT is required to provide an independent analysis of the proposed lease that demonstrates the cost-effectiveness and overall public benefit.

If the FDOT receives an unsolicited proposal for a lease through a public-private partnership, the FDOT must publish a notice in the Florida Administrative Weekly and a newspaper of general circulation at least once a week for two weeks stating that the FDOT has received the proposal and will accept, for 120 days after the initial date of publication, other proposals for the same project purpose. The FDOT must also mail a copy of the notice to each local government in the affected area.

Effect of Proposed Changes

Section 24 amends s. 337.251(2), F.S., relating to the lease of property for joint public-private development, to:

- Require that if the FDOT receives a proposal for a lease (rather than to negotiate a lease) of particular property the FDOT desires to consider, it shall publish the currently required newspaper notice stating that the FDOT will accept for 120 (rather than 60) days other proposals for lease of the particular property;
- Direct the FDOT to establish by rule an application fee for the submission of proposals under s. 337.251, F.S., sufficient to pay the anticipated costs of evaluating the proposals;
- Authorize the FDOT to engage the services of private consultants to assist in the evaluations;
- Require the FDOT, before approval of any proposal, to determine that the proposed lease is in the public's best interest, does not require state funds to be used, and has adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease; and

[56] The ownership requirement in s. 334.30, F.S., would not, of course, apply to a lease arrangement under s. 337.251, F.S.

- Require the FDOT to provide an independent analysis of a proposed lease that demonstrates the cost-effectiveness and overall public benefit before moving forward with the procurement and before awarding the contract if the procurement moves forward.

These revisions make the process under s. 337.251, F.S., more similar to that under s. 334.30, F.S.

Metropolitan Planning Organizations

Current Situation

Based on census data, the U.S. Bureau of the Census designates urbanized areas throughout the state. Federal law and rule (23 U.S.C. 134 and 23 C.F.R 450 Part C) require a metropolitan planning organization (MPO) to be designated for each urbanized area[57] or group of contiguous urbanized areas. In addition, federal law and rules specify the requirements for a MPO transportation planning and programming activities. These requirements are updated after each federal transportation reauthorization bill enacted by Congress. State law also includes provisions governing MPO activities. Section 339.175, F.S., paraphrases or restates some key federal requirements. In addition, state law includes provisions that go beyond the federal requirements. For example, federal requirements regarding MPO membership are very general, while state law is more specific.

Section 339.175(2)(a)2., F.S., currently provides that designation of an MPO be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the population of the urbanized area; however, the unit of general-purpose local government that represents the central city or cities within the MPO jurisdiction, as defined by the United State Bureau of the Census, must be a party to such agreement. This language has been superseded by revisions to 23 U.S.C. 134(d) and 23 C.F.R. 450.310(b), which now require designation to be accomplished by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

An existing MPO may be re-designated by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the existing population in the area served, including the largest incorporated city.[58] Re-designation of an MPO is required whenever the existing MPO proposes to make a substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general-purpose local government served by the MPO, and the State; or a substantial change in the decision-making authority or responsibility of the MPO, or in decision-making procedures established under the MPO bylaws.[59]

[57] An urbanized area is defined by the U.S. Bureau of the Census and has a population of 50,000 or more.
[58] 23 C.F.R. 450.301(h) (2012).
[59] 23 C.F.R. 450.301(k) (2012).

Current law does not authorize more than 19 members on an MPO in cases when the MPO is re-designated as a result of the expansion of an MPO to include a new urbanized area or the consolidation of two or more MPOs, even if the membership is already at 19 members.

For both multicounty and single-county MPOs, current law requires that county commission members compose not less than one-third of the MPO governing board membership. All voting members must be elected officials of general-purpose local government.

MPOs are currently required to establish bylaws and adopt rules pursuant to the Administrative Procedures Act.

Effect of Proposed Changes

Section 25 amends s. 339.175, F.S., to:

- Revise state law superseded by federal law and rule by requiring that MPO designation occur by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the population, including the largest incorporated city, based on population, as named by the Bureau of the Census.
- Increase the voting membership from 19 to 25 members, which may provide more flexibility when membership apportionment plans are revised based on updated census data and new or expanded urbanized area boundaries, and could potentially benefit MPO consolidation.
- Provide that, with the exception of instances in which all of the county commissioners in a single-county MPO are members of the MPO governing board, county commissioners must compose at least one-third of the MPO governing board membership.
- Provide that a multicounty MPO may satisfy the one-third requirement by any combination of county commissioners from each of the counties constituting the MPO.
- Authorize general purpose local governments serving on an MPO to include one member who represents a group of general purpose local governments through an entity created by an MPO for that purpose. This would allow an entity created by an MPO that is composed of local government officials, such as an MPO-created committee consisting of local governments not on the MPO, to serve on an MPO.
- Authorize, rather than require, provision of governing board voting membership to authorities or other agencies that perform transportation functions but which are not under the jurisdiction of a general purpose local government. This provides MPO discretion to determine which authorities or other agencies should serve on an MPO governing board.
- Provide that each MPO is to review the composition of its membership after each decennial census and, as necessary, reapportion its membership with the Governor, to clarify that the MPO initiates the review and reapportionment of its governing board membership.
- Authorize MPOs to establish bylaws by action of its governing board providing procedural rules to guide its proceedings and consideration of matters before the council or, alternatively, adopt rules pursuant to the Administrative Procedures Act.

Economic Development Transportation Projects

Current Situation

Florida has a number of economic development incentive programs used to recruit industry to Florida or to persuade existing businesses to expand their operations. One such incentive exists

in what is commonly referred to as the Road Fund, which is funded by the State Transportation Trust Fund and used to assist local government in paying for highway or other transportation infrastructure improvements that will benefit a relocating or expanding company. The amount appropriated for this transfer varies from year to year. The Legislature in 2012 repealed s. 288.063, F.S., in which the Road Fund was statutorily placed, and created s. 339.2821, F.S. The revisions did not change the purpose of the Road Fund but simply moved oversight of the fund from the Florida Department of Economic Opportunity (FDEO) to the FDOT.[60]

The FDOT, in consultation with the FDEO, is authorized under the new section to make and approve expenditures and contract with the appropriate government body for the direct costs of transportation projects. Current law specifies that as part of the contractual agreement between the FDOT and a governmental body, the governmental body must provide FDOT with specified quarterly reports, the FDOT may only transfer funds on a quarterly basis, the governmental body must expend funds received in a timely manner, and the FDOT may only transfer funds after construction has begun on the facility of a business on whose behalf the award was made.

Effect of Proposed Changes

Section 26 amends s. 339.2821, F.S., to include Enterprise Florida, Inc., as an FDOT consultant in making and approving economic development transportation project contracts; provides authority for the FDOT to terminate a grant award if construction of the transportation project does not begin within four years after the date of the initial grant award; and expands the type of authorized transportation facility projects to include spaceports.

Gasoline Stations/Accessibility/Preemption of Regulation

Current Situation

People with disabilities may find it difficult or impossible to use the controls, hose, or nozzle of a self-serve gas pump. As a result, at stations that offer both self and full service, people with disabilities might have no choice but to purchase the more expensive gas from a full-serve pump. At locations with only self-serve pumps, people with disabilities might be unable to purchase gas at all. The Americans with Disabilities Act (ADA) requires self-serve gas stations to provide equal access to their customers with disabilities. If necessary to provide access, gas stations must:

- Provide refueling assistance upon the request of an individual with a disability. A service station or convenience store is not required to provide such service at any time that it is operating on a remote control basis with a single employee**,** but is encouraged to do so, if feasible.
- Let patrons know (e.g., through appropriate signs) that customers with disabilities can obtain refueling assistance by either honking or otherwise signaling an employee.
- Provide the refueling assistance without any charge beyond the self-serve price.[61]

[60] Budget Committee Final Analysis of SB 1998: http://www.flsenate.gov/Session/Bill/2012/1998/Analyses/M6TO2qtoNCs60=PL=Y=PL=DT9BT2bnWNo=%7C11/Public/Bills/1900-1999/1998/Analysis/s1998z2.TEDAS.PDF.

[61] http://www.ada.gov/gasserve.htm (last visited 2/26/14)

Section 526.141, F.S., requires every full-service gasoline station that offers gasoline at a lower price to provide an attendant to dispense gasoline from the self-service portion of the station to any motorist properly displaying an exemption parking permit as provided in s. 316.1958, F.S.,[62] or a license plate bearing the international accessibility symbol, and the operator is the person to whom such permit was issued. Such stations shall prominently display a decal no larger than 8 square inches on the front of all self-service pumps clearly stating the requirements and applicable penalties for violations. Violation of this section is a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days[63] or by a $500 fine.[64]

Effect of Proposed Changes

Section 27 amends s. 526.141, F.S., to require, by July 1, 2016, a full-service gas station offering self-service at a lesser cost to prominently display, in addition to the above-described decal, a blue decal at least 15 square inches in size that clearly displays the international symbol of accessibility, the station's telephone number, and the words "Call for Assistance." The Department of Agriculture and Consumer Services is directed to adopt rules to implement and enforce these provisions, and local government laws and regulations pertaining to the provision of fueling assistance by a self-service gas station are preempted and superseded.

Pinellas Bayway/Maintenance Costs

Current Situation

The FDOT-owned, tolled Pinellas Bayway System is a series of causeways and bridges providing a connection between St. Petersburg Beach, Fort DeSoto Park, and I-275:

> The east-west section of the facility (SR 682) provides a connection between I-275 (via 54th Avenue) on the east and Gulf Boulevard (SR 699) on the west. This section crosses the Bayway Isles and Isle Del Sol. The north-south section of the facility (SR 679) extends from Isle Del Sol through Tierra Verde to Mullet Key and Fort DeSoto Park. The facility was opened to traffic in December 1962.[65]

The 1985 Legislature directed that all tolls collected shall first be used for the payment of annual operating costs, second to discharge the current bond indebtedness,[66] and thereafter to establish a reserve construction account to be used for certain Pinellas Bayway improvements. Maintenance costs were not included in the directive. Instead, the FDOT was required, upon completion of those certain improvements, to continue to collect tolls on the Pinellas Bayway to reimburse the FDOT for all accrued maintenance costs for the Pinellas Bayway.

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[62] Out-of-state vehicles bearing identification of issuance to persons who have disabilities.
[63] Section 775.082, F.S.
[64] Section 775.083, F.S.
[65] Traffic Engineer's Annual Report for Fiscal Year Ended June 30, 2012, p. 51, on file in the Senate Transportation Committee.
[66] The FDOT advises no current bond indebtedness exists. The FDOT email, February 4, 2014, on file in the Senate Transportation Committee.

The 1995 Legislature amended the 1985 law to remove reference to completed improvements and modify references to future improvements but did not change the directive regarding maintenance costs. Consequently, amounts paid by the FDOT for maintenance costs accrue as long-term debt due the State Transportation Trust Fund (STTF), as opposed to the FDOT paying the maintenance costs from toll revenues. As of December 20, 2013, the long-term debt due the STTF as a result of maintenance costs paid by the FDOT is projected to be approximately $66 million in Fiscal Year 2022-2023.[67]

Effect of Proposed Changes

Section 31 amends s. 2 of ch. 85-364, L.O.F., as amended by s. 2 of ch. 95-382, L.O.F., to authorize the FDOT to use tolls first for the payment of annual operating *and maintenance* costs. This will allow the FDOT to pay the costs from the toll revenues and no longer accrue those costs as long-term debt. Users of the facility will pay maintenance costs, rather than having the costs subsidized by revenues deposited into the STTF. The bill also removes references to completed improvements.

Section 33 creates an undesignated section of law providing an appropriation to the DHSMV. The nonrecurring sum of $100,000 is appropriated for Fiscal Year 2014-15 for the purpose of the issuance of driver licenses and identifications with marking of "SEXUAL PREDATOR" in accordance with this act.

Section 34 provides the bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/SB 1272 redirects existing fees from the Highway Safety Operating Trust Fund in the Department of Highway Safety and Motor Vehicles (DHSMV) to county tax collectors who provide licensing issuance services.

[67] The FDOT Pinellas Bayway Toll Facility Revenue and Expenditure Report, on file in the Senate Transportation Committee.

B. Private Sector Impact:

Section 6: Individuals who start their vehicles by remote control while the ignition, transmission, and doors are locked will no longer by subject to a $30 penalty.

Sections 9 and 14: Individuals will be subject to withholding of registration *only* of the motor vehicle identified in a notice to surrender, which may avoid economic loss for some.

Section 24: Those wishing to submit proposals for lease of the Florida Department of Transportation (FDOT) property that the FDOT wishes to consider will be subject to an application fee sufficient to pay the anticipated cost of evaluation the proposal, to be established by the FDOT rule. Opportunities for private consultant contracts with the FDOT are authorized.

Section 27: Full-service gas stations that offer gasoline at a lower price will incur what is expected to be insignificant expenses associated with displaying the required decal.

C. Government Sector Impact:

Section 1: The Florida Transportation Commission (FTC) will incur additional expenditures associated with monitoring the Mid-Bay Bridge Authority (MBBA) and any publicly funded passenger rail system. These expenses are expected to be absorbed within existing resources, as the FTC already monitors the South Florida Regional Transportation Authority, which operates Tri-Rail, and will only add monitoring of the SunRail system to its duties.

Sections 2 and 17: The DHSMV may incur an indeterminate revenue reduction in the Highway Safety Operating Trust Fund related to a reduced number of driver license suspensions for failure to comply with child support responsibilities.

Section 4: The Department of State and the Department of Law Enforcement may incur costs associated with establishing a retention schedule for records containing images and data generated through the use of an automated license plate recognition system, which are expected to be absorbed within existing resources.

Section 6: The $30 penalty previously applicable to individuals who start their vehicles by remote control while the ignition, transmission, and doors are locked will no longer be collected.

Section 16: The DHSMV will incur expenses associated with developing a secure and uniform system for issuing an optional digital proof of driver license, which are expected to be absorbed within existing resources.

Sections 19 and 22: Deposits into the Highway Safety Operating Trust Fund will be reduced by, and the tax collectors will retain, the specified dollar amounts for initial knowledge and skills tests conducted by tax collectors, and for replacement driver

licenses and replacement identification cards issued by tax collectors. The General Revenue Fund will be reduced due to the fee exemption for identification cards for persons at 100 percent of the poverty level. The fiscal impact below was provided by the DHSMV based on the Highway Safety Fees Estimating Conference held in February, 2014.

	FY 2014-15 Revenue	FY 2015-16 Revenue	FY 2016-17 Revenue	FY 2017-18 Revenue
General Revenue	(1,578,539)	(1,604,086)	(1,824,483)	(2,288,446)
Highway Safety Operating Trust Fund	(5,653,028)	(8,369,422)	(8,550,671)	(8,808,677)
Tax Collectors	5,450,846	8,163,379	8,279,267	8,394,963

The DHSMV has indicated that there will be programming cost of 420 hours incurred at $100 per hour. This includes:

- Issuance of Identification Cards to Homeless at 100 percent of poverty level will require 20 hours of programming.
- Fee redirection to tax collectors will require 400 hours of programming.

The remaining cost to develop and implement a uniform and secure system for an optional digital proof of driver license is indeterminate but potentially significant. The development of this system will increase the total cost of the contract for driver license issuance in future years.

Section 20: The DHSMV indicates that there will be programming cost related to the implementing the revised requirements for special markings on driver licenses and identifications for persons who have been designated or are required to register as a sexual predator. The bill provides an appropriation of $100,000 related to these expenditures.

Section 23: The fiscal impact of the modified terms and conditions governing the FDOT's sale or lease of surplus property is indeterminate. However, according to the FDOT, a net positive impact to local revenue is expected as properties are returned to the ad valorem tax roll. In addition, an indeterminate savings to the state is expected as a result of reduced appraisal expenses, especially in cases when such costs approach and even exceed the price received by the FDOT.

Section 24: The FDOT's costs associated with evaluating lease proposals pursuant to s. 337.251, F.S., would presumably be covered by the application fee the FDOT is required to establish by rule, particularly if the fee includes the cost of private consultants the FDOT is authorized to engage to assist in its evaluations.

Section 27: The Department of Agriculture and Consumer Services will incur expenses to adopt rules relating to decal display at full-service gas stations offering self-service at a lower cost, which are expected to be absorbed within existing resources.

Section 32: The DHSMV will incur expenses associated with developing a plan of action that addresses motor vehicle registration holds for outstanding tolls, parking tickets, and fines, which are expected to be absorbed within existing resources.

Section 33: provides a nonrecurring appropriation in the amount of $100,000 to the DHSMV for Fiscal Year 2014-2015 from the Highway Safety Operating Trust Fund for costs incurred relating to revising the special marking requirements for persons designated as sexual predators.

VI. Technical Deficiencies:

The DHSMV is concerned that the creation of a digital driver license does not guarantee acceptance or the same level of acceptance as a physical license. It is the agency's belief that the Transportation Safety Administration and other federal agencies will not accept it in lieu of the actual physical card. Privacy and search and seizure issues could possibly be implicated in a digital driver license verification. First responders may face digital driver license identification challenges when individuals are non-responsive. In addition, digital driver license verifications would be subject to an individual's smart phone operating properly which could result in time intensive digital verifications in the field by law enforcement agencies.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 20.23, 61.13016, 110.205, 316.1975, 316.2952, 316.86, 320.02, 320.08056, 320.08062, 320.083, 320.1316, 322.055, 322.058, 322.059, 322.12, 322.141, 322.15, 322.21, 337.25, 337.251, 339.175, 339.2821, 526.141, 562.11, 812.0155, and 832.09.

This bill amends section 2 of chapter 85-364, Laws of Florida, as amended by section 2 of chapter 95-382, Laws of Florida; and amends section 45 of chapter 2008-176, Laws of Florida, as amended by section 21 of chapter 2010-233, Laws of Florida.

This bill creates the following sections of the Florida Statutes: 316.0778, 316.0817, and 322.032.

This bill creates undesignated sections of Florida Law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on April 24, 2014:
The CS/CS differs as follows:

- Language prohibiting the enforcement of State Uniform Traffic Laws by any means other than the direct observation of a law enforcement officer or other duly appointed individual, unless expressly authorized, is removed from the bill.
- Reinstatement of driving privileges for certain cases regarding suspensions due to unpaid child support is allowed.
- The court is required to make a specific determination of whether a driver license can be issued for business purposes only (BPO) when the suspension is for unpaid child support and convictions of certain drug offenses.
- The requirement that a court order the driver license suspension of persons who fail to appear on worthless check charges is repealed. Driver license suspension is permitted and applied only to persons previously found guilty of bad check charges.
- Designation of a testing roadway for autonomous vehicles by an authority with roadway jurisdiction in a given location is required, in addition to designation by the Florida Department of Transportation.
- The moratorium on specialty license plates is extended to 2016, and provisions relating to accountability of specialty license plate organizations are revised.
- Revises the requirements for special markings on driver licenses and state identification cards for persons designated as sexual predators or sexual offenders, including persons so designated or subject to registration under the laws of another jurisdiction.
- Provides a $100,000 appropriation to the DHSMV for costs incurred with the issuance or reissuance of driver licenses and identification cards with the special marking of "Sexual Predator".
- Removes a preemption barring a county or municipality from adopting or enforcing ordinances to expand accessibility, safety or availability of fueling assistance for persons displaying the international symbol of accessibility at full-service gas stations offering self-service.

CS by Transportation on March 6, 2014:
The CS revises provisions relating to the testing of autonomous vehicle technology to remove the requirement that a human be present in the vehicle and capable of intervening, if necessary, unless the vehicle is being tested on a closed course. Instead, the bill provides that a human operator must retain the ability to monitor the vehicle and intervene, if necessary, unless the vehicle is being tested on a closed course *or any other testing roadway designated by the FDOT and applicable local or county government*. The CS also expands those authorized to conduct testing to include research organizations associated with accredited educational institutions. The CS also removes obsolete language requiring a DHSMV report, as the report has already been submitted. Lastly, the CS removes the date certain by which the DHSMV is to develop an optional

digital proof of driver license (10/1/16) and instead directs the department to begin to review and prepare for the development.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Transportation; and Senator Brandes

596-02207-14 20141272c1

A bill to be entitled

An act relating to transportation and motor vehicles; amending s. 20.23, F.S.; requiring the Florida Transportation Commission to monitor the Mid-Bay Bridge Authority; repealing the Florida Statewide Passenger Rail Commission; amending s. 110.205, F.S.; conforming cross-references; creating s. 316.0071, F.S.; requiring that the provisions of ch. 316, F.S., be enforced by the direct observation and intervention of a law enforcement officer, a parking enforcement specialist, a traffic infraction enforcement officer, or any other duly appointed individual unless another method has been expressly authorized; creating s. 316.0778, F.S.; defining the term "automated license plate recognition system"; requiring the Department of State to consult with the Department of Law Enforcement in establishing a retention schedule for records generated by the use of an automated license plate recognition system; creating s. 316.0817, F.S.; prohibiting a bus from stopping to load or unload passengers in a manner that impedes, blocks, or otherwise restricts the progression of traffic under certain circumstances; amending s. 316.1975, F.S.; authorizing an operator of a vehicle that is started by remote control to let the vehicle stand unattended under certain circumstances; amending s. 316.2952, F.S.; revising a provision exempting a global position system device or similar satellite receiver device from the prohibition of attachments on windshields;

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amending s. 316.86, F.S.; revising provisions relating to the operation of vehicles equipped with autonomous technology on state roads for testing purposes; authorizing research organizations associated with accredited educational institutions to operate such vehicles; authorizing the testing of such vehicles on certain roadways designated by the Department of Transportation and applicable local or county governments; deleting an obsolete provision; amending s. 320.02, F.S.; requiring, rather than authorizing, the Department of Highway Safety and Motor Vehicles to withhold the renewal of registration or replacement registration of a motor vehicle identified in a notice submitted by a lienor for failure to surrender the vehicle if the applicant's name is on the list of persons who may not be issued a license plate or revalidation sticker; revising the conditions under which a revalidation sticker or replacement license plate may be issued; amending s. 320.083, F.S.; revising the requirements for a special license plate; amending s. 320.1316, F.S.; prohibiting the department from issuing a license plate, revalidation sticker, or replacement license plate for a vehicle or vessel identified in a notice from a lienor; requiring that a notice to surrender a vehicle or vessel be signed under oath by the lienor; authorizing a registered owner of a vehicle to bring a civil action, rather than to notify the department and present certain proof, to dispute a notice to surrender a vehicle or

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vessel or his or her inclusion on the list of persons who may not be issued a license plate or revalidation sticker; providing a procedure for such a civil action; providing for the award of attorney fees and costs; creating s. 322.032, F.S.; requiring the Department of Highway Safety and Motor Vehicles to begin to review and prepare for the development of a system for issuing an optional digital proof of driver license; authorizing the Department of Highway Safety and Motor Vehicles to contract with private entities to develop the system; providing requirements for digital proof of driver license; providing criminal penalties for manufacturing or possessing a false digital proof of driver license; amending s. 322.059, F.S.; requiring the Department of Highway Safety and Motor Vehicles to invalidate the digital proof of driver license for a person whose license or registration has been suspended; amending s. 322.12, F.S.; requiring that certain test fees incurred by certain applicants for a driver license be retained by the tax collector; amending s. 322.15, F.S.; authorizing a digital proof of driver license to be accepted in lieu of a physical driver license; amending s. 322.21, F.S.; authorizing certain tax collectors to retain a replacement driver license or identification card fee under certain circumstances; exempting certain individuals who are homeless or whose annual income is at or below a certain percentage of the federal poverty level from paying a

fee for an original, renewal, or replacement identification card; amending s. 337.25, F.S.; authorizing the Department of Transportation to use auction services in the conveyance of certain property or leasehold interests; revising certain inventory requirements; revising provisions relating to, and providing criteria for, the disposition of certain excess property by the Department of Transportation; providing criteria for the disposition of donated property, property used for a public purpose, or property acquired to provide replacement housing for certain displaced persons; providing value offsets for property that requires significant maintenance costs or exposes the Department of Transportation to significant liability; providing procedures for the sale of property to abutting property owners; deleting provisions to conform to changes made by the act; providing monetary restrictions and criteria for the conveyance of certain leasehold interests; providing exceptions to restrictions for leases entered into for a public purpose; providing criteria for the preparation of estimates of value prepared by the Department of Transportation; providing that the requirements of s. 73.013, F.S., relating to eminent domain are not modified; amending s. 337.251, F.S.; revising criteria for leasing certain Department of Transportation property; increasing the time for the Department of Transportation to accept proposals for lease after a notice is published; directing the

Department of Transportation to establish an application fee by rule; providing criteria for the fee; providing criteria for a proposed lease; requiring the Department of Transportation to provide an independent analysis of a proposed lease; amending s. 339.175, F.S.; increasing the maximum number of apportioned members that may compose the voting membership of a metropolitan planning organization (M.P.O.); providing that the governing board of a multicounty M.P.O. may be made up of any combination of county commissioners from the counties constituting the M.P.O; providing that a voting member of an M.P.O may represent a group of general-purpose local governments through an entity created by the M.P.O.; requiring each M.P.O. to review and reapportion its membership as necessary in conjunction with the decennial census, the agreement of the affected units of the M.P.O., and the agreement of the Governor; removing provisions requiring the Governor to apportion, review, and reapportion the composition of an M.P.O. membership; revising a provision regarding bylaws to allow the M.P.O. governing board to establish bylaws; amending s. 339.2821, F.S.; authorizing Enterprise Florida, Inc., to be a consultant to the Department of Transportation for consideration of expenditures associated with and contracts for transportation projects; revising the requirements for economic development transportation project contracts between the Department of

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Transportation and a governmental entity; amending s. 526.141, F.S.; requiring full-service gasoline stations offering self-service at a lesser cost to display an additional decal; requiring the decal to contain certain information; requiring the Department of Agriculture and Consumer Services to adopt rules to implement and enforce this requirement; providing for preemption of local regulations pertaining to fueling assistance for certain motor vehicle operators; amending chapter 85-634, Laws of Florida, as amended; providing that maintenance costs are eligible for payment from certain toll revenues as specified; removing references to certain completed projects; directing the Department of Highway Safety and Motor Vehicles to develop a plan that addresses certain vehicle registration holds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) and subsection (3) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(2)

(b) The commission shall ~~have the primary functions to~~:

1. Recommend major transportation policies for the Governor's approval~~,~~ and assure that approved policies and any

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revisions ~~thereto~~ are properly executed.

2. Periodically review the status of the state transportation system including highway, transit, rail, seaport, intermodal development, and aviation components of the system and recommend improvements ~~therein~~ to the Governor and the Legislature.

3. Perform an in-depth evaluation of the annual department budget request, the Florida Transportation Plan, and the tentative work program for compliance with all applicable laws and established departmental policies. Except as specifically provided in s. 339.135(4)(c)2., (d), and (f), the commission may not consider individual construction projects, but shall consider methods of accomplishing the goals of the department in the most effective, efficient, and businesslike manner.

4. Monitor the financial status of the department on a regular basis to assure that the department is managing revenue and bond proceeds responsibly and in accordance with law and established policy.

5. Monitor on at least a quarterly basis, the efficiency, productivity, and management of the department~~,~~ using performance and production standards developed by the commission pursuant to s. 334.045.

6. Perform an in-depth evaluation of the factors causing disruption of project schedules in the adopted work program and recommend to the Governor ~~Legislature~~ and the Legislature ~~Governor~~ methods to eliminate or reduce the disruptive effects of these factors.

7. Recommend to the Governor and the Legislature improvements to the department's organization in order to

streamline and optimize the efficiency of the department. In reviewing the department's organization, the commission shall determine if the current district organizational structure is responsive to this state's ~~Florida's~~ changing economic and demographic development patterns. The initial report by the commission must be delivered to the Governor and the Legislature by December 15, 2000, and each year thereafter, as appropriate. The commission may retain ~~such~~ experts as ~~are reasonably~~ necessary to carry out ~~effectuate~~ this subparagraph, and the department shall pay the expenses of the ~~such~~ experts.

8. Monitor the efficiency, productivity, and management of the authorities created under chapters 348 and 349, including any authority formed using ~~the provisions of~~ part I of chapter 348; the Mid-Bay Bridge Authority re-created pursuant to chapter 2000-411, Laws of Florida; and any authority formed under chapter 343 ~~which is not monitored under subsection (3)~~. The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

~~(3) There is created the Florida Statewide Passenger Rail Commission.~~

~~(a)1. The commission shall consist of nine voting members appointed as follows:~~

~~a. Three members shall be appointed by the Governor, one of whom must have a background in the area of environmental concerns, one of whom must have a legislative background, and one of whom must have a general business background.~~

~~b. Three members shall be appointed by the President of the~~

~~Senate, one of whom must have a background in civil engineering, one of whom must have a background in transportation construction, and one of whom must have a general business background.~~

~~c. Three members shall be appointed by the Speaker of the House of Representatives, one of whom must have a legal background, one of whom must have a background in financial matters, and one of whom must have a general business background.~~

~~2. The initial term of each member appointed by the Governor shall be for 4 years. The initial term of each member appointed by the President of the Senate shall be for 3 years. The initial term of each member appointed by the Speaker of the House of Representatives shall be for 2 years. Succeeding terms for all members shall be for 4 years.~~

~~3. A vacancy occurring during a term shall be filled by the respective appointing authority in the same manner as the original appointment and only for the balance of the unexpired term. An appointment to fill a vacancy shall be made within 60 days after the occurrence of the vacancy.~~

~~4. The commission shall elect one of its members as chair of the commission. The chair shall hold office at the will of the commission. Five members of the commission shall constitute a quorum, and the vote of five members shall be necessary for any action taken by the commission. The commission may meet upon the constitution of a quorum. A vacancy in the commission does not impair the right of a quorum to exercise all rights and perform all duties of the commission.~~

~~5. The members of the commission are not entitled to~~

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~~compensation but are entitled to reimbursement for travel and other necessary expenses as provided in s. 112.061.~~

~~(b) The commission shall have the primary functions of:~~

~~1. Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.~~

~~2. Advising the department on policies and strategies used in planning, designing, building, operating, financing, and maintaining a coordinated statewide system of passenger rail services.~~

~~3. Evaluating passenger rail policies and providing advice and recommendations to the Legislature on passenger rail operations in the state.~~

~~(c) The commission or a member of the commission may not enter into the day-to-day operation of the department or a~~

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~~monitored authority and is specifically prohibited from taking part in:~~

~~1. The awarding of contracts.~~

~~2. The selection of a consultant or contractor or the prequalification of any individual consultant or contractor. However, the commission may recommend to the secretary standards and policies governing the procedure for selection and prequalification of consultants and contractors.~~

~~3. The selection of a route for a specific project.~~

~~4. The specific location of a transportation facility.~~

~~5. The acquisition of rights-of-way.~~

~~6. The employment, promotion, demotion, suspension, transfer, or discharge of any department personnel.~~

~~7. The granting, denial, suspension, or revocation of any license or permit issued by the department.~~

~~(d) The commission is assigned to the Office of the Secretary of the Department of Transportation for administrative and fiscal accountability purposes, but it shall otherwise function independently of the control and direction of the department except that reasonable expenses of the commission shall be subject to approval by the Secretary of Transportation. The department shall provide administrative support and service to the commission.~~

Section 2. Paragraphs (j), (m), and (q) of subsection (2) of section 110.205, Florida Statutes, are amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(j) The appointed secretaries and the State Surgeon

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General, assistant secretaries, deputy secretaries, and deputy assistant secretaries of all departments; the executive directors, assistant executive directors, deputy executive directors, and deputy assistant executive directors of all departments; the directors of all divisions and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, program directors, assistant program directors, district administrators, deputy district administrators, the Director of Central Operations Services of the Department of Children and Families ~~Family Services~~, the State Transportation Development Administrator, the State Public Transportation and Modal Administrator, district secretaries, district directors of transportation development, transportation operations, transportation support, and the managers of the offices of the Department of Transportation specified in s. 20.23(3)(b) ~~s. 20.23(4)(b), of the Department of Transportation~~. Unless otherwise fixed by law, the department shall set the salary and benefits of these positions ~~in accordance with the rules of the Senior Management Service;~~ and the positions of county health department directors and county health department administrators of the Department of Health in accordance with the rules of the Senior Management Service.

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which include, but are not limited to:

1. Positions in the Department of Health and the Department

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of Children and Families which ~~Family Services that~~ are assigned primary duties of serving as the superintendent or assistant superintendent of an institution.

2. Positions in the Department of Corrections which ~~that~~ are assigned primary duties of serving as the warden, assistant warden, colonel, or major of an institution or that are assigned primary duties of serving as the circuit administrator or deputy circuit administrator.

3. Positions in the Department of Transportation which ~~that~~ are assigned primary duties of serving as regional toll managers and managers of offices, as specified ~~defined~~ in s. 20.23(3)(b) and (4)(c) ~~s. 20.23(4)(b) and (5)(c)~~.

4. Positions in the Department of Environmental Protection which ~~that~~ are assigned the duty of an Environmental Administrator or program administrator.

5. Positions in the Department of Health which ~~that~~ are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator.

6. Positions in the Department of Highway Safety and Motor Vehicles which ~~that~~ are assigned primary duties of serving as captains in the Florida Highway Patrol.

Unless otherwise fixed by law, the department shall set the salary and benefits of the positions listed in this paragraph in accordance with the rules established for the Selected Exempt Service.

(q) The staff directors, assistant staff directors, district program managers, district program coordinators,

district subdistrict administrators, district administrative services directors, district attorneys, and the Deputy Director of Central Operations Services of the Department of Children and Families ~~Family Services~~. Unless otherwise fixed by law, the department shall establish the salary ~~pay band~~ and benefits for these positions in accordance with the rules of the Selected Exempt Service.

Section 3. Section 316.0071, Florida Statutes, is created to read:

316.0071 Enforcement.—Unless expressly authorized, enforcement of this chapter by a method other than the direct observation and intervention of a law enforcement officer, a parking enforcement specialist, a traffic infraction enforcement officer, or any other duly appointed individual is prohibited.

Section 4. Section 316.0078, Florida Statutes, is created to read:

316.0778 Automated license plate recognition systems; records retention.—

(1) As used in this section, the term "automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.

(2) In consultation with the Department of Law Enforcement, the Department of State shall establish a retention schedule for records containing images and data generated through the use of an automated license plate recognition system. The retention schedule must establish a maximum period that the records may be retained.

Section 5. Section 316.0817, Florida Statutes, is created

to read:

316.0817 Loading and unloading of bus passengers.—

(1) Notwithstanding any other law, a bus may not stop to load or unload passengers in a manner that impedes, blocks, or otherwise restricts the progression of traffic on the main-traveled portion of a roadway if there is another reasonable means for the bus to stop parallel to the travel lane and safely load and unload passengers. As used in this section, the term "reasonable means" means sufficient unobstructed pavement or a designated turn lane that is sufficient in length to allow the safe loading and unloading of passengers parallel to the travel lane.

(2) This section does not apply to a school bus.

Section 6. Paragraph (d) is added to subsection (2) of section 316.1975, Florida Statutes, to read:

316.1975 Unattended motor vehicle.—

(2) This section does not apply to the operator of:

(d) A vehicle that is started by remote control while the ignition, transmission, and doors are locked.

Section 7. Paragraph (d) of subsection (2) of section 316.2952, Florida Statutes, is amended to read:

316.2952 Windshields; requirements; restrictions.—

(2) A person shall not operate any motor vehicle on any public highway, road, or street with any sign, sunscreening material, product, or covering attached to, or located in or upon, the windshield, except the following:

(d) A global positioning system device or similar satellite receiver device that ~~which~~ uses the global positioning system operated pursuant to 10 U.S.C. s. 2281 to obtain ~~for the purpose~~

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~~of obtaining~~ navigation, to improve driver safety as a component of safety monitoring equipment capable of providing driver feedback, or to otherwise route ~~routing~~ information while the motor vehicle is being operated.

Section 8. Subsections (1) and (3) of section 316.86, Florida Statutes, are amended to read:

316.86 Operation of vehicles equipped with autonomous technology on roads for testing purposes; financial responsibility; exemption from liability for manufacturer when third party converts vehicle; report.—

(1) Vehicles equipped with autonomous technology may be operated on roads in this state by employees, contractors, or other persons designated by manufacturers of autonomous technology, or by research organizations associated with accredited educational institutions, for the purpose of testing the technology. For testing purposes, a human operator must retain ~~shall be present in the autonomous vehicle such that he or she has~~ the ability to monitor the vehicle's performance and intervene, if necessary, unless the vehicle is being tested or demonstrated on a closed course or any other autonomous vehicle testing roadway as designated by the Department of Transportation and applicable local or county government. Before ~~Prior to~~ the start of testing in this state, the entity performing the testing must submit to the Department of Highway Safety and Motor Vehicles an instrument of insurance, surety bond, or proof of self-insurance acceptable to the department in the amount of $5 million.

~~(3) By February 12, 2014, the Department of Highway Safety and Motor Vehicles shall submit a report to the President of the~~

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~~Senate and the Speaker of the House of Representatives recommending additional legislative or regulatory action that may be required for the safe testing and operation of motor vehicles equipped with autonomous technology.~~

Section 9. Subsection (17) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(17) If an ~~any~~ applicant's name appears on a list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate after a written notice to surrender a vehicle was submitted to the department by a lienor as provided in s. 320.1316, the department shall ~~may~~ withhold renewal of registration or replacement registration of the ~~any~~ motor vehicle identified in ~~owned by the applicant at the time~~ the notice ~~was~~ submitted by the lienor. The lienor must maintain proof that written notice to surrender the vehicle was sent to each registered owner pursuant to s. 320.1316(1). A revalidation sticker or replacement license plate may not be issued for the identified vehicle until the ~~that~~ person's name no longer appears on the list, ~~or until~~ the person presents documentation from the lienor that the vehicle has been surrendered to the lienor, or a court orders the person's name removed from the list as provided in s. 320.1316. The department may ~~shall~~ not withhold an initial registration in connection with an applicant's purchase or lease of a motor vehicle solely because the applicant's name is on the list created by s. 320.1316.

Section 10. Subsection (1) of section 320.083, Florida Statutes, is amended to read:

320.083 Amateur radio operators; special license plates; fees.—

(1) A person who is the owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use; who is a resident of the state; and who holds a valid official amateur radio station license recognized ~~issued~~ by the Federal Communications Commission shall be issued a special license plate upon application, accompanied by proof of ownership of such radio station license, and payment of the following tax and fees:

(a) The license tax required for the vehicle, as prescribed by s. 320.08(2), (3)(a), (b), or (c), (4)(a), (b), (c), (d), (e), or (f), or (9); and

(b) An initial additional fee of $5, and an additional fee of $1.50 thereafter.

Section 11. Section 320.1316, Florida Statutes, is amended to read:

320.1316 Failure to surrender vehicle or vessel.—

(1) Upon receipt from a lienor who claims a lien on a vehicle pursuant to s. 319.27 by the Department of Highway Safety and Motor Vehicles of written notice to surrender a vehicle or vessel that has been disposed of, concealed, removed, or destroyed by the lienee, the department shall place the name of the registered owner of that vehicle on the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate ~~for any motor vehicle under s. 320.03(8) owned by the licnee at the time the notice~~

~~was given by the lienor~~. Pursuant to s. 320.03(8), the department may not issue a license plate or revalidation sticker for the vehicle or vessel owned by the lienee which is identified in the claim by the lienor. If the vehicle is owned jointly ~~by more than one person~~, the name of each registered owner shall be placed on the list.

(2) The notice to surrender the vehicle shall be signed under oath by the lienor and submitted on forms developed by the department, which must include:

(a) The name, address, and telephone number of the lienor.

(b) The name of the registered owner of the vehicle and the address to which the lienor provided notice to surrender the vehicle to the registered owner.

(c) A general description of the vehicle, including its color, make, model, body style, and year.

(d) The vehicle identification number, registration license plate number, if known, or other identification number, as applicable.

(3) The registered owner of the vehicle may dispute a notice to surrender the vehicle or his or her inclusion on the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate under s. 320.03(8) by bringing a civil action in the county in which he or she resides ~~by notifying the department of the dispute in writing on forms provided by the department and presenting proof that the vehicle was sold to a motor vehicle dealer licensed under s. 320.27, a mobile home dealer licensed under s. 320.77, or a recreational vehicle dealer licensed under s. 320.771~~.

(4) In an action brought pursuant to subsection (3), the

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petitioner is entitled to the summary procedure specified in s. 51.011, and the court shall advance the cause on its calendar if requested by the petitioner.

(5) At a hearing challenging the refusal to issue a license plate, revalidation sticker, or replacement license plate under s. 320.03(8), the court shall first determine whether the lienor has a recorded lien on the vehicle or vessel and whether the lienor properly made a demand for the surrender of the vehicle or vessel in accordance with this section. If the court determines that the lien was recorded and that such a demand was properly made, the court shall determine whether good cause exists for the lienee's failure to surrender the vehicle or vessel. As used in this section, the term "good cause" is limited to proof that:

(a) The vehicle that was the subject of the demand for surrender was traded in to a licensed motor vehicle dealer before the date of the surrender demand;

(b) The lien giving rise to the inclusion on the list has been paid in full or otherwise satisfied;

(c) There is ongoing litigation relating to the validity or enforceability of the lien;

(d) The petitioner was in compliance with all of his or her contractual obligations with the lienholder at the time of the demand for surrender;

(e) The vehicle or vessel was reported to law enforcement as stolen by the registered owner of the vehicle or vessel before the demand for surrender; or

(f) The petitioner no longer has possession of the vehicle or vessel, and the loss of possession occurred pursuant to

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operation of law. If the petitioner's loss of possession did not occur pursuant to operation of law, the fact that a third party has physical possession of the vehicle or vessel does not constitute good cause for the failure to surrender the vehicle or vessel.

(6) If the petitioner establishes good cause for his or her failure to surrender the vehicle or vessel, the court shall enter an order removing the petitioner's name from the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate under s. 320.03(8) and shall award the petitioner reasonable attorney fees and costs actually incurred for the proceeding.

(7) If the court finds that the demand for surrender was properly made by the lienor and the petitioner fails to establish good cause for the failure to surrender the vehicle or vessel, the court shall award the lienor reasonable attorney fees and costs actually incurred for the proceeding.

Section 12. Section 322.032, Florida Statutes, is created to read:

322.032 Digital proof of driver license.—

(1) The department shall begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. The department may contract with one or more private entities to develop a digital proof of driver license system.

(2) The digital proof of driver license developed by the department or by an entity contracted by the department must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license. The

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department may promulgate rules to ensure valid authentication of digital driver licenses by law enforcement.

(3) A person may not be issued a digital proof of driver license until he or she has satisfied all the requirements of this chapter and has received a physical driver license as provided in this chapter.

(4) A person who:

(a) Manufactures a false digital proof of driver license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable as provided in s. 775.082.

Section 13. Section 322.059, Florida Statutes, is amended to read:

322.059 Mandatory surrender of suspended driver ~~driver's~~ license and registration.—A ~~Any~~ person whose driver ~~driver's~~ license or registration has been suspended as provided in s. 322.058 must immediately return his or her driver ~~driver's~~ license and registration to the Department of Highway Safety and Motor Vehicles. The department shall invalidate the digital proof of driver license issued pursuant to s. 322.032 for such person. If such person fails to return his or her driver ~~driver's~~ license or registration, a ~~any~~ law enforcement agent may seize the license or registration while the driver ~~driver's~~ license or registration is suspended.

Section 14. Subsection (1) of section 322.12, Florida Statutes, is amended to read:

322.12 Examination of applicants.—

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(1) It is the intent of the Legislature that each ~~every~~ applicant for an original driver ~~driver's~~ license in this state be required to pass an examination pursuant to this section. However, the department may waive the knowledge, endorsement, and skills tests for an applicant who is otherwise qualified and who surrenders a valid driver ~~driver's~~ license from another state or a province of Canada, or a valid driver ~~driver's~~ license issued by the United States Armed Forces, if the driver applies for a Florida license of an equal or lesser classification. An ~~Any~~ applicant who:

(a) ~~Who~~ Fails to pass the initial knowledge test incurs a $10 fee for each subsequent test. Of the $10 fee, $6 shall be retained by the tax collector if the knowledge test is conducted by the tax collector, and the remaining $4 shall~~, to~~ be deposited into the Highway Safety Operating Trust Fund. All knowledge test fees incurred by an applicant taking the knowledge test with a third-party provider or administered at a state facility shall be deposited into the Highway Safety Operating Trust Fund. ~~Any applicant~~

(b) ~~Who~~ Fails to pass the initial skills test incurs a $20 fee for each subsequent test. Of the $20 fee, $15 shall be retained by the tax collector if the skills test is conducted by the tax collector, and the remaining $5 shall~~, to~~ be deposited into the Highway Safety Operating Trust Fund. All skills test fees incurred by an applicant taking the skills test with a third-party provider or administered at a state facility shall be deposited into the Highway Safety Operating Trust Fund. ~~A person who~~

(c) Seeks to retain a hazardous-materials endorsement,

pursuant to s. 322.57(1)(d), must pass the hazardous-materials test~~,~~ upon surrendering his or her commercial driver ~~driver's~~ license~~,~~ if the person has not taken and passed the hazardous-materials test within 2 years before applying for a commercial driver ~~driver's~~ license in this state.

Section 15. Subsection (1) of section 322.15, Florida Statutes, is amended to read:

322.15 License to be carried and exhibited on demand; fingerprint to be imprinted upon a citation.—

(1) Every licensee shall have his or her driver ~~driver's~~ license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon the demand of a law enforcement officer or an authorized representative of the department. A licensee may display digital proof of driver license as provided in s. 322.032 in lieu of a physical driver license.

Section 16. Paragraphs (e) and (f) of subsection (1) of section 322.21, Florida Statutes, are amended to read:

322.21 License fees; procedure for handling and collecting fees.—

(1) Except as otherwise provided herein, the fee for:

(e) A replacement driver license issued pursuant to s. 322.17 is $25. Of this amount, $7 shall be deposited into the Highway Safety Operating Trust Fund or retained by the tax collector if issued by a tax collector that has completed the transition of driver licensing services, and $18 shall be deposited into the General Revenue Fund. ~~Beginning July 1, 2015, or upon completion of the transition of driver license issuance~~

~~services, if the replacement driver license is issued by the tax collector, the tax collector shall retain the $7 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the General Revenue Fund.~~

(f) An original, renewal, or replacement identification card issued pursuant to s. 322.051 is $25, except that an applicant who presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7) or his or her annual income is at or below 100 percent of the federal poverty level is exempt from such fee. Funds collected from ~~these~~ fees for original, renewal, or replacement identification cards shall be distributed as follows:

1. For an original identification card issued pursuant to s. 322.051, the fee ~~is $25. This amount~~ shall be deposited into the General Revenue Fund.

2. For a renewal identification card issued pursuant to s. 322.051 ~~the fee is $25. Of this amount~~, $6 shall be deposited into the Highway Safety Operating Trust Fund, and $19 shall be deposited into the General Revenue Fund.

3. For a replacement identification card issued pursuant to s. 322.051, the fee is $25. Of this amount, $9 shall be deposited into the Highway Safety Operating Trust Fund or retained by the tax collector if issued by a tax collector that has completed the transition of driver licensing services, and $16 shall be deposited into the General Revenue Fund. ~~Beginning July 1, 2015, or upon completion of the transition of the driver license issuance services, if the replacement identification card is issued by the tax collector, the tax collector shall~~

~~retain the $9 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the General Revenue Fund.~~

Section 17. Section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(1)(a) The department may purchase, lease, exchange, or otherwise acquire any land, property interests, ~~or~~ buildings, or other improvements, including personal property within such buildings or on such lands, necessary to secure or use ~~utilize~~ transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System, on the State Park Road System, in a rail corridor, or in a transportation corridor designated by the department. Such property shall be held in the name of the state.

(b) The department may accept donations of any land, ~~or~~ buildings, or other improvements, including personal property within such buildings or on such lands with or without such conditions, reservations, or reverter provisions as are acceptable to the department. Such donations may be used as transportation rights-of-way or to secure or use ~~utilize~~ transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in a transportation corridor designated by the department.

(c) If ~~When~~ lands, buildings, or other improvements are needed for transportation purposes, but are held by a federal, state, or local governmental entity and used ~~utilized~~ for public

purposes other than transportation, the department may compensate the entity for such properties by providing functionally equivalent replacement facilities. The provision ~~providing~~ of replacement facilities under this subsection may only be undertaken with the agreement of the governmental entity affected.

(d) The department may contract pursuant to s. 287.055 for auction services used in the conveyance of real or personal property or the conveyance of leasehold interests under subsections (4) and (5). The contract may allow for the contractor to retain a portion of the proceeds as compensation for the contractor's services.

(2) A complete inventory shall be made of all real or personal property immediately upon possession or acquisition. Such inventory must ~~shall~~ include ~~an itemized listing of all appliances, fixtures, and other severable items;~~ a statement of the location or site of each piece of realty, structure, or severable item~~; and the serial number assigned to each~~. Copies of each inventory shall be filed in the district office in which the property is located. Such inventory shall be carried forward to show the final disposition of each item of property, both real and personal.

(3) The inventory of real property that ~~which~~ was acquired by the state after December 31, 1988, that ~~which~~ has been owned by the state for 10 or more years, and that ~~which~~ is not within a transportation corridor or within the right-of-way of a transportation facility shall be evaluated to determine the necessity for retaining the property. If the property is not needed for the construction, operation, and maintenance of a

transportation facility~~,~~ or is not located within a transportation corridor, the department may dispose of the property pursuant to subsection (4).

(4) The department may convey ~~sell~~, in the name of the state, any land, building, or other property, real or personal, which was acquired under ~~the provisions of~~ subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. ~~With the exception of any parcel governed by paragraph (c), paragraph (d), paragraph (f), paragraph (g), or paragraph (i), the department shall afford first right of refusal to the local government in the jurisdiction of which the parcel is situated.~~ When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than $10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). ~~in the following manner:~~

(a) If the ~~value of the~~ property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated

property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives ~~is $10,000 or less as determined by department estimate, the department may negotiate the sale~~.

(b) If ~~the value of~~ the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity ~~exceeds $10,000 as determined by department estimate, such property may be sold to the highest bidder through receipt of sealed competitive bids, after due advertisement, or by public auction held at the site of the improvement which is being sold~~.

(c) If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive at least its investment in such property or the department's current estimate of value, whichever is lower. It is expressly intended that this benefit be extended only to persons actually displaced by the project. Dispositions to any other person must be for at least the department's current estimate of value~~, in the discretion of the department, public sale would be inequitable, properties may be sold by negotiation to the owner holding title to the property abutting the property to be sold, provided such sale is at a negotiated price not less than fair market value as determined by an independent appraisal, the cost of which shall be paid by the owner of the abutting land. If negotiations do not result in the sale of the property to the owner of the abutting land and the property is sold to someone else, the cost of the independent~~

~~appraisal shall be borne by the purchaser; and the owner of the abutting land shall have the cost of the appraisal refunded to him or her. If, however, no purchase takes place, the owner of the abutting land shall forfeit the sum paid by him or her for the independent appraisal. If, due to action of the department, the property is removed from eligibility for sale, the cost of any appraisal prepared shall be refunded to the owner of the abutting land~~.

(d) If the department determines that the property requires significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero ~~property acquired for use as a borrow pit is no longer needed, the department may sell such property to the owner of the parcel of abutting land from which the borrow pit was originally acquired, provided the sale is at a negotiated price not less than fair market value as determined by an independent appraisal, the cost of which shall be paid by the owner of such abutting land~~.

(e) If, at the discretion of the department, a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the department's current estimate of value ~~the department begins the process for disposing of the property on its own initiative, either by negotiation under the provisions of paragraph (a), paragraph (c), paragraph (d), or paragraph (i), or by receipt of sealed competitive bids or public auction under the provisions~~

~~of paragraph (b) or paragraph (i), a department staff appraiser may determine the fair market value of the property by an appraisal~~.

~~(f) Any property which was acquired by a county or by the department using constitutional gas tax funds for the purpose of a right-of-way or borrow pit for a road on the State Highway System, State Park Road System, or county road system and which is no longer used or needed by the department may be conveyed without consideration to that county. The county may then sell such surplus property upon receipt of competitive bids in the same manner prescribed in this section.~~

~~(g) If a property has been donated to the state for transportation purposes and the facility has not been constructed for a period of at least 5 years and no plans have been prepared for the construction of such facility and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.~~

~~(h) If property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.~~

~~(i) If property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive no less than its investment in such properties or fair market value, whichever is lower. It is expressly intended that this benefit be extended only to those~~

~~persons actually displaced by such project. Dispositions to any other persons must be for fair market value.~~

~~(j) If the department determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 5 years to offset the market value in establishing a value for disposal of the property, even if that value is zero.~~

(5) The department may convey a leasehold interest for commercial or other purposes, in the name of the state, to any land, building, or other property, real or personal, which was acquired under ~~the provisions of~~ subsection (1). However, a lease may not be entered into at a price less than the department's current estimate of value. The department's estimate of value shall be prepared in accordance with department procedures, guidelines, and rules for valuation of real property, the cost of which shall be paid by the party seeking the lease of the property.

(a) A lease may be through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest ~~The department may negotiate such a lease at the prevailing market value with the owner from whom the property was acquired; with the holders of leasehold estates existing at the time of the department's acquisition; or, if public bidding would be inequitable, with the owner holding title to privately owned abutting property, if reasonable notice is provided to all other owners of abutting property~~. The department may allow an outdoor advertising sign to remain on

the property acquired~~,~~ or be relocated on department property, and such sign is ~~shall~~ not ~~be considered~~ a nonconforming sign pursuant to chapter 479.

(b) If, at the discretion of the department, a lease to a person other than an abutting property owner or tenant with a leasehold interest in the abutting property would be inequitable, the property may be leased to the abutting owner or tenant for at least the department's current estimate of value ~~All other leases shall be by competitive bid~~.

(c) A ~~No~~ lease signed pursuant to paragraph (a) may not ~~or paragraph (b) shall~~ be for ~~a period of~~ more than 5 years; however, the department may renegotiate or extend such a lease for an additional ~~term of~~ 5 years as the department deems appropriate ~~without rebidding~~.

(d) Each lease shall provide that, unless otherwise directed by the lessor, any improvements made to the property during ~~the term of~~ the lease shall be removed at the lessee's expense.

(e) If property is to be used for a public purpose, ~~including a fair, art show, or other educational, cultural, or fundraising activity,~~ the property may be leased without consideration to a governmental entity ~~or school board~~. A lease for a public purpose is exempt from the term limits in paragraph (c).

(f) Paragraphs (c) and (e) ~~(d)~~ do not apply to leases entered into pursuant to s. 260.0161(3), except as provided in such a lease.

(g) A ~~No~~ lease executed under this subsection may not be used ~~utilized~~ by the lessee to establish the ~~4 years'~~ standing

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required under ~~by~~ s. 73.071(3)(b) if the business had not been established for the specified number of ~~4~~ years on the date title passed to the department.

(h) The department may enter into a long-term lease without compensation with a public port listed in s. 403.021(9)(b) for rail corridors used for the operation of a short-line railroad to the port.

(6) ~~Nothing in~~ This chapter does not prevent ~~prevents~~ the joint use of right-of-way for alternative modes of transportation if~~; provided that~~ the joint use does not impair the integrity and safety of the transportation facility.

(7) The department shall prepare the estimate of value provided under subsection (4) in accordance with department procedures, guidelines, and rules for valuation of real property. If the value of the property is greater than $50,000, as determined by the department estimate, the sale must be at a negotiated price of at least the estimate of value as determined by an appraisal prepared in accordance with department procedures, guidelines, and rules for valuation of real property, the cost of which shall be paid by the party seeking the purchase of the property. If the estimated value is $50,000 or less, the department may use a department staff appraiser or obtain an independent appraisal ~~required by paragraphs (4)(c) and (d) shall be prepared in accordance with department guidelines and rules by an independent appraiser who has been certified by the department. If federal funds were used in the acquisition of the property, the appraisal shall also be subject to the approval of the Federal Highway Administration.~~

(8) As used in this section, the term ~~A~~ "due advertisement"

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means ~~under this section is~~ an advertisement in a newspaper of general circulation in the area of the improvements of at least ~~not less than~~ 14 calendar days before ~~prior to~~ the date of the receipt of bids or the date on which a public auction is to be held.

(9) The department, with the approval of the Chief Financial Officer, may ~~is authorized to~~ disburse state funds for real estate closings in a manner consistent with good business practices and in a manner minimizing costs and risks to the state.

(10) The department may ~~is authorized to~~ purchase title insurance if ~~in those instances where~~ it determines ~~is determined~~ that such insurance is necessary to protect the public's investment in property being acquired for transportation purposes. The department shall adopt procedures to be followed in making the determination to purchase title insurance for a particular parcel or group of parcels which, at a minimum, shall specify ~~set forth~~ criteria that ~~which~~ the parcels must meet.

(11) This section does not modify the requirements of s. 73.013.

Section 18. Subsection (2) of section 337.251, Florida Statutes, is amended, present subsections (3) through (10) of that section are redesignated as subsections (4) through (11), respectively, and a new subsection (3) is added to that section, to read:

337.251 Lease of property for joint public-private development and areas above or below department property.—

(2) The department may request proposals for the lease of

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such property or, if the department receives a proposal for ~~to negotiate~~ a lease of a particular department property which it desires to consider, the department ~~it~~ shall publish a notice in a newspaper of general circulation at least once a week for 2 weeks~~,~~ stating that it has received the proposal and will accept~~, for 60 days after the date of publication,~~ other proposals for lease of such property for 120 days after the date of publication ~~use of the space~~. A copy of the notice must be mailed to each local government in the affected area. The department shall establish by rule an application fee for the submission of proposals pursuant to this section. The fee must be sufficient to pay the anticipated costs of evaluating the proposals. The department may engage the services of private consultants to assist in the evaluations. Before approval, the department shall determine that the proposed lease:

(a) Is in the public's best interest;

(b) Does not require that state funds be used; and

(c) Has adequate safeguards in place to ensure that additional costs are not borne and service disruptions are not experienced by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease.

(3) The department shall provide an independent analysis of a proposed lease which demonstrates the cost-effectiveness and overall public benefit at the following times:

(a) Before moving forward with the procurement; and

(b) Before awarding the contract if the procurement moves forward.

Section 19. Paragraphs (a) and (b) of subsection (3),

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paragraph (a) of subsection (4), and paragraph (c) of subsection (11) of section 339.175, Florida Statutes, are amended to read:

339.175 Metropolitan planning organization.—

(3) VOTING MEMBERSHIP.—

(a) The voting membership of an M.P.O. shall consist of at least ~~not fewer than~~ 5 but not ~~or~~ more than 25 ~~19~~ apportioned members, with the exact number ~~to be~~ determined on an equitable geographic-population ratio basis ~~by the Governor~~, based on an agreement among the affected units of general-purpose local government and the Governor, as required by federal ~~rules and~~ regulations. ~~The Governor,~~ In accordance with 23 U.S.C. s. 134, the Governor may also allow ~~provide for~~ M.P.O. members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area which ~~that~~ do not have members on the M.P.O. With the exception of instances in which all of the county commissioners in a single-county M.P.O. are members of the M.P.O. governing board, county commissioners ~~commission members~~ shall compose at least ~~not less than~~ one-third of the M.P.O. governing board membership. A multicounty M.P.O. may satisfy this requirement by any combination of county commissioners from each of the counties constituting the M.P.O.~~, except for an M.P.O. with more than 15 members located in a county with a 5-member county commission or an M.P.O. with 19 members located in a county with no more than 6 county commissioners, in which case county commission members may compose less than one-third percent of the M.P.O. membership, but all county commissioners must be members. All~~ Voting members shall be elected officials of general-purpose local governments, one of whom may represent a group of general-purpose local governments through an entity created by an M.P.O. for that purpose. ~~except that~~ An M.P.O. may include, as part of its apportioned voting members, a member of a statutorily authorized planning board, an official of an agency that operates or administers a major mode of transportation, or an official of Space Florida. As used in this section, the term "elected officials of a general-purpose local government" excludes ~~shall exclude~~ constitutional officers, including sheriffs, tax collectors, supervisors of elections, property appraisers, clerks of the court, and similar types of officials. County commissioners shall compose not less than 20 percent of the M.P.O. membership if an official of an agency that operates or administers a major mode of transportation has been appointed to an M.P.O.

(b) In metropolitan areas in which authorities or other agencies have been or may be created by law to perform transportation functions and are or will be performing transportation functions that are not under the jurisdiction of a general-purpose local government represented on the M.P.O., such authorities or other agencies may ~~they shall~~ be provided voting membership on the M.P.O. In all other M.P.O.s in which ~~M.P.O.'s where~~ transportation authorities or agencies are to be represented by elected officials from general-purpose local governments, the M.P.O. shall establish a process by which the collective interests of such authorities or other agencies are expressed and conveyed.

(4) APPORTIONMENT.—

(a) Each M.P.O. shall review the composition of its membership in conjunction with the decennial census, as prepared

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by the United States Department of Commerce, Bureau of the Census, and with the agreement of the Governor and the affected general-purpose local government units that constitute the existing M.P.O., reapportion the membership as necessary to comply with subsection (3) ~~The Governor shall, with the agreement of the affected units of general-purpose local government as required by federal rules and regulations, apportion the membership on the applicable M.P.O. among the various governmental entities within the area~~. At the request of a majority of the affected units of general-purpose local government comprising an M.P.O., the Governor and a majority of units of general-purpose local government serving on an M.P.O. shall cooperatively agree upon and prescribe who may serve as an alternate member and a method for appointing alternate members, who may vote at any M.P.O. meeting that he or she ~~an alternate member~~ attends in place of a regular member. The method must ~~shall~~ be set forth as a part of the interlocal agreement describing the M.P.O. ~~M.P.O.'s~~ membership or in the ~~M.P.O.'s~~ operating procedures and bylaws of the M.P.O. The governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting advisers to the M.P.O. governing board. Additional nonvoting advisers may be appointed by the M.P.O. as deemed necessary; however, to the maximum extent feasible, each M.P.O. shall seek to appoint nonvoting representatives of various multimodal forms of transportation not otherwise represented by voting members of the M.P.O. An M.P.O. shall appoint nonvoting advisers representing major military installations located within the

jurisdictional boundaries of the M.P.O. upon the request of the aforesaid major military installations and subject to the agreement of the M.P.O. All nonvoting advisers may attend and participate fully in governing board meetings but may not vote or be members of the governing board. ~~The Governor shall review the composition of the M.P.O. membership in conjunction with the decennial census as prepared by the United States Department of Commerce, Bureau of the Census, and reapportion it as necessary to comply with subsection (3).~~

(11) METROPOLITAN PLANNING ORGANIZATION ADVISORY COUNCIL.—

(c) The powers and duties of the Metropolitan Planning Organization Advisory Council are to:

1. Enter into contracts with individuals, private corporations, and public agencies.

2. Acquire, own, operate, maintain, sell, or lease personal property essential for the conduct of business.

3. Accept funds, grants, assistance, gifts, or bequests from private, local, state, or federal sources.

4. Establish bylaws by action of its governing board providing procedural rules to guide its proceedings and consideration of matters before the council, or, alternatively, ~~and~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring powers or duties upon it.

5. Assist M.P.O.s ~~M.P.O.'s~~ in carrying out the urbanized area transportation planning process by serving as the principal forum for collective policy discussion pursuant to law.

6. Serve as a clearinghouse for review and comment by M.P.O.s ~~M.P.O.'s~~ on the Florida Transportation Plan and on other issues required to comply with federal or state law in carrying

out the urbanized area transportation and systematic planning processes instituted pursuant to s. 339.155.

7. Employ an executive director and such other staff as necessary to perform adequately the functions of the council, within budgetary limitations. The executive director and staff are exempt from part II of chapter 110 and serve at the direction and control of the council. The council is assigned to the Office of the Secretary of the Department of Transportation for fiscal and accountability purposes, but it shall otherwise function independently of the control and direction of the department.

8. Adopt an agency strategic plan that prioritizes steps ~~provides the priority directions~~ the agency will take to carry out its mission within the context of the state comprehensive plan and any other statutory mandates and directives ~~directions given to the agency~~.

Section 20. Paragraph (a) of subsection (1) and subsections (4) and (5) of section 339.2821, Florida Statutes, are amended to read:

339.2821 Economic development transportation projects.—

(1)(a) The department, in consultation with the Department of Economic Opportunity and Enterprise Florida, Inc., may make and approve expenditures and contract with the appropriate governmental body for the direct costs of transportation projects. The Department of Economic Opportunity and the Department of Environmental Protection may formally review and comment on recommended transportation projects, although the department has final approval authority for any project authorized under this section.

(4) A contract between the department and a governmental body for a transportation project must:

(a) Specify that the transportation project is for the construction of a new or expanding business and specify the number of full-time permanent jobs that will result from the project.

(b) Identify the governmental body and require that the governmental body award the construction of the particular transportation project to the lowest and best bidder in accordance with applicable state and federal statutes or rules unless the transportation project can be constructed using existing local governmental employees within the contract period specified by the department.

(c) Require that the governmental body provide the department with ~~quarterly~~ progress reports. Each ~~quarterly~~ progress report must contain:

1. A narrative description of the work completed and whether the work is proceeding according to the transportation project schedule;

2. A description of each change order executed by the governmental body;

3. A budget summary detailing planned expenditures compared to actual expenditures; and

4. The identity of each small or minority business used as a contractor or subcontractor.

(d) Require that the governmental body make and maintain records in accordance with accepted governmental accounting principles and practices for each progress payment made for work performed in connection with the transportation project, each

change order executed by the governmental body, and each payment made pursuant to a change order. The records are subject to financial audit as required by law.

(e) Require that the governmental body, upon completion and acceptance of the transportation project, certify to the department that the transportation project has been completed in compliance with the terms and conditions of the contract between the department and the governmental body and meets the minimum construction standards established in accordance with s. 336.045.

(f) Specify that ~~the department transfer~~ funds will not be transferred to the governmental body unless construction has begun on the facility of the ~~not more often than quarterly, upon receipt of a request for funds from the governmental body and consistent with the needs of the transportation project. The governmental body shall expend funds received from the department in a timely manner. The department may not transfer funds unless construction has begun on the facility of a~~ business on whose behalf the award was made. The grant award shall be terminated if construction of the transportation project does not begin within 4 years after the date of the initial grant award ~~A contract totaling less than $200,000 is exempt from the transfer requirement~~.

(g) Require that funds be used only on a transportation project that has been properly reviewed and approved in accordance with the criteria provided ~~set forth~~ in this section.

(h) Require that the governing board of the governmental body adopt a resolution accepting future maintenance and other attendant costs occurring after completion of the transportation

project if the transportation project is constructed on a county or municipal system.

(5) For purposes of this section, Space Florida may serve as the governmental body or as the contracting agency for a ~~transportation~~ project within a spaceport territory as defined by s. 331.304.

Section 21. Subsection (5) of section 526.141, Florida Statutes, is amended to read:

526.141 Self-service gasoline stations; attendants; regulations.—

(5)(a) Every full-service gasoline station offering self-service at a lesser cost shall require an attendant employed by the station to dispense gasoline from the self-service portion of the station to any motor vehicle properly displaying an exemption parking permit as provided in s. 316.1958 or s. 320.0848 or a license plate issued pursuant to s. 320.084, s. 320.0842, s. 320.0843, or s. 320.0845 when the person to whom such permit has been issued is the operator of the vehicle and such service is requested. Such stations shall prominently display a decal no larger than 8 square inches on the front of all self-service pumps clearly stating the requirements of this subsection and the penalties applicable to violations of this subsection. The Department of Agriculture and Consumer Services shall enforce this requirement.

(b) By July 1, 2016, a full-service gasoline station offering self-service at a lesser cost shall prominently display, in addition to the decal required under paragraph (a), a decal that is blue, is at least 15 square inches in size, and clearly displays the international symbol of accessibility shown

in s. 320.0842, the telephone number of the station, and the words "Call for Assistance." The Department of Agriculture and Consumer Services shall adopt rules to implement and enforce this paragraph. This paragraph preempts and supersedes local government laws and regulations pertaining to the provision of fueling assistance by a self-service gasoline station to a motor vehicle operator described in paragraph (a).

(c) ~~(b)~~ Violation of paragraph (a) is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 22. Section 2 of chapter 85-364, Laws of Florida, as amended by section 2 of chapter 95-382, Laws of Florida, is amended to read:

Section 2. All tolls collected shall ~~first~~ be used first for the payment of annual operating and maintenance costs and second to discharge the current bond indebtedness related to the Pinellas Bayway. Thereafter, tolls collected shall be used to establish a reserve construction account to be used, together with interest earned thereon, by the department ~~for the construction of Blind Pass Road, State Road 699 improvements, and~~ for Phase II of the Pinellas Bayway improvements. ~~A portion of the tolls collected shall first be used specifically for the construction of the Blind Pass Road improvements, which improvements consist of widening to four lanes the Blind Pass Road, State Road 699, from 75th Avenue north to the approach of the Blind Pass Bridge, including necessary right-of-way acquisition along said portion of Blind Pass Road, and intersection improvements at 75th Avenue and Blind Pass Road in Pinellas County. Said improvements shall be included in the~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~department's current 5-year work program. Upon completion of the Blind Pass Road improvements, the tolls collected shall be used, together with interest earned thereon, by the department for~~ Phase II of the Pinellas Bayway improvements consists~~, which improvements consist~~ of widening to four lanes the Pinellas Bayway from State Road 679 west to Gulf Boulevard, including necessary approaches, bridges, and avenues of access. Upon completion of the Phase II improvements, the department shall continue to collect tolls on the Pinellas Bayway for purposes of reimbursing the department for all accrued maintenance costs for the Pinellas Bayway.

Section 23. The Department of Highway Safety and Motor Vehicles is directed to develop a plan of action that addresses motor vehicle registration holds placed pursuant to ss. 316.1001, 316.1967, and 318.15, Florida Statutes, for presentation to the Legislature by February 1, 2015. The plan must, at a minimum, include a methodology for applicants whose names have been placed on the list of persons who may not be issued a license plate or revalidation sticker under s. 320.03(8), Florida Statutes, to rectify the cause of the hold through the payment of any outstanding toll, parking ticket, fine, and any other fee at the point of collection of the registration fee.

Section 24. This act shall take effect July 1, 2014.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 11, 2014

I respectfully request that **Senate Bill #1272**, relating to Transportation and Motor Vehicles, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

SENATE APPROPRIATIONS
RECEIVED
14 APR 11 AM
CHAIRMAN
STAFF DIR.
STAFF

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1292
INTRODUCER:	Education Committee and Senator Legg
SUBJECT:	Postsecondary Education
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Favorable**
3.	Elwell	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1292 restructures governance and functionality of online public postsecondary student support services related to libraries, online courses, and online student advising systems.

Specifically, the bill creates the Complete Florida Plus Program (Program) within the Innovation Institute at the University of West Florida and transfers the requirements and responsibilities associated with student support services that are currently administered through the Florida Virtual Campus (FLVC) to the new Program. The bill also establishes the Florida Center for Library Automation (Center) and reassigns the duties and resources regarding online library support services that are currently administered by the FLVC to the new Center. Additionally, the bill renames the Complete Florida Degree Program as the Complete Florida Degree Initiative (Initiative) and restructures the related functions under the new Program.

Senate Bill 2500, the proposed 2014-2015 Senate General Appropriations Bill, appropriates $22.8 million for the Florida Virtual Campus.

The bill takes effect on July 1, 2014.

II. Present Situation:

Complete Florida Degree Program

In 2012, the Legislature established the Complete Florida Degree Program to recruit, recover, and retain the state's adult learners and assist them in completing an associate degree or baccalaureate degree aligned to high-wage, high-skill workforce needs.[1] The program is administered by the University of West Florida (UWF), acting as the lead institution, in coordination with the Florida College System institutions, state universities, and private postsecondary institutions.[2]

The Complete Florida Degree Program must:[3]

- Provide adult learners with a single point of access to information and links to innovative online and accelerated distance learning courses, student and library support services, and electronic resources that will aid them in completing a postsecondary degree.
- Develop and implement an advising and student support system that includes the use of degree completion specialists, is based on best practices and processes, and includes academic and career support services designed specifically for adult learners.
- Use existing or develop new competency-based instructional and evaluation tools to assess prior performance, experience, and education to award college credit and reduce the time required for adults to complete degrees.
- Develop and implement an evaluation process to collect and analyze appropriate data in order to report program effectiveness.
- Develop and implement a statewide student recruitment campaign for the program.
- Identify proposed changes to the statewide computer-assisted student advising system developed by the Florida Virtual Campus (FLVC) to assist adult learners use of the system.
- Use the online admissions application implemented by the FLVC.
- Use the distance learning catalog implemented by the FLVC.

Florida Virtual Campus

In 2012, the Legislature created the FLVC by consolidating the services and resources previously provided by the Florida Distance Learning Consortium, the Florida Higher Education Distance Learning Catalog, FACTS.org, the Florida Center for Library Automation, and the College Center for Library Automation. The FLVC was established to provide access to online student and library support services and to serve as a statewide resource and clearinghouse for public postsecondary education distance learning courses and degree programs.[4]

The primary purposes of the FLVC are to:[5]

- Establish a single library automation system and associated resources and services for all public postsecondary education institutions to use to support their learning, teaching, and research needs.

[1] Section 15, ch. 2012-34, L.O.F.
[2] Section 1006.735(2), F.S.
[3] Section 1006.735(4)-(5), F.S.
[4] Section 14, ch. 2012-134, L.O.F.
[5] Section 1006.73(1), F.S.

- Provide information and access to distance learning courses and degree programs offered by the state's public postsecondary education institutions.
- Coordinate with the Florida College System (FCS) and the State University System (SUS) to identify and provide online academic support services and resources if the multi-institutional provision of such services and resources is more cost or operationally effective.

The FCS and SUS Chancellors exercise joint oversight of the FLVC and establish governance and reporting structures, administrative and operational guidelines and processes, staffing requirements, and the operational budget.[6]

The FLVC must:[7]

- Develop and manage a library information portal and automated library management tools for use by the FCS institutions and state universities.
- Develop and manage a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education institutions to assist in the coordination and collaboration of articulation and access.
- Implement a streamlined, automated, online admissions application process for undergraduate transient students.
- Develop and manage a statewide computer-assisted student advising system that will support advising, registering, and certifying students for graduation and include a degree audit and articulation component.
- Coordinate the negotiation of statewide licensing of electronic library resources and preferred pricing agreements, issue purchase orders, and enter into contracts for the acquisition of distance learning resources, student and library support services, electronic resources, and other goods and services necessary to perform its duties.
- Promote and provide recommendations concerning the use and distribution of open-access textbooks and education resources to reduce costs and develop and standardized process for reviewing and approving open-access textbooks.
- Provide appropriate help desk support, training and consultation services to institutions and students using the services and resources of the FLVC.
- Identify and evaluate new technologies and instructional methods that can be used to improve distance learning instruction, student learning, the efficient delivery of student support services, and the overall quality of undergraduate distance learning courses and degree programs.
- Develop and implement a plan, in consultation with the public postsecondary education institutions, which describes the services and resources available through the FLVC to encourage students to use such services and resources.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) reported that the FLVC as made progress toward functioning as a cohesive unit and saved approximately $1.5 million by reducing positions and an additional $116,586 by renegotiating leases. However, the FLVC continues to maintain three separate locations. The Tallahassee lease agreement

[6] Section 1006.73(2), F.S.
[7] Section 1006.73(5), F.S.

obligates the FLVC to pay for 2,000 square feet of space that it does not need. The FLVC maintains an $8 million in reserve balance for which the obligations are unclear.[8]

Additionally, OPPAGA reported that the FLVC has not implemented key legislative priorities and lacks a plan for addressing key issues, such as:[9]

- The FLVC has not taken adequate steps to advertise to students services that are available through the FLVC.
- The FLVC Website is difficult to navigate and use.
- The FLVC advising system is out-of-date and relatively few students use the system.
- The FLVC distance learning catalog is functional but does not have ready access to data that is needed to fully meet the statutory requirements.
- The FCS and state university library systems continue to operate separately.

Licensing Electronic Library Resources

Florida law provides parameters for cost efficient and cost effective licensing of electronic library resources and outlines a process for identifying shared core resources among institutions that must be made available to all public postsecondary education students.[10] The chancellors and vice chancellors of the FCS institutions and state universities must annually report to the Governor and the chairs of the legislative appropriations committee the cost savings realized as a result of the collaborative licensing process.[11]

III. Effect of Proposed Changes:

The bill restructures governance and functionality of online public postsecondary student support services related to libraries, online courses, and online student advising systems.

Specifically, the bill creates the Complete Florida Plus Program (Program) within the Innovation Institute at the University of West Florida (UWF) and transfers the requirements and responsibilities associated with student support services that are currently administered through the FLVC to the new Program. The bill also establishes the Florida Center for Library Automation (Center) and reassigns the duties and resources regarding online library support services that are currently administered by the FLVC to the new Center. Additionally, the bill renames the Complete Florida Degree Program as the Complete Florida Degree Initiative (Initiative) and restructures the related functions under the new Program. The consolidation of duties and resources are intended to strengthen and streamline online services and resources to students pursuing higher education in Florida.

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[8] Office of Program Policy Analysis and Government Accountability, *Progress of Florida Virtual Campus*, presentation to the Higher Education & Workforce Subcommittee, Florida House of Representatives (Feb. 13, 2014), *available at* http://www.oppaga.state.fl.us/monitordocs/Presentations/P14-19.pdf.

[9] Office of Program Policy Analysis and Government Accountability, *Progress of Florida Virtual Campus*, presentation to the Higher Education & Workforce Subcommittee, Florida House of Representatives (Feb. 13, 2014), *available at* http://www.oppaga.state.fl.us/monitordocs/Presentations/P14-19.pdf.

[10] Section 1006.72, F.S.

[11] Section 1006.72(7), F.S.

Complete Florida Plus Program

The bill specifies that the purpose of the Program is to:

- Facilitate degree completion of the state's adult learners through the Initiative.
- Provide information and access to distance learning courses and degree programs offered by the state's public postsecondary institutions.
- Coordinate with the FCS and the SUS to identify and provide online academic support services and resources if the multi-institutional provision of such services and resources is more cost-effective or operationally effective.

The bill repeals section 1006.73 of the Florida Statutes and transfers responsibility regarding implementation of the services and resources that are currently assigned to the FLVC to the Program and requires the Program to:

- Develop and manage a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary institutions to assist with the coordination and collaboration of articulation and access to postsecondary education.
- Provide a streamlined, automated, online admissions application process for undergraduate transient students who are enrolled in a public postsecondary education institution and who enroll in a course offered by a public postsecondary education institution that is not the students' degree-granting institution.
- Develop and manage a statewide computer-assisted student advising system that will support student advising and registration and certification of students for graduation and include a degree audit and articulation component.
- Identify and evaluate new technologies and instructional methods that can be used to improve distance learning instruction and professional development for faculty, student learning outcomes, student access, the delivery of student support services, the alignment of degrees to career needs, and the overall quality of postsecondary distance learning courses and degree programs.
- Provide appropriate help desk support and training and consultation services to institutions and students using the Program services.
- Coordinate the negotiation of statewide licensing of resources and preferred pricing agreements, issue purchase orders, and execute contracts for the acquisition of distance learning resources, student support services, electronic resources, and other goods and services necessary to perform Program duties.
- Develop and implement a plan, in consultation with the public postsecondary education institutions, which describes the services and resources available through the Program to encourage students to use the Program services and resources.

The bill requires transfer of all records, personnel, property, existing contracts, and unexpended balance of appropriations, allocations, grants, and other funds of the FLVC to UWF. The bill also designates UWF as the successor in interest to the FLVC and be responsible for the provision of all authorized services.

Florida Center for Library Automation

The bill establishes the Center to provide a single library automation system and related resources and services that all public postsecondary institutions must use to support the teaching, learning, and research needs of students and faculty.

The Center must:

- Develop and manage a library information portal and automated library management tools for use by the FCS institutions and state universities.
- Coordinate the negotiation of statewide licensing of electronic library resources and preferred pricing agreements, issue purchase orders, and execute duties of the Center.
- Promote and provide recommendations concerning the use and distribution of open-access textbooks and education resources to reduce costs and work with public postsecondary education institutions to develop a standardized process for the review and approval of open-access textbooks.

The Center must be administered by an executive director who must be accountable to the executive director of UWF's Innovation Institute. The executive director of the Center must:

- Independently exercise all powers, duties, and functions of the Center as prescribed by law.
- Administer the operational requirements of the Center.
- Hire professional and administrative staff necessary to perform the duties of the Center.
- Keep administrative staff to the minimum necessary to administer the duties of the Center.

The bill repeals section 1006.72 of the Florida Statutes regarding licensing electronic library resources and incorporates related provisions into the Center.

The bill adds conforming references to reflect the new Program.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Senate Bill 2500, the proposed 2014-2015 Senate General Appropriations Bill, appropriates $22.8 million for the Florida Virtual Campus.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1006.735, 1007.01, 1009.23, and 1009.24.

This bill creates section 1004.448 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 1006.72 and 1006.73.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education on March 25, 2014:
The committee substitute differs from SB 1292 in that the committee substitute:

- Creates the Complete Florida Plus Program (Program) within the Innovation Institute at the University of West Florida and transfers the requirements and responsibilities associated with student support services that are currently administered through the Florida Virtual Campus (FLVC) to the new Program.
- Establishes the Florida Center for Library Automation (Center) and reassigns the duties and resources regarding online library support services that are currently administered by the FLVC to the new Center.
- Renames the Complete Florida Degree Program as the Complete Florida Degree Initiative (Initiative) and restructures the related functions under the new Program.

- Omits the provision regarding adding industry certifications to the list of articulated acceleration mechanisms.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
04/23/2014	.	
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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 368 - 410
and insert:
Section 6. Paragraphs (c) through (g) of subsection (3) of section 1009.22, Florida Statutes, are amended to read:
1009.22 Workforce education postsecondary student fees.—
(3)
(c) Effective July 1, 2014 ~~2011~~, for programs leading to a career certificate or an applied technology diploma, the

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standard tuition shall be $2.33 ~~$2.22~~ per contact hour for residents and nonresidents and the out-of-state fee shall be $6.99 ~~$6.66~~ per contact hour. For adult general education programs, a block tuition of $45 per half year or $30 per term shall be assessed ~~for residents and nonresidents, and the out-of-state fee shall be $135 per half year or $90 per term~~. Each district school board and Florida College System institution board of trustees shall adopt policies and procedures for the collection of and accounting for the expenditure of the block tuition. All funds received from the block tuition shall be used only for adult general education programs. Students enrolled in adult general education programs may not be assessed the fees authorized in subsection (5), subsection (6), or subsection (7).

~~(d) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee per contact hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and out-of-state fee shall remain at the same level as~~

~~the prior fiscal year.~~

(d) ~~(c)~~ Each district school board and each Florida College System institution board of trustees may adopt tuition and out-of-state fees that may vary no more than 5 percent below and 5 percent above the combined total of the standard tuition and out-of-state fees established in paragraph (c).

(e) ~~(f)~~ The maximum increase in resident tuition for any school district or Florida College System institution during the 2007-2008 fiscal year shall be 5 percent over the tuition charged during the 2006-2007 fiscal year.

(f) ~~(g)~~ The State Board of Education may adopt, by rule, the definitions and procedures that district school boards and Florida College System institution boards of trustees shall use in the calculation of cost borne by students.

Section 7. Subsection (3), paragraph (a) of subsection (16), and subsection (17) of section 1009.23, Florida Statutes, are amended to read:

1009.23 Florida College System institution student fees.—

(3)(a) Effective July 1, 2014 ~~2011~~, for advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs, the standard tuition shall be $71.98 ~~$68.56~~ per credit hour for residents and nonresidents, and the out-of-state fee shall be $215.94 ~~$205.82~~ per credit hour.

(b) Effective July 1, 2014 ~~2011~~, for baccalaureate degree programs, the following tuition and fee rates shall apply:

1. The tuition shall be $91.79 ~~$87.42~~ per credit hour for students who are residents for tuition purposes.

2. The sum of the tuition and the out-of-state fee per

credit hour for students who are nonresidents for tuition purposes shall be no more than 85 percent of the sum of the tuition and the out-of-state fee at the state university nearest the Florida College System institution.

~~(c) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and the out-of-state fee per credit hour shall remain at the same levels as the prior fiscal year.~~

(16)(a) Each Florida College System institution may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.735 ~~s. 1006.73~~, a per-credit-hour distance learning course user fee. For purposes of assessing this fee, a distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time

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or space, or both.

(17) Each Florida College System institution that accepts transient students, pursuant to s. 1006.735 ~~s. 1006.73~~, may establish a transient student fee not to exceed $5 per course for processing the transient student admissions application.

Section 8. Paragraphs (a), (b), and (e) of subsection (4), paragraph (t) of subsection (14), paragraph (b) of subsection (16), and paragraph (a) of subsection (17) of section 1009.24, Florida Statutes, are amended, to read:

1009.24 State university student fees.—

(4)(a) Effective July 1, 2014 ~~2011~~, the resident undergraduate tuition for lower-level and upper-level coursework shall be $105.07 ~~$103.32~~ per credit hour.

~~(b) Beginning with the 2008-2009 fiscal year and each year thereafter, the resident undergraduate tuition per credit hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Board of Governors each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the resident undergraduate tuition shall remain at the same level as the prior fiscal year.~~

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(d) ~~(c)~~ The sum of the activity and service, health, and athletic fees a student is required to pay to register for a course may ~~shall~~ not exceed 40 percent of the tuition established in law or in the General Appropriations Act. No university shall be required to lower any fee in effect on the effective date of this act in order to comply with this subsection. Within the 40 percent cap, universities may not increase the aggregate sum of activity and service, health, and athletic fees more than 5 percent per year~~, or the same percentage increase in tuition authorized under paragraph (b), whichever is greater,~~ unless specifically authorized in law or in the General Appropriations Act. A university may increase its athletic fee to defray the costs associated with changing National Collegiate Athletic Association divisions. Any such increase in the athletic fee may exceed both the 40 percent cap and the 5 percent cap imposed by this subsection. Any such increase must be approved by the athletic fee committee in the process outlined in subsection (12) and may not ~~cannot~~ exceed $2 per credit hour. Notwithstanding ~~the provisions of~~ ss. 1009.534, 1009.535, and 1009.536, that portion of any increase in an athletic fee pursuant to this subsection which ~~that~~ causes the sum of the activity and service, health, and athletic fees to exceed the 40 percent cap or the annual increase in such fees to exceed the 5 percent cap may ~~shall~~ not be included in calculating the amount a student receives for a Florida Academic Scholars award, a Florida Medallion Scholars award, or a Florida Gold Seal Vocational Scholars award. Notwithstanding this paragraph and subject to approval by the board of trustees, each state university may ~~is authorized to~~ exceed the 5 percent ~~5-~~

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~~percent~~ cap on the annual increase to the aggregate sum of activity and service, health, and athletic fees for the 2010-2011 fiscal year. Any such increase may ~~shall~~ not exceed 15 percent or the amount required to reach the 2009-2010 fiscal year statewide average for the aggregate sum of activity and service, health, and athletic fees at the main campuses, whichever is greater. The aggregate sum of the activity and service, health, and athletic fees may ~~shall~~ not exceed 40 percent of tuition. Any increase in the activity and service fee, health fee, or athletic fee must be approved by the appropriate fee committee pursuant to subsection (10), subsection (11), or subsection (12).

(14) Except as otherwise provided in subsection (15), each university board of trustees is authorized to establish the following fees:

(t) A transient student fee that may not exceed $5 per course for accepting a transient student and processing the transient student admissions application pursuant to s. 1006.735 ~~s. 1006.73~~.

With the exception of housing rental rates and except as otherwise provided, fees assessed pursuant to paragraphs (h)-(s) shall be based on reasonable costs of services. The Board of Governors shall adopt regulations and timetables necessary to implement the fees and fines authorized under this subsection. The fees assessed under this subsection may be used for debt only as authorized under s. 1010.62.

(16) Each university board of trustees may establish a tuition differential for undergraduate courses upon receipt of

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approval from the Board of Governors. The tuition differential shall promote improvements in the quality of undergraduate education and shall provide financial aid to undergraduate students who exhibit financial need.

(b) Each tuition differential is subject to the following conditions:

1. The tuition differential may be assessed on one or more undergraduate courses or on all undergraduate courses at a state university.

2. The tuition differential may vary by course or courses, campus or center location, and by institution. Each university board of trustees shall strive to maintain and increase enrollment in degree programs related to math, science, high technology, and other state or regional high-need fields when establishing tuition differentials by course.

3. For each state university that is designated as a preeminent state research university by the Board of Governors, pursuant to s. 1001.7065, ~~that has total research and development expenditures for all fields of at least $100 million per year as reported annually to the National Science Foundation,~~ the aggregate sum of tuition and the tuition differential may ~~not~~ be increased by no more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year if the university meets or exceeds each performance standard target for that university established annually by the Board of Governors for the following performance standards, each amounting to no more than a 2 percent increase in tuition differential:

a. Increase in the 6-year graduation rate for full-time,

first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System;

b. Increase in the total annual research expenditures; and

c. Increase in the total patents awarded by the United States Patent and Trademark Office for the most recent years. ~~For each state university that has total research and development expenditures for all fields of less than $100 million per year as reported annually to the National Science Foundation, the aggregate sum of tuition and the tuition differential may not be increased by more than 15 percent of the total charged for the aggregate sum of these fees in the preceding fiscal year.~~

4. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.

5. The tuition differential shall not be included in any award under the Florida Bright Futures Scholarship Program established pursuant to ss. 1009.53-1009.538.

6. Beneficiaries having prepaid tuition contracts pursuant to s. 1009.98(2)(b) which were in effect on July 1, 2007, and which remain in effect, are exempt from the payment of the tuition differential.

7. The tuition differential may not be charged to any student who was in attendance at the university before July 1, 2007, and who maintains continuous enrollment.

8. The tuition differential may be waived by the university for students who meet the eligibility requirements for the Florida public student assistance grant established in s.

1009.50.

9. Subject to approval by the Board of Governors, the tuition differential authorized pursuant to this subsection may take effect with the 2009 fall term.

(17)(a) A state university may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.735 ~~s. 1006.73~~, a per-credit-hour distance learning course fee. For purposes of assessing this fee, a distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.

Section 9. Subsection (8) of section 1009.26, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

1009.26 Fee waivers.—

(8) A state university, a ~~or~~ Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive undergraduate tuition for each recipient of a Purple Heart or another combat decoration superior in precedence who:

(a) Is enrolled as a full-time, part-time, or summer-school student in an undergraduate program that terminates in a degree or certificate;

(b) Is currently, and was at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, a resident of this state; and

(c) Submits to the state university or the Florida College

System institution the DD-214 form issued at the time of separation from service as documentation that the student has received a Purple Heart or another combat decoration superior in precedence. If the DD-214 is not available, other documentation may be acceptable if recognized by the United States Department of Defense or the United States Department of Veterans Affairs as documenting the award.

Such a waiver for a Purple Heart recipient or recipient of another combat decoration superior in precedence shall be applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled.

(12)(a) A state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive out-of-state fees for students, including but not limited to students who are undocumented for federal immigration purposes, who meet the following conditions:

1. Attended a secondary school in this state, which is not the Florida Virtual School Global, for 3 consecutive years immediately before graduating from a high school in this state;

2. Enrolled in a degree or certificate program at an institution of higher education within 24 months after high school graduation; and

3. Submitted an official Florida high school transcript as evidence of attendance and graduation.

(b) Tuition and fees charged to a student who qualifies for the out-of-state fee waiver under this subsection may not exceed

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the tuition and fees charged to a resident student. The waiver is applicable for 110 percent of the required credit hours of the degree or certificate program for which the student is enrolled. Each state university, Florida College System institution, career center operated by a school district under s. 1001.44, and charter technical career center shall report to the Board of Governors and the State Board of Education, as appropriate, the number and value of all fee waivers granted annually under this subsection. The Board of Governors for the state universities and the State Board of Education for Florida College System institutions, career centers operated by a school district under s. 1001.44, and charter technical career centers shall annually certify within their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as the 2013-2014 resident student enrollment systemwide.

(c) A student who is granted an out-of-state fee waiver under this subsection is not eligible for state financial aid under part III of chapter 1009.

Section 10. Subsection (10) of section 1009.98, Florida Statutes, is amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds ~~exceed~~ the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2)(d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2)(b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2)(b)3. The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at $37.03 per credit hour. The base rate for the tuition differential in subsequent years is the amount assessed ~~paid by the board~~ for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.

(b) Effective with the 2009-2010 academic year and thereafter, and notwithstanding the provisions of s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose contract was purchased before July 1, 2024 ~~2009~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected

liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.

2. As to the tuition differential, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the base rate for the tuition differential fee in the preceding fiscal year.

3. As to local fees, the board shall pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.

4. As to dormitory fees, the board shall pay the state universities 6 percent above the amount assessed for dormitory fees in the preceding fiscal year.

5. Qualified beneficiaries of advance payment contracts purchased before July 1, 2007, are exempt from paying any

tuition differential fee.

(c) Notwithstanding the amount assessed for registration fees, the tuition differential fee, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for the aggregate sum of those fees.

(d) Notwithstanding the amount assessed for dormitory fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for dormitory fees.

(e) ~~(c)~~ The board shall pay state universities the actual amount assessed in accordance with law for registration fees, the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2024 ~~2009~~.

(f) ~~(d)~~ The board shall annually evaluate or cause to be evaluated the actuarial soundness of the trust fund.

Section 11. Subsection (10) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(10) A high school student dually enrolled under s. 1007.271 in a workforce education program operated by a Florida College System institution or school district career center generates the amount calculated for workforce education funding, including any payment of performance funding, and the

proportional share of full-time equivalent enrollment generated through the Florida Education Finance Program for the student's enrollment in a high school. If a high school student is dually enrolled in a Florida College System institution program, including a program conducted at a high school, the Florida College System institution earns the funds generated for workforce education funding, and the school district earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a career center operated by the same district as the district in which the student attends high school, that district earns the funds generated for workforce education funding and also earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a workforce education program provided by a career center operated by a different school district, the funds must be divided between the two school districts proportionally from the two funding sources. A student may not be reported for funding in a dual enrollment workforce education program unless the student has completed the basic skills assessment pursuant to s. 1004.91. A student who is coenrolled in a K-12 education program and an adult education program may be reported for purposes of funding in an adult education program. If a student is coenrolled in core curricula courses for credit recovery or dropout prevention purposes and does not have a pattern of excessive absenteeism or habitual truancy or a history of disruptive behavior in school, the student may be reported for funding for up to two courses per year. Such a student is exempt from the payment of the block tuition for

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adult general education programs provided in s. 1009.22(3)(c) ~~s. 1009.22(3)(d)~~. The Department of Education shall develop a list of courses to be designated as core curricula courses for the purposes of coenrollment.

Section 12. A dependent child who is a citizen of the United States of America may not be denied residency classification for tuition purposes based solely on the parent's undocumented immigration status. All applicable laws apply.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 35 - 37

and insert:

deleting an obsolete provision; amending s. 1007.01, F.S.; conforming a cross-reference; amending s. 1009.22, F.S.; revising the standard tuition and out-of-state fees for workforce education postsecondary programs leading to certain certificates and diplomas at Florida College System institutions; deleting a provision relating to an increase in tuition and out-of-state fees at a rate equal to inflation; deleting a requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, and the State Board of Education; deleting the definition of the term "rate of inflation"; amending s. 1009.23, F.S.; revising the standard tuition and out-of-state fees for certain programs at Florida College System institutions; deleting a provision relating to an

increase in tuition and out-of-state fees at a rate equal to inflation; deleting a requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, and the State Board of Education; deleting the definition of the term "rate of inflation"; conforming cross-references; amending s. 1009.24, F.S.; revising the resident undergraduate tuition for lower-level and upper-level coursework; deleting a provision related to an increase of the resident undergraduate tuition at state universities at a rate equal to inflation; deleting the requirement of the Office of Economic and Demographic Research to annually report the rate of inflation to the Governor, the Legislature, and the Board of Governors; deleting the definition of the term "rate of inflation"; conforming provisions to changes made by the act; conforming a cross-reference; authorizing a state university board of trustees to increase the aggregate sum of tuition and tuition differential for up to 6 percent of the total charged for the aggregate sum of such fees in the preceding year if the state university meets the specified conditions; conforming a cross-reference; amending s. 1009.26, F.S.; requiring a state university, a Florida College System institution, a career center operated by a school district, or a charter technical career center to waive undergraduate tuition for a recipient of a Purple Heart or another combat decoration superior in

precedence under certain conditions; requiring a state university, a Florida College System institution, a career center operated by a school district, and a charter technical career center to waive out-of-state fees for certain students who meet specified conditions; requiring a state university, a Florida College System institution, a career center operated by a school district, and a charter technical career center to report to the Board of Governors and the State Board of Education, as appropriate, the number and value of all fee waivers; requiring the Board of Governors for the state universities and the State Board of Education for the Florida College System institutions, career centers operated by a school district, and charter technical career centers to annually certify within their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as the resident student enrollment systemwide in a specified academic year; providing that a student who is granted the out-of-state fee waiver is not eligible for state financial aid; amending s. 1009.98, F.S.; redefining the term "tuition differential"; revising the purchase date of an advance payment contract as it relates to the amount paid by the Florida Prepaid College Board to a state university on behalf of a qualified beneficiary; prohibiting the amount of the aggregate sum of registration fees, the tuition differential fee, and local fees paid by the board to a state

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university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for the aggregate sum of those fees; prohibiting the amount of the dormitory fees paid for by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for those fees; conforming provisions to changes made by the act; amending s. 1011.80, F.S.; conforming a cross-reference; prohibiting certain dependent children from being denied residency classification for tuition purposes based solely on a parent’s undocumented immigration status; providing an effective date.

444818

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (824504)

Delete line 9
and insert:
(c) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for programs leading to a

Delete line 58
and insert:
(3)(a) Unless otherwise provided in the General

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Appropriations Act, effective July 1, 2014 ~~2011~~, for advanced and

Delete line 64

and insert:

(b) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for baccalaureate degree

Delete line 108

and insert:

(4)(a) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, the resident

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Substitute for Amendment (824504) (with title amendment)

Delete lines 368 - 410
and insert:
Section 6. Paragraphs (c) through (g) of subsection (3) of section 1009.22, Florida Statutes, are amended to read:
1009.22 Workforce education postsecondary student fees.—
(3)
(c) Unless otherwise provided in the General Appropriations

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Act, effective July 1, 2014 ~~2011~~, for programs leading to a career certificate or an applied technology diploma, the standard tuition shall be $2.33 ~~$2.22~~ per contact hour for residents and nonresidents and the out-of-state fee shall be $6.99 ~~$6.66~~ per contact hour. For adult general education programs, a block tuition of $45 per half year or $30 per term shall be assessed for residents and nonresidents, and the out-of-state fee shall be $135 per half year or $90 per term. Each district school board and Florida College System institution board of trustees shall adopt policies and procedures for the collection of and accounting for the expenditure of the block tuition. All funds received from the block tuition shall be used only for adult general education programs. Students enrolled in adult general education programs may not be assessed the fees authorized in subsection (5), subsection (6), or subsection (7).

~~(d) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee per contact hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous~~

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~~year. In the event the percentage change is negative, the tuition and out-of-state fee shall remain at the same level as the prior fiscal year.~~

(d) ~~(e)~~ Each district school board and each Florida College System institution board of trustees may adopt tuition and out-of-state fees that may vary no more than 5 percent below and 5 percent above the combined total of the standard tuition and out-of-state fees established in paragraph (c).

(e) ~~(f)~~ The maximum increase in resident tuition for any school district or Florida College System institution during the 2007-2008 fiscal year shall be 5 percent over the tuition charged during the 2006-2007 fiscal year.

(f) ~~(g)~~ The State Board of Education may adopt, by rule, the definitions and procedures that district school boards and Florida College System institution boards of trustees shall use in the calculation of cost borne by students.

Section 7. Subsection (3), paragraph (a) of subsection (16), and subsection (17) of section 1009.23, Florida Statutes, are amended to read:

1009.23 Florida College System institution student fees.—

(3)(a) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs, the standard tuition shall be $71.98 ~~$68.56~~ per credit hour for residents and nonresidents, and the out-of-state fee shall be $215.94 ~~$205.82~~ per credit hour.

(b) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for baccalaureate degree

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programs, the following tuition and fee rates shall apply:

1. The tuition shall be $91.79 ~~$87.42~~ per credit hour for students who are residents for tuition purposes.

2. The sum of the tuition and the out-of-state fee per credit hour for students who are nonresidents for tuition purposes shall be no more than 85 percent of the sum of the tuition and the out-of-state fee at the state university nearest the Florida College System institution.

~~(c) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and the out-of-state fee per credit hour shall remain at the same levels as the prior fiscal year.~~

(16)(a) Each Florida College System institution may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.735 ~~s. 1006.73~~, a per-credit-hour distance learning course user fee.

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For purposes of assessing this fee, a distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.

(17) Each Florida College System institution that accepts transient students, pursuant to s. 1006.735 ~~s. 1006.73~~, may establish a transient student fee not to exceed $5 per course for processing the transient student admissions application.

Section 8. Paragraphs (a), (b), and (e) of subsection (4), paragraph (t) of subsection (14), paragraph (b) of subsection (16), and paragraph (a) of subsection (17) of section 1009.24, Florida Statutes, are amended, to read:

1009.24 State university student fees.—

(4)(a) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, the resident undergraduate tuition for lower-level and upper-level coursework shall be $105.07 ~~$103.32~~ per credit hour.

~~(b) Beginning with the 2008-2009 fiscal year and each year thereafter, the resident undergraduate tuition per credit hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Board of Governors each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average,~~

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~~All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the resident undergraduate tuition shall remain at the same level as the prior fiscal year.~~

(d) ~~(c)~~ The sum of the activity and service, health, and athletic fees a student is required to pay to register for a course may ~~shall~~ not exceed 40 percent of the tuition established in law or in the General Appropriations Act. No university shall be required to lower any fee in effect on the effective date of this act in order to comply with this subsection. Within the 40 percent cap, universities may not increase the aggregate sum of activity and service, health, and athletic fees more than 5 percent per year, or the same percentage increase in tuition authorized under paragraph (a) ~~(b)~~, whichever is greater, unless specifically authorized in law or in the General Appropriations Act. A university may increase its athletic fee to defray the costs associated with changing National Collegiate Athletic Association divisions. Any such increase in the athletic fee may exceed both the 40 percent cap and the 5 percent cap imposed by this subsection. Any such increase must be approved by the athletic fee committee in the process outlined in subsection (12) and may not ~~cannot~~ exceed $2 per credit hour. Notwithstanding ~~the provisions of~~ ss. 1009.534, 1009.535, and 1009.536, that portion of any increase in an athletic fee pursuant to this subsection which ~~that~~ causes the sum of the activity and service, health, and athletic fees to exceed the 40 percent cap or the annual increase in such fees to exceed the 5 percent cap may ~~shall~~ not be included in

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calculating the amount a student receives for a Florida Academic Scholars award, a Florida Medallion Scholars award, or a Florida Gold Seal Vocational Scholars award. Notwithstanding this paragraph and subject to approval by the board of trustees, each state university may ~~is authorized to~~ exceed the 5 percent ~~5-percent~~ cap on the annual increase to the aggregate sum of activity and service, health, and athletic fees for the 2010-2011 fiscal year. Any such increase may ~~shall~~ not exceed 15 percent or the amount required to reach the 2009-2010 fiscal year statewide average for the aggregate sum of activity and service, health, and athletic fees at the main campuses, whichever is greater. The aggregate sum of the activity and service, health, and athletic fees may ~~shall~~ not exceed 40 percent of tuition. Any increase in the activity and service fee, health fee, or athletic fee must be approved by the appropriate fee committee pursuant to subsection (10), subsection (11), or subsection (12).

(14) Except as otherwise provided in subsection (15), each university board of trustees is authorized to establish the following fees:

(t) A transient student fee that may not exceed $5 per course for accepting a transient student and processing the transient student admissions application pursuant to s. 1006.735 ~~s. 1006.73~~.

With the exception of housing rental rates and except as otherwise provided, fees assessed pursuant to paragraphs (h)-(s) shall be based on reasonable costs of services. The Board of Governors shall adopt regulations and timetables necessary to

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implement the fees and fines authorized under this subsection. The fees assessed under this subsection may be used for debt only as authorized under s. 1010.62.

(16) Each university board of trustees may establish a tuition differential for undergraduate courses upon receipt of approval from the Board of Governors. The tuition differential shall promote improvements in the quality of undergraduate education and shall provide financial aid to undergraduate students who exhibit financial need.

(b) Each tuition differential is subject to the following conditions:

1. The tuition differential may be assessed on one or more undergraduate courses or on all undergraduate courses at a state university.

2. The tuition differential may vary by course or courses, campus or center location, and by institution. Each university board of trustees shall strive to maintain and increase enrollment in degree programs related to math, science, high technology, and other state or regional high-need fields when establishing tuition differentials by course.

3. For each state university that has total research and development expenditures for all fields of at least $100 million per year as reported annually to the National Science Foundation, the aggregate sum of tuition and the tuition differential may ~~not~~ be increased by no more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year. For each state university that has total research and development expenditures for all fields of less than $100 million per year as reported annually to the National

Science Foundation, the aggregate sum of tuition and the tuition differential may not be increased by more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year.

4. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.

5. The tuition differential may ~~shall~~ not be included in any award under the Florida Bright Futures Scholarship Program established pursuant to ss. 1009.53-1009.538.

6. Beneficiaries having prepaid tuition contracts pursuant to s. 1009.98(2)(b) which were in effect on July 1, 2007, and which remain in effect, are exempt from the payment of the tuition differential.

7. The tuition differential may not be charged to any student who was in attendance at the university before July 1, 2007, and who maintains continuous enrollment.

8. The tuition differential may be waived by the university for students who meet the eligibility requirements for the Florida public student assistance grant established in s. 1009.50.

9. Subject to approval by the Board of Governors, the tuition differential authorized pursuant to this subsection may take effect with the 2009 fall term.

(17)(a) A state university may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.735 ~~s. 1006.73~~, a per-credit-hour distance learning course fee. For purposes of assessing this fee, a

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distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.

Section 9. Subsection (10) of section 1009.98, Florida Statutes, is amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds ~~exceed~~ the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2)(d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2)(b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2)(b)3. The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at $37.03 per credit hour. The base rate for the tuition differential in subsequent years is the amount assessed ~~paid by the board~~ for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.

(b) Effective with the 2009-2010 academic year and thereafter, and notwithstanding the provisions of s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose

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contract was purchased before July 1, 2024 ~~2009~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.

2. As to the tuition differential, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the

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base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the base rate for the tuition differential fee in the preceding fiscal year.

3. As to local fees, the board shall pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.

4. As to dormitory fees, the board shall pay the state universities 6 percent above the amount assessed for dormitory fees in the preceding fiscal year.

5. Qualified beneficiaries of advance payment contracts purchased before July 1, 2007, are exempt from paying any tuition differential fee.

(c) Notwithstanding the amount assessed for registration fees, the tuition differential fee, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for the aggregate sum of those fees.

(d) Notwithstanding the amount assessed for dormitory fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for dormitory fees.

(e) ~~(c)~~ The board shall pay state universities the actual amount assessed in accordance with law for registration fees,

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the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2024 ~~2009~~.

(f) ~~(d)~~ The board shall annually evaluate or cause to be evaluated the actuarial soundness of the trust fund.

Section 10. Subsection (10) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(10) A high school student dually enrolled under s. 1007.271 in a workforce education program operated by a Florida College System institution or school district career center generates the amount calculated for workforce education funding, including any payment of performance funding, and the proportional share of full-time equivalent enrollment generated through the Florida Education Finance Program for the student's enrollment in a high school. If a high school student is dually enrolled in a Florida College System institution program, including a program conducted at a high school, the Florida College System institution earns the funds generated for workforce education funding, and the school district earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a career center operated by the same district as the district in which the student attends high school, that district earns the funds generated for workforce education funding and also earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a workforce education program provided by

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a career center operated by a different school district, the funds must be divided between the two school districts proportionally from the two funding sources. A student may not be reported for funding in a dual enrollment workforce education program unless the student has completed the basic skills assessment pursuant to s. 1004.91. A student who is coenrolled in a K-12 education program and an adult education program may be reported for purposes of funding in an adult education program. If a student is coenrolled in core curricula courses for credit recovery or dropout prevention purposes and does not have a pattern of excessive absenteeism or habitual truancy or a history of disruptive behavior in school, the student may be reported for funding for up to two courses per year. Such a student is exempt from the payment of the block tuition for adult general education programs provided in s. 1009.22(3)(c) ~~s. 1009.22(3)(d)~~. The Department of Education shall develop a list of courses to be designated as core curricula courses for the purposes of coenrollment.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 35 - 37

and insert:

deleting an obsolete provision; amending s. 1007.01, F.S.; conforming a cross-reference; amending s. 1009.22, F.S.; revising the standard tuition and out-of-state fees for workforce education postsecondary programs leading to certain certificates and diplomas at Florida College System institutions; deleting a

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provision relating to an increase in tuition and out-of-state fees at a rate equal to inflation; deleting a requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, and the State Board of Education; deleting the definition of the term "rate of inflation"; amending s. 1009.23, F.S.; revising the standard tuition and out-of-state fees for certain programs at Florida College System institutions; deleting a provision relating to an increase in tuition and out-of-state fees at a rate equal to inflation; deleting a requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, and the State Board of Education; deleting the definition of the term "rate of inflation"; conforming cross-references; amending s. 1009.24, F.S.; revising the resident undergraduate tuition for lower-level and upper-level coursework; deleting a provision related to an increase of the resident undergraduate tuition at state universities at a rate equal to inflation; deleting the requirement of the Office of Economic and Demographic Research to annually report the rate of inflation to the Governor, the Legislature, and the Board of Governors; deleting the definition of the term "rate of inflation"; conforming provisions to changes made by the act; conforming a cross-reference; authorizing a state university board of trustees to increase the aggregate

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sum of tuition and tuition differential for up to 6 percent of the total charged for the aggregate sum of such fees in the preceding year; conforming a cross-reference; amending s. 1009.98, F.S.; redefining the term "tuition differential"; revising the purchase date of an advance payment contract as it relates to the amount paid by the Florida Prepaid College Board to a state university on behalf of a qualified beneficiary; prohibiting the amount of the aggregate sum of registration fees, the tuition differential fee, or local fees paid by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for the aggregate sum of those fees; prohibiting the amount of the dormitory fees paid for by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for those fees; conforming provisions to changes made by the act; amending s. 1011.80, F.S.; conforming a cross-reference; providing an effective date.

By the Committee on Education; and Senator Legg

581-03211-14 20141292c1

A bill to be entitled

An act relating to postsecondary education; creating s. 1004.448, F.S.; establishing the Florida Center for Library Automation; providing the duties of the center; providing that an executive director administers the center; providing the duties of the executive director; repealing s. 1006.72, F.S., relating to licensing electronic library resources; repealing s. 1006.73, F.S., relating to the Florida Virtual Campus; amending s. 1006.735, F.S.; creating the Complete Florida Plus Program, rather than the Complete Florida Degree Program, within the Innovation Institute of the University of West Florida; providing a purpose for the program; establishing the Complete Florida Degree Initiative; requiring the initiative to use labor market data and projections to identify specific workforce needs and targeted occupations; deleting implementing provisions relating to the Complete Florida Degree Program; providing duties of the Complete Florida Degree Initiative; requiring the Complete Florida Plus Program to develop and manage a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education institutions; providing requirements for the operational procedures for the catalog; requiring the Complete Florida Plus Program to make available to postsecondary students specified online supports and services; providing that records, personnel, property, existing contracts, unexpended

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581-03211-14 20141292c1

balances of appropriations, allocations, grants, and other funds of the Florida Virtual Campus are transferred to the University of West Florida; providing that the University of West Florida is the successor in interest to the Florida Virtual Campus; deleting an obsolete provision; amending ss. 1007.01, 1009.23, and 1009.24, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1004.448, Florida Statutes, is created to read:

1004.448 Florida Center for Library Automation.—

(1) The Florida Center for Library Automation is established to provide a single library automation system and associated resources and services that all public postsecondary institutions shall use to support their learning, teaching, and research needs.

(2) The Florida Center for Library Automation shall:

(a) Develop and manage a library information portal and automated library management tools for use by the Florida College System institutions and state universities. The library information portal and automated library management tools must include, but are not limited to, the following services and functions:

1. A shared Internet-based catalog and a discovery tool that allow a user to search and, if authorized, access the aggregate library holdings of the state's public postsecondary

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education institutions. The catalog and discovery tool must allow the user to search the library holdings of one institution, selected institutions, or all institutions and, to the extent feasible, include an interlibrary loan function that ensures that the authorized user can access the required library holding.

2. An Internet-based searchable collection of electronic resources which includes, but is not limited to, full-text journals, articles, databases, and electronic books that the center licenses pursuant to paragraph (b).

3. An integrated library management system and its associated services that all public postsecondary education institution academic libraries must use for purposes of acquiring, cataloging, circulating, and tracking library material.

4. A statewide searchable database that includes an inventory of digital archives and collections held by public postsecondary education institutions.

(b) Coordinate the negotiation of statewide licensing of electronic library resources and preferred pricing agreements, issue purchase orders, and enter into contracts for the acquisition of library support services, electronic resources, and other goods and services necessary to carry out its duties under this section.

(c) Promote and provide recommendations concerning the use and distribution of open-access textbooks and education resources as a method for reducing costs and work with public postsecondary education institutions in developing a standardized process for the review and approval of open-access

textbooks.

(3) The Florida Center for Library Automation shall be administered by an executive director who is accountable to the executive director of the University of West Florida's Innovation Institute. The executive director of the Florida Center for Library Automation shall:

(a) Independently exercise all powers, duties, and functions of the center as prescribed by law.

(b) Administer the operational requirements of the center.

(c) Hire professional and administrative staff necessary to carry out the duties of the center.

(d) Keep administrative staff to the minimum necessary to administer the duties of the center.

Section 2. Section 1006.72, Florida Statutes, is repealed.

Section 3. Section 1006.73, Florida Statutes, is repealed.

Section 4. Section 1006.735, Florida Statutes, is amended to read:

1006.735 Complete Florida Plus ~~Degree~~ Program.—The Complete Florida Plus Program is created within the Innovation Institute at the University of West Florida.

(1) PURPOSE.—The purpose of the Complete Florida Plus Program is to:

(a) Facilitate degree completion for the state's adult learners through the Complete Florida Degree Initiative.

(b) Provide information and access to distance learning courses and degree programs offered by the state's public postsecondary education institutions.

(c) Coordinate with the Florida College System and the State University System to identify and provide online academic

support services and resources when the multi-institutional provision of such services and resources is more cost-effective or operationally effective.

(2) ~~(1)~~ COMPLETE FLORIDA DEGREE INITIATIVE.—The Complete Florida Degree Initiative ~~Program~~ is established for the purpose of recruiting, recovering, and retaining the state's adult learners and assisting them in completing an associate degree or a baccalaureate degree that is aligned to high-wage, high-skill workforce needs. As used in this section, the term "adult learner" means a student who has successfully completed college-level coursework in multiple semesters but has left an institution in good standing before completing his or her degree. The program shall give priority to adult learners who are veterans or active duty members of the United States Armed Forces.

(a) ~~(2)~~ The Complete Florida Degree Initiative ~~Program~~ shall be implemented ~~by the University of West Florida, acting as the lead institution,~~ in coordination with Florida College System institutions, state universities, and private postsecondary institutions, as appropriate. The initiative includes ~~program shall include~~ the associate, applied baccalaureate, and baccalaureate degree programs that these institutions have selected. Other partnering public postsecondary education institutions shall provide areas of specialization or concentration.

(b) ~~(3)~~ In determining ~~For purposes of selecting~~ the degree programs that will be given priority, ~~in~~ the Complete Florida Degree Initiative ~~Program, the institutions identified in subsection (2)~~ shall ~~partner with public and private job~~

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~~recruitment and placement agencies and~~ use labor market data and projections, including those identified in the Board of Governors' gap analysis, to identify the specific workforce needs and targeted occupations of the state.

(c) ~~(4)~~ The Complete Florida Degree Initiative ~~Program~~ shall provide adult learners with a single point of access to information and links to innovative online and accelerated distance learning courses, student and library support services, and electronic resources that will guide the adult learner toward the successful completion of a postsecondary degree.

~~(5) By the end of the 2013-2014 academic year, the Complete Florida Degree Program shall be implemented and must:~~

~~(a) Use the distance learning course catalog established pursuant to s. 1006.73 to communicate course availability to the adult learner.~~

~~(b) Develop and implement an advising and student support system that includes the use of degree completion specialists, is based upon best practices and processes, and includes academic and career support services designed specifically for the adult learner. The program must identify proposed changes to the statewide computer-assisted student advising system established pursuant to s. 1006.73 to assist the adult learner in using the system.~~

~~(c) Use the streamlined, automated, online admissions application process for transient students established pursuant to s. 1006.73. The program shall identify any additional admissions and registration policies and practices that could be further streamlined and automated for purposes of assisting the adult learner.~~

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(d) The Complete Florida Degree Initiative shall:

1. Use existing and, if necessary, develop new competency-based instructional and evaluation tools to assess prior performance, experience, and education for the award of college credit in order to reduce the time required for adult learners to complete their degrees. The tools may include the use of the American Council on Education's collaborative link between the United States Department of Defense and higher education through the review of military training and experiences for the award of equivalent college credit for members of the United States Armed Forces.

2. ~~(e)~~ Develop and implement an evaluation process that collects, analyzes, and provides to the chancellors of the Florida College System and the State University System, the participating postsecondary education institutions, the chairs of the legislative appropriations committees, and the Executive Office of the Governor information on the effectiveness of the program and the attainment of its goals. Such a process shall include a management information system that collects the appropriate student, programmatic, and fiscal data necessary to complete the evaluation of the program. Institutions involved in the program shall also collect job placement and employment data on the adult learners who have completed their degrees as a result of the program.

3. ~~(f)~~ Develop and implement a statewide student recruitment campaign targeted toward adult learners, particularly veterans and active duty members of the United States Armed Forces, for enrollment in the degree programs offered through the program.

(e) ~~(6)~~ For purposes of the Complete Florida Degree

Initiative ~~Program~~, each institution's current tuition and fee structure shall be used. However, all participating institutions shall collaboratively identify the applicable cost components involved in the development and delivery of distance learning courses, collect information on these cost components, and submit the information to the chancellors of the Florida College System and the State University System. The chancellors shall submit a report to the chairs of the legislative appropriations committees no later than December 31, 2014, on the need for a differentiated tuition and fee structure for the development and delivery of distance learning courses.

(3) STATEWIDE INTERNET-BASED CATALOG OF DISTANCE LEARNING COURSES.—The Complete Florida Plus Program shall develop and manage a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education institutions to assist with the coordination and collaboration of articulation and access to postsecondary education pursuant to parts II and III of chapter 1007. The program shall establish operational procedures for the catalog which must:

(a) Require participating institutions to provide specific information concerning the distance learning courses and degree programs including, but not limited to, prerequisite courses or technology competencies or skills; the availability of academic support services and financial aid resources; and course costs, fees, and payment policies.

(b) Require that distance learning courses and degree programs meet applicable accreditation standards and criteria established in law.

(c) Require that the catalog be reviewed at least annually and updated as needed to ensure that distance learning courses and degree programs comply with operational procedures.

(d) Define and describe the catalog's search and retrieval options that, at a minimum, allow users to search courses and programs by academic term or start date; institution or institutions; delivery method, level, availability, subject or discipline, and course number or program classification number.

(e) Use an Internet-based analytic tool that allows for the collection and analysis of information, including, but not limited to:

1. The number of students who use the catalog to search for distance learning courses and degree programs;

2. The number and type of requests for information on distance learning courses and degree programs that are not listed in the catalog; and

3. A summary of specific requests by course type or course number, delivery method, offering institution, and semester.

(4) STATEWIDE ONLINE STUDENT ADVISING SERVICES AND SUPPORT.—The Complete Florida Plus Program shall make available to all postsecondary students on a statewide basis online supports and services that:

(a) Provide a streamlined, automated, online admissions application process for undergraduate transient students who are currently enrolled and pursuing a degree at a public postsecondary education institution and who enroll in a course offered by a public postsecondary education institution that is not the student's degree-granting institution. The University of West Florida shall work with the Florida College System

institutions and state universities to:

1. Use the transient student admissions application available through the statewide computer-assisted student advising system established pursuant to paragraph (b). This admissions application is the only application required for the enrollment of a transient student as described in this paragraph.

2. Implement the financial aid procedures required by the transient student admissions application process.

3. Transfer credit awarded by the institution offering the course to the transient student's degree-granting institution.

4. Provide for an interface between the institutional advising system and the statewide computer-assisted student advising system established pursuant to paragraph (b) in order to electronically send, receive, and process the transient student admissions application.

(b) Develop and manage a statewide computer-assisted student advising system that supports the process of advising, registering, and certifying students for graduation and includes a degree audit and an articulation component. The Florida College System institutions and state universities shall interface institutional advising systems with the statewide computer-assisted student advising system. At a minimum, the statewide computer-assisted student advising system must:

1. Allow a student to access the system at any time, search public postsecondary education institutions, and identify course options that will meet the requirements of a selected path toward a degree.

2. Audit transcripts of students enrolled in a public

postsecondary education institution to assess current academic standing, the requirements for a student to transfer to another institution, and all requirements necessary for graduation.

3. Serve as the official statewide repository for the common prerequisite manual, admissions information for transferring programs, foreign language requirements, residency requirements, and statewide articulation agreements.

4. Provide information relating to career descriptions and corresponding educational requirements, admissions requirements, and available sources of student financial assistance.

5. Provide the admissions application for transient students pursuant to paragraph (a) which must include the electronic transfer and receipt of information and records for:

a. Admissions and readmissions;

b. Financial aid; and

c. Transfer of credit awarded by the institution offering the course to the transient student's degree-granting institution.

(c) Identify and evaluate new technologies and instructional methods that can be used to improve distance learning instruction and professional development for faculty, student learning outcomes, student access, the delivery of student support services, the alignment of degrees to career needs, and the overall quality of postsecondary distance learning courses and degree programs.

(d) Provide appropriate help desk support and training and consultation services to institutions and students using the services and resources of the Complete Florida Plus Program.

(e) Coordinate the negotiation of statewide licensing

resources and preferred pricing agreements, issue purchase orders, and execute contracts for the acquisition of distance learning resources, student support services, electronic resources, and other goods and services necessary to perform duties under this section.

(f) Develop and implement a plan, in consultation with the public postsecondary education institutions, that describes the services and resources available through the Complete Florida Plus Program to encourage current and prospective students' use of such services and resources.

(5) All records, personnel, property, existing contracts, and unexpended balances of appropriations, allocations, grants, and other funds of the Florida Virtual Campus shall be transferred to the University of West Florida. The University of West Florida shall be the successor in interest to the Florida Virtual Campus and shall be responsible for the provision of all services as authorized by this section.

~~(7) The University of West Florida, in collaboration with its partners, shall submit to the chairs of the Board of Governors, the State Board of Education, and the legislative appropriations committees no later than September 1, 2013, a detailed program plan that defines the major work activities, student eligibility criteria, timeline, and cost for implementing the Complete Florida Degree Program.~~

Section 5. Paragraph (h) of subsection (3) of section 1007.01, Florida Statutes, is amended to read:

1007.01 Articulation; legislative intent; purpose; role of the State Board of Education and the Board of Governors; Articulation Coordinating Committee.—

(3) The Commissioner of Education, in consultation with the Chancellor of the State University System, shall establish the Articulation Coordinating Committee, which shall make recommendations related to statewide articulation policies and issues regarding access, quality, and reporting of data maintained by the K-20 data warehouse, established pursuant to ss. 1001.10 and 1008.31, to the Higher Education Coordination Council, the State Board of Education, and the Board of Governors. The committee shall consist of two members each representing the State University System, the Florida College System, public career and technical education, K-12 education, and nonpublic postsecondary education and one member representing students. The chair shall be elected from the membership. The Office of K-20 Articulation shall provide administrative support for the committee. The committee shall:

(h) Recommend roles and responsibilities of public education entities in interfacing with the single, statewide computer-assisted student advising system established pursuant to s. 1006.735 ~~s. 1006.73~~.

Section 6. Paragraph (a) of subsection (16) and subsection (17) of section 1009.23, Florida Statutes, are amended to read:

1009.23 Florida College System institution student fees.—

(16)(a) Each Florida College System institution may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.735 ~~s. 1006.73~~, a per-credit-hour distance learning course user fee. For purposes of assessing this fee, a distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of

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technology when the student and instructor are separated by time or space, or both.

(17) Each Florida College System institution that accepts transient students, pursuant to s. 1006.735 ~~s. 1006.73~~, may establish a transient student fee not to exceed $5 per course for processing the transient student admissions application.

Section 7. Paragraph (t) of subsection (14) and paragraph (a) of subsection (17) of section 1009.24, Florida Statutes, are amended to read:

1009.24 State university student fees.—

(14) Except as otherwise provided in subsection (15), each university board of trustees is authorized to establish the following fees:

(t) A transient student fee that may not exceed $5 per course for accepting a transient student and processing the transient student admissions application pursuant to s. 1006.735 ~~s. 1006.73~~.

With the exception of housing rental rates and except as otherwise provided, fees assessed pursuant to paragraphs (h)-(s) shall be based on reasonable costs of services. The Board of Governors shall adopt regulations and timetables necessary to implement the fees and fines authorized under this subsection. The fees assessed under this subsection may be used for debt only as authorized under s. 1010.62.

(17)(a) A state university may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.735 ~~s. 1006.73~~, a per-credit-hour distance learning course fee. For purposes of assessing this fee, a

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distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.

Section 8. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic ED

Bill Number 1292 *(if applicable)*

Name Joey San Javier

Amendment Barcode 824504 *(if applicable)*

Job Title Student

Address 225 Granada St. *Street*

Phone (863) 409-0785

Lakeland *City* FL *State* 33805 *Zip*

E-mail lucios1930@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

Amendment

Representing Raising Awareness Through Student Action

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic Education

Bill Number CS/SB 1292 *(if applicable)*

Name Francesca Menes

Amendment Barcode 824504 *(if applicable)*

Job Title Policy and Advocacy Coordinator

Address 2900 Biscayne Blvd. Suite 800 *Street*

Phone (305) 571-7754

Miami *City* FL *State* 33137 *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Amendment

Representing Florida Immigrant Coalition

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic ED

Bill Number 1292 *(if applicable)*

Name Julio Calderon.

Amendment Barcode 824504 *(if applicable)*

Job Title

Address 763 SW 5th St.
Street

Phone (305) 763-1630

Miami FL 33130
City *State* *Zip*

E-mail julioc@swer.org

Speaking: ☑ For amendment ☐ Against ☐ Information

Representing Students Working for Equal Rights

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic ED

Bill Number 1292 *(if applicable)*

Name Maricela Ramirez-Lemus

Amendment Barcode 824504 *(if applicable)*

Job Title

Address 2106 NW 21st #330
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Boynton Beach FL 33436
City *State* *Zip*

Phone (561) 880-7549

E-mail maryKay.maricela@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information
Amendment

Representing Palm Beach State College

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic ED

Bill Number 1292 *(if applicable)*

Name Victor Herrera-Ramirez

Amendment Barcode 824504 *(if applicable)*

Job Title

Address 2331 Avenida Alhambra
Street

Phone (561) 371 0498

West Palm Beach FL 33415
City *State* *Zip*

E-mail Victor.Stu@Hotmail.com

Speaking: ☑ For (Amendment) ☐ Against ☐ Information

Representing Students Worry for equal rights

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1328
INTRODUCER:	Appropriations Committee; Governmental Oversight and Accountability Committee; and Senator Latvala
SUBJECT:	Inspectors General
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Fav/CS**
2.	Shettle	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1328 modifies how agency inspectors general are appointed, supervised, and removed.

Currently, agency inspectors general are appointed by and report to agency heads. The bill provides that for agencies under the jurisdiction of the Governor, agency inspectors general are to be appointed and removed (only for cause) by the Chief Inspector General, with notice to the Governor; are to report to the Chief Inspector General; and may hire and fire their staff independently of the agency. For other state agencies, inspectors general are to be appointed and removed by agency heads.

The bill has no fiscal impact to the state agencies.

II. Present Situation:

Agency Inspectors General

Duties

Section 20.055, F.S., requires that each state agency[1] created in the organizational structure of state government have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. Each office is responsible for the following:

- Advising in the development of performance standards, their validation, and the compliance of agency activities with them.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Improving agency performance.
- Supervising and coordinating audits, investigations, and reviews relating to the operations of the state agency.
- Conducting, supervising, or coordinating other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.
- Providing central coordination of efforts to identify and remedy waste, fraud, and abuse.
- Coordinating agency-specific audit activities with those of peer federal and state agencies.
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact.
- Maintaining a balance among audit, investigative, and other accounting activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[2]

Appointment

Inspectors general are appointed by the agency head. For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the inspector general.[3]

Removal and Qualifications

Inspectors general may be removed only by the agency head. For agencies under the direction of the Governor, the agency head must notify the Governor and the Chief Inspector General, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head

[1] For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system are considered "state agencies," in addition to the departments created in Ch. 20, F.S.
[2] Section 20.055(2), F.S.
[3] Section 20.055(3)(a), F.S.

must notify the Governor and Cabinet, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal.[4] Inspectors general must possess minimum educational and experience qualifications,[5] and the investigations they conduct must adhere to specific internal auditing standards.

Internal Audits

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.[6]

Audit work papers and reports must be public records to the extent that they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S., or information protected under s. 112.3187(5), F.S., of the Whistle-blower's Act.[7]

Reporting

At the conclusion of each audit, the inspector general must submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who must respond to any adverse findings within 20 working days after receipt of the tentative findings. Such response and the inspector general's rebuttal to the response must be included in the final audit report.[8]

The inspector general must submit the final report to the agency head and to the Auditor General. The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.[9]

[4] Section 20.055(3)(c), F.S.
[5] Section 20.055(4), F.S.
[6] Section 20.055(5)(a), F.S.
[7] Section 20.055(5)(b), F.S.
[8] Section 20.055(5)(d), F.S.
[9] Section 20.055(5)(g), F.S.

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability (OPPAGA). No later than six months after the Auditor General or the OPPAGA publishes a report on the state agency, the inspector general must provide a written response to the agency head on the status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.[10]

More Duties

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands related to claims against the state, and examining, auditing, adjusting, and settling accounts relating to those indebted to the state, may utilize audits performed by the inspectors general and internal auditors. For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.[11]

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law.
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information.
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.[12]

[10] Section 20.055(5)(h), F.S.
[11] Section 20.055(5)(i), F.S.
[12] Section 20.055(6), F.S.

Each inspector general must submit a yearly report on its activities to the agency head, and provide any written complaints about the operations of the inspector general.[13]

III. Effect of Proposed Changes:

Agency Inspectors General

Section 1 amends s. 20.055, F.S., relating to the duties of agency inspectors general.

Appointment

The bill changes the appointment process for agency inspectors general, who are currently appointed by the agency head. The bill provides that for state agencies under the jurisdiction of the Governor, the Chief Inspector General appoints the agency inspector general. For all other state agencies, the agency head appoints the inspector general; the agency head or Chief Inspector General must notify the Governor in writing seven days in advance of the hiring of an agency inspector general.

Supervision

The inspector general will report to and be under the supervision of the agency head. In addition, for state agencies under the jurisdiction of the Governor, the inspector general will report to the Chief Inspector General, and may hire and remove staff within the Office of the Inspector General in consultation with the Chief Inspector General but independently of the respective agency. Inspectors general are not subject to supervision by any other agency employee.

Removal

For state agencies under the jurisdiction of the Governor, the Chief Inspector General may remove, for cause, the inspector general. The Chief Inspector General must give 21 days' notice to the Governor before removing an inspector general, who may present written objections to the agency head or Governor. For all other state agencies, the inspector general may be removed by the agency head.

Reports and Responses to Reports

For state agencies under the jurisdiction of the Governor, the agency inspector general must submit:

- Final reports to the agency head, the Auditor General, and the Chief Inspector General; and
- Responses to OPPAGA and Auditor General reports to the Chief Inspector General; and
- Annual reports on inspector general activities to the Chief Inspector General.

The bill takes effect July 1, 2014.

[13] Section 20.055(7) and (8), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 1328 has no fiscal impact to the state agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 20.055 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 22, 2014:
The CS/CS:

- Removes provisions regarding how the Chief Inspector General is appointed, and requiring the Chief Inspector General to provide independent legal counsel for inspectors general in agencies under the jurisdiction of the Governor.

- Removes provision requiring the Office of Inspector General to have its own budget within the respective state agency, developed in consultation with the Chief Inspector General.
- Makes technical correction by removing duplicative language regarding the approval of audit plans.

CS by Governmental Oversight and Accountability on April 3, 2014:
The CS removes a provision that would have required the Governor to consult with the Cabinet on the appointment of the Chief Inspector General and clarifies the appointment, supervision, and removal procedures for agency inspectors general.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

296028

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 14 - 27.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 2 - 6

and insert:

An act relating to inspectors general; amending s.

563654

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment

Delete lines 124 - 127.

492374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment

Delete lines 222 - 224
and insert:
The plan shall be submitted to the agency head for approval. A copy of the approved plan shall be

By the Committee on Governmental Oversight and Accountability; and Senator Latvala

585-03740-14 20141328c1

A bill to be entitled

An act relating to inspectors general; amending s. 14.32, F.S.; requiring that the Chief Inspector General be confirmed by the Senate; requiring the Chief Inspector General to provide independent legal counsel for specified state agencies; amending s. 20.055, F.S.; revising provisions relating to the duties, appointment, and removal of agency inspectors general; updating a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) and paragraph (e) of subsection (2) of section 14.32, Florida Statutes, are amended to read:

14.32 Office of Chief Inspector General.—

(1) There is created in the Executive Office of the Governor the Office of Chief Inspector General. The Chief Inspector General is ~~shall be~~ responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor. The Chief Inspector General shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor.

(2) The Chief Inspector General shall:

(e) Coordinate complaint-handling activities with agencies and provide for independent legal counsel for inspectors general in agencies under the jurisdiction of the Governor.

Section 2. Subsections (2), (3), (5), (7), and (8) of section 20.055, Florida Statutes, are amended to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-03740-14 20141328c1

20.055 Agency inspectors general.—

(2) The Office of Inspector General is ~~hereby~~ established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. ~~It shall be the duty and responsibility of~~ Each inspector general, with respect to the state agency in which the office is established, shall ~~to~~:

(a) Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs.

(b) Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before ~~prior to~~ submission of such information ~~those measures and standards to the Executive Office of the Governor~~ pursuant to s. 216.1827 ~~s. 216.0166(1)~~.

(c) Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.

(d) Provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency, except that when the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall conduct such audits.

(e) Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

preventing and detecting fraud and abuse in, its programs and operations.

(f) Keep the ~~such~~ agency head and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General, informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action.

(g) Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.

(h) Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact.

(i) Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities.

(j) Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

(3)(a) For state agencies under the jurisdiction of the Governor, the inspector general shall be appointed by the Chief Inspector General ~~agency head~~. For all other state agencies ~~under the direction of the Governor~~, the inspector general shall be appointed by the agency head. The agency head or Chief Inspector General shall notify ~~appointment shall be made after notifying~~ the Governor ~~and the Chief Inspector General~~ in writing, ~~at least 7 days prior to an offer of employment,~~ of his

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

or her ~~the agency head's~~ intention to hire the inspector general at least 7 days before an offer of employment. The inspector general shall be appointed without regard to political affiliation.

(b) The ~~Each~~ inspector general shall report to and be under the general supervision of the agency head and is ~~shall~~ not ~~be~~ subject to supervision by any other employee of the state agency in which the office is established. In addition, for state agencies under the jurisdiction of the Governor, the inspector general shall report to the Chief Inspector General, and may hire and remove staff within the office of the inspector general in consultation with the Chief Inspector General but independently of the agency ~~The inspector general shall be appointed without regard to political affiliation~~.

(c)1. For state agencies under the jurisdiction of the Governor, the ~~An~~ inspector general may be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties under this section ~~agency head~~. The Chief Inspector General ~~For agencies under the direction of the Governor, the agency head~~ shall notify the Governor ~~and the Chief Inspector General,~~ in writing~~,~~ of his or her ~~the~~ intention to terminate the inspector general at least 21 ~~7~~ days before ~~prior to~~ the removal. If the inspector general objects to the removal, the inspector general may present written objections to the agency head or the Governor within the 21 day period.

2. For all other state agencies ~~under the direction of the Governor and Cabinet~~, the inspector general may be removed from

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office by the agency head. ~~The agency head shall notify the Governor and Cabinet in writing of the intention to terminate the inspector general at least 7 days prior to the removal.~~

(d) The Governor, the Governor and Cabinet, the agency head, or agency staff may ~~shall~~ not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.

(e) The Office of Inspector General shall have its own budget within the respective state agency, developed in consultation with the Chief Inspector General, sufficient to meet its mission.

(5) In carrying out the auditing duties and responsibilities in this section ~~of this act~~, each inspector general shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the inspector general; however, the agency head may at any time direct the inspector general to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

(a) Such audits shall be conducted in accordance with the current International Standards for the Professional Practice of Internal Auditing as published by the Institute of Internal

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Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.

(b) Audit workpapers and reports shall be public records to the extent that they do not include information which has been made confidential and exempt from the provisions of s. 119.07(1) pursuant to law. However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual shall not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation.

(c) The inspector general and the staff shall have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The inspector general is also authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local government entity.

(d) At the conclusion of each audit, the inspector general shall submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who shall respond to any adverse findings within 20 working days after receipt of the preliminary findings. Such response and the inspector general's rebuttal to the response shall be included in the final audit report.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(e) At the conclusion of an audit in which the subject of the audit is a specific entity contracting with the state or an individual substantially affected, if the audit is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with s. 119.07(1), submit the findings to the entity contracting with the state or the individual substantially affected, who shall be advised in writing that they may submit a written response within 20 working days after receipt of the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.

(f) The inspector general shall submit the final report to the agency head, ~~and to~~ the Auditor General, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(g) The Auditor General, in connection with the independent postaudit of the same agency pursuant to s. 11.45, shall give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and shall take appropriate action.

(h) The inspector general shall monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability. No later than 6 months after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the

state agency, the inspector general shall provide a written response to the agency head on the status of corrective actions taken. The Inspector General shall file a copy of such response with the Legislative Auditing Committee.

(i) The inspector general shall develop long-term and annual audit plans based on the findings of periodic risk assessments. If appropriate, the plan must~~, where appropriate, should~~ include postaudit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands pursuant to s. 17.03(1), and examining, auditing, adjusting, and settling accounts pursuant to s. 17.04, may use ~~utilize~~ audits performed by the inspectors general and internal auditors. For state agencies under the jurisdiction of the Governor, the audit plans shall be submitted to the agency head for review and to the ~~Governor's~~ Chief Inspector General. The plan shall be submitted to the agency head for approval. For all other state agencies, the plan shall be submitted to the agency head for approval. A copy of the approved plan shall be submitted to the Auditor General.

(7)(a) Except as provided in paragraph (b), each inspector general shall, not later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.

(b) The inspector general of the Florida Housing Finance Corporation shall, not later than 90 days after the end of each fiscal year, prepare an annual report summarizing the activities

of the Office of Inspector General during the immediately preceding fiscal year.

(c) The final reports prepared pursuant to paragraphs (a) and (b) shall be furnished to the heads of the respective agencies and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such reports must ~~shall~~ include, but need not be limited to:

1. A description of activities relating to the development, assessment, and validation of performance measures.

2. A description of significant abuses and deficiencies relating to the administration of programs and operations of the agency disclosed by investigations, audits, reviews, or other activities during the reporting period.

3. A description of the recommendations for corrective action made by the inspector general during the reporting period with respect to significant problems, abuses, or deficiencies identified.

4. The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed.

5. A summary of each audit and investigation completed during the reporting period.

(8) The inspector general in each state agency shall provide to the agency head, upon receipt, all written complaints concerning the duties and responsibilities in this section or any allegation of misconduct related to the office of the inspector general or its employees, if received from subjects of audits or investigations who are individuals substantially affected or entities contracting with the state, as defined in

this section. For state agencies ~~solely~~ under the jurisdiction ~~direction~~ of the Governor, the inspector general shall also provide the complaint to the Chief Inspector General.

Section 3. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1354
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; and Senator Grimsley
SUBJECT:	Health Care
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Johnson	Knudson	BI	**Fav/CS**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1354 revises the managed care accountability contract requirements for the Managed Medical Assistance (MMA) contracts under the Statewide Medicaid Managed Care Program (SMMC). MMA managed care plans that establish a prescribed drug formulary or preferred drug list must provide a broad range of therapeutic options, and, if feasible, the formulary or drug list must include at least two products in a therapeutic class.

Beginning January 1, 2015, each health insurer, managed care organization, health maintenance organization (HMO) and MMA managed care plan must use a single standardized form for obtaining prior authorization for a medical procedure, course of treatment, or prescription drug benefit.

Under the bill, a prior authorization request submitted for prescription drugs is deemed approved unless an insurer responds otherwise within three business days. Health insurers, managed care organizations, HMOs, and MMA managed care plans that restrict medications by a step-therapy or fail-first protocol are required to have a clear and convenient process for providers to request an override of the protocol, among other requirements in the bill. An override must be granted within 72 hours for certain situations where the prescribing provider documents that the drug under the step-therapy or fail-first protocol has been or likely will be ineffective or will cause or will likely cause an adverse reaction. The bill also provides circumstances for the customary period for use of the medication under the step therapy or fail-first protocol to be extended by the

MMA plan, insurer or HMO or terminated by the prescribing provider under certain circumstances.

The bill is likely to have a significant negative, but indeterminate, impact on the Medicaid program and on the State Employees' Group Health Self-Insurance Trust Fund.

II. Present Situation:

Medicaid

Medicaid is a joint federal and state funded program that provides healthcare for low income Floridians. The program is administered by the Agency for Healthcare Administration (AHCA). As of March 31, 2014, 3,539,441 Floridians were enrolled in Medicaid. The program's estimated expenditures for Fiscal Year 2013-2014 are approximately $22.2 billion.[1] The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Statewide Medicaid Managed Care

Part IV of chapter 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the Statewide Medicaid Managed Care program (SMMC). The program, authorized under two federal Medicaid waivers, is designed for the AHCA to issue invitations to negotiate[2] and competitively procure contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most of the state's enrollees in the Medicaid program. SMMC has two components: managed medical assistance (MMA) and long-term care managed care (LTCMC).

The LTCMC component began enrolling Medicaid recipients in August 2013 and was scheduled to complete its statewide roll-out in March 2014.[3] The MMA component is scheduled to begin enrolling Medicaid recipients in May 2014 and finish its roll-out in August 2014.[4]

The AHCA's current contracts with non-SMMC Medicaid managed care plans allow the plans to develop their own preferred drug list (PDL) and prior authorization processes, including step-therapy and fail-first criteria, which must be approved by the AHCA.[5] Non-SMMC managed care plans also have the ability to deny claims for enrollees who were later determined to be ineligible at the time of service despite having issued a prior authorization.[6]

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[1] Social Services Estimating Conference, *Medicaid Services Expenditures*, February 26, 2014, available at http://edr.state.fl.us/Content/conferences/medicaid/ (last visited April 17, 2014).
[2] An "invitation to negotiate" is a written or electronically posted solicitation for vendors to submit competitive, sealed replies for the purpose of selecting one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. *See* s. 287.012(17), F.S.
[3] *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#LTCMC >, last visited March 20, 2014.
[4] *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#MMA >, last visited March 20, 2014.
[5] Agency for Health Care Administration, *2014 Agency Bill Analysis - SB 1354* (Feb. 21, 2014), p. 2, on file with the Senate Committee on Health Policy.
[6] *Id.*

For the first year of the MMA transition, the AHCA is requiring the MMA plans to use the Medicaid PDL. After the first year, MMA plans may develop a plan-specific PDL for the AHCA's consideration, if requested by the AHCA at that time.[7]

The Patient Protection and Affordable Care Act

In March 2010, the Congress passed and President Barack Obama signed the Patient Protection and Affordable Care Act (PPACA).[8] Among its changes to the U.S. health care system are requirements for health insurers to make coverage available to all individuals and employers. Qualifying coverage may be obtained through an employer, the federal or state exchanges created under PPACA, or private individual or group coverage meeting the minimum essential benefits coverage standard. Florida did not establish its own state exchange under PPACA.

Premium credits and other cost sharing subsidies are available to U.S. citizens and legal immigrants within certain income limits for qualified coverage purchased through the exchange. Premium credits are set on a sliding scale based on a percentage of the federal poverty level and reduce the out-of-pocket costs incurred by individuals and families.[9]

Federal regulations for PPACA also govern an enrollee's coverage bought through the exchanges and for non-grandfathered plans.[10] If an enrollee's coverage bought with advance premium tax credit for a qualified health plan (QHP)[11] is terminated for non-payment of premium, for example, the regulations provide the enrollee a 3-month grace period before cancellation of coverage.[12] During the grace period, the insurer must pay claims for services rendered in the first month but may pend claims for the second and third months.[13] If coverage is ultimately terminated, the termination date is the last day of the first month of the grace period and the insurer may not recoup any claims paid during the first month of the grace period.

The federal regulations do not affect those enrollees who are not enrolled in an exchange plan or do not receive a subsidy. The grace period for these individuals remains at the length required under s. 627.608, F.S., which varies by the length of the premium payment interval. Cancellation of coverage is effective the first day of the grace period if payment is not received.

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[7] *Id.*
[8] P.L. 111-148. On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.
[9] Centers for Medicare and Medicaid Services, *Health Insurance Marketplace - Will I Qualify for Lower Costs on Monthly Premiums?* https://www.healthcare.gov/will-i-qualify-to-save-on-monthly-premiums/ (last visited Mar. 22, 2014).
[10] Certain plans received "grandfather status" under PPACA. A grandfathered health plan is a plan that existed on March 23, 2010, and had at least one person continuously covered for 1 year. Some consumer protections elements do not apply to grandfathered plans.
[11] A "qualified health plan" is an insurance plan certified by the applicable Health Insurance Marketplace, provides the essential health benefits, established limits on cost sharing and meets other requirements. *See* https://www.healthcare.gov/glossary/qualified-health-plan/ for more information on qualified health plans.
[12] 45 CFR 156.270 and 45 CFR 430.
[13] 45 CFR 156.270.

Step-Therapy or Fail-First Protocols

Step-therapy or fail-first protocols for prescription medication coverage require a member to try a certain drug, usually a generic alternative, before receiving coverage for another drug, usually a branded, more expensive product. Utilization management pharmacy benefit programs were first introduced in the 1980s and became popular with the implementation of tiered co-payment formularies.[14] Typically, step-therapy is applied to a certain drug class with the goal of encouraging generic drug use and decreasing costs without compromising the quality of care.[15] Many step-therapy programs incorporate edits into the system to recognize members through prior claims who have previously received a first-step drug so claims for a second-step drug are not rejected.

One outcome of step-therapy programs, however, has been that enrollees who have had a claim rejected do not have a later claim for a later medication in that same class.[16] The process for notifying the patient and prescriber of a step-therapy claim rejection and the resubmission of an alternate medication varies by insurer.

Prior Authorization for Health Care Services

Insurers may require prior authorization for certain services as a cost control and quality measure. Florida law prohibits requirements for prior authorization for certain services and requires direct access within specified guidelines for certain services such as dermatology.[17] State law currently does not provide a specific standard form or review timeline for a prior authorization process for health care services covered by an insurer, managed care plan, or HMO. Prior authorization is never required for any emergency procedure. Each insurer has established its own prior authorization process and form based on the situation and the type of authorization, service, course of treatment, or prescription. The state has mandated a standard health claims processing form be adopted and used under s. 627.647, F.S., by all hospitals and a separate form for all physicians, dentists and pharmacists.

Federal regulations for Medicaid and the Children's Health Insurance Program (or CHIP, which, in Florida, is known as Kidcare) require that managed care plans have written policies and procedures for initial and continuing authorization decisions that ensure timely access to care for enrollees with serious and chronic conditions.[18] Under these federal regulations, prior authorization decisions may not exceed 14 calendar days following receipt of the request, with a possible extension up to 14 additional calendar days if requested by the enrollee or provider or there is a need for additional information.

For Medicaid, an expedited authorization process is also provided that does not exceed three working days with the ability to extend up to 14 calendar days upon enrollee request, or if

[14] Patrick P. Gleason, PharmD, FCCP, BCPS, *Assessing Step-Therapy Programs: A Step in the Right Direction*, www.amcp.org, Journal of Managed Care Pharmacy, p. 274, http://www.amcp.org/data/jmcp/273-75.pdf (April 2007, Vol. 13, No. 3) (last visited Mar. 23, 2014).
[15] *Id*.
[16] Gleason, *supra*, note 15 at 273-274.
[17] *See* s. 641.31(33), F.S. Provides direct access to dermatologists for up to five visits and testing annually.
[18] *See* 42 CFR 438.210 (Medicaid) and 42 CFR 495 (Children's Health Insurance Program).

the managed care plan justifies a need for additional information and the extension is in the enrollee's benefit.[19] Regulations governing the CHIP provide a deferral to any existing state law on the authorization of health services, if applicable.[20]

Preferred Provider Listings

Individuals enrolled in plans licensed under s. 627.6471, F.S., known as a "Preferred Provider Organization" or PPO plans, incur higher out-of-pocket costs if the provider is out of network. These out-of-pocket costs can be significant to the consumer. For example, in the standard PPO Option Group Plan for state employees, the enrollee would pay a small copayment for a physician office visit with an in-network provider after the enrollee had met any calendar year deductible, but would incur 40 percent of the costs with an out of network provider for the same service.[21] The state group PPO provider, Florida Blue, provides a list of in-network providers on its website.

Federal regulations require a QHP on a PPACA exchange to make its provider directory available online and to potential enrollees in hard copy, upon request.[22] Further guidance from the federal Centers for Medicare and Medicaid Services (CMS) indicates that QHPs must provide a link from the federal exchange to their networks directly where the consumer can view an up-to-date provider directory. The CMS requires the directory to include the location, contact information, specialty, medical group, any institutional affiliations for each provider and whether the provider is accepting new patients.[23]

State Group Health Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with s. 125 of the Internal Revenue Code.

As part of the State Group Insurance Program, the DMS contracts with third party administrators for the self-insured State Employees' PPO Plan and four self-insured HMO plans; contracts directly with two fully-insured HMOs; and contracts with a pharmacy benefits manager (PBM) for the State Employees' Prescription Drug Plan. The State Employees' Prescription Drug Plan covers all PPO and HMO plan members (excluding Medicare Advantage Plans offered exclusively to eligible retirees).

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[19] 42 CFR 438.210.
[20] 42 CFR 457.495(d)(2).
[21] Florida Blue, 2014 Benefits, State Employees' PPO Plan, on file with the Senate Health Policy Committee.
[22] 45 CFR 156.235(b).
[23] Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, *Draft 2015 Letter to Issuers in the Federally-Facilitated Marketplace* (Feb. 4, 2014), pg. 47, http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/draft-issuer-letter-2-4-2014.pdf (last visited Mar. 23, 2014).

III. Effect of Proposed Changes:

Statewide Medicaid Managed Care Program (Section 1)

Section 1 revises s. 409.967, F.S., and requires a Medicaid managed care plan in Statewide Medicaid Managed Care (SMMC) that establishes a prescribed drug formulary or a PDL to provide a broad range of therapeutic options for the treatment of disease consistent with the outpatient population. At least two products in each therapeutic class must be included, if feasible. The AHCA indicates it will be required to amend its existing Medicaid contracts to ensure compliance.[24]

Prior Authorization Requirements (Sections 1, 2, and 8)

Health plans, health insurers, and health maintenance organizations (HMOs), including those participating under SMMC, will be required, after January 1, 2015, to use a single, standardized prior authorization form for obtaining approval for a medical procedure, course of treatment, or prescription drug benefit. A pharmacy benefit manager under contract with a managed care plan must also comply with this requirement. The form must be available electronically on the Medicaid managed care plan, insurer, or HMO's website. A prior authorization request completed on the standardized form will be deemed approved upon receipt by the managed care plan unless the managed care plan responds otherwise within three business days. The bill adds the prior authorization provisions to existing s. 409.967, F.S., and creates two new sections, ss. 627.42392 and 641.393, F.S.

The prior authorization requirements in ss. 627.42392 and 641.393, F.S., do not apply to grandfathered health plans.

Medication Protocol Overrides (Sections 1, 3, and 9)

If medications for the treatment of a medical condition are restricted for use through a step-therapy or fail-first protocol by a SMMC plan, an insurer, or a HMO, the prescribing provider must have access to a clear and convenient process to request an override. An override must be granted within 72 hours if the prescribing provider documents that:

- Based on sound clinical evidence, the preferred treatment required under step-therapy or fail-first protocol has been ineffective in the patient's disease or medical condition; or
- Based on sound, clinical evidence or medical and scientific evidence, the preferred treatment required under the step-therapy or fail-first protocol:
  - Is expected or likely to be ineffective based on known relevant physical or mental characteristics of the enrollee and known characteristics of the drug regimen; or
  - Will cause or will likely cause an adverse reaction or other physical harm to the patient.

If the patient does enroll in the step-therapy or fail-first protocol, the duration of the process may not exceed the customary period for use of the medication if the prescriber demonstrates such treatment to be clinically ineffective. If the SMMC plan, an insurer or an HMO can demonstrate that the originally prescribed medication is likely to require more than the customary period to

[24] *See supra,* note 6.

provide any relief or amelioration to the enrollee, the step therapy or fail-first protocol may be extended for an additional time period, but no longer than the customary period for the medication. Notwithstanding these provisions, if the prescribing provider determines the enrollee is having an adverse reaction or suffering physical harm from the use of the medication, the step-therapy or fail first therapy shall be terminated.

To add the provisions on step-therapy and fail-first protocol for the SMMC program, s. 409.967, F.S., is amended and two new sections, ss. 627.42393 and 641.394, F.S., are created to apply the provisions to insurers and HMOs. The medication protocol overrides do not apply to grandfathered health plans.

Payment of Claims (Sections 4 and 7)

Currently, health insurers under s. 627.6131, F.S., and HMOs under s. 641.3155, F.S., are prohibited from retroactively denying claims because of insured ineligibility more than 1 year after the date of the payment of the claim. The bill requires a health insurer or HMO to notify a provider that an insured or subscriber of a PPACA-compliant policy or contract is delinquent in their premium payments at the time of eligibility verification for the treatment in order to deny a claim for that treatment because of patient ineligibility. This provision would not apply to grandfathered plans.

Reduced Rate Insurance Contracts - Provider Listings (Section 5)

For contracts for reduced rates of payment, s. 627.6471, F.S., is revised and an insurer must post a link on its website's homepage to a list of preferred providers. Changes to the provider list must be updated within 24 hours.

Out of State Groups (Section 6)

For any group health insurance policy issued or delivered outside this state to a resident of this state, s. 627.6515, F.S., is updated to incorporate cross references to the newly created sections under ss. 627.42392 and 627.42393, F.S. These sections relating to prior authorization and the medication protocol override process would be applicable to out of state group health insurance policies sold under s. 627.6515, F.S.

The bill has an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Under Article VII, section 18(a) of the State Constitution, a mandate includes a general bill requiring counties or municipalities to spend funds. Counties and municipalities are not bound by a general law to spend funds or take an action unless the Legislature has determined that such a law fulfills an important state interest and one of the specific exceptions specified in the state constitution applies. The implementation of this bill may require some counties and municipalities to spend funds or take actions regarding health insurance programs for their employees because of the step-therapy provisions, which

may increase utilization of more costly brand medications. One of those mandate exceptions is that the law applies to all persons similarly situated, including the state and local governments. This bill may apply to all similarly situated persons, including the state and local governments. Therefore, a finding by the Legislature that the bill fulfills an important state interest would remove the bill from the purview of the constitutional provision.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers may see more timely authorization for certain services, course of treatment, or prescriptions ordered by their health care providers. Health care providers and their patients may also experience less of a burden receiving a brand drug under the step-therapy or fail-first guidelines because patients are provided a statutory mechanism for bypassing step one, if certain indicators are present.

The provisions of the bill would not apply to self-insured plans, which are preempted from state mandates by the federal Employee Retirement Income Security Act (ERISA). In 2011, 58.5 percent of workers with private health coverage were enrolled in self-insured plans.[25]

Insurers, managed care organizations, and health maintenance organizations are likely to experience an indeterminate but significant increase in costs to cover prescription drugs under the bill. Those cost increases are likely to flow through to the purchasers of health insurance coverage, such as individuals and employers.

Individuals and employers with private insurance coverage may see an increase in out-of-pocket costs or premiums for health coverage related to the implementation of the bill's step-therapy and prior authorization provisions. Insurers use these measures as utilization management and cost control tools and will affect some current policies and procedures of insurers.

[25] https://www.shrm.org/hrdisciplines/benefits/Articles/Pages/Self-Insured-Health-Plans.aspx (last visited April 4, 2014).

Insurers under s. 627.6471, F.S., have an additional administrative impact complying with posting a list of preferred providers to their website and reflecting changes within 24 hours.

C. Government Sector Impact:

Medicaid
The bill has a negative indeterminate fiscal impact to Medicaid. This negative impact is likely to be significant given that Statewide Medicaid Managed Care is scheduled to fully complete its phase-in by August 2014. According to an actuarial analysis conducted by the Wakely Consulting Group for the Florida Association of Health Plans on April 3, 2014, Medicaid managed care plans were able to reduce the costs of providing prescription drugs to Medicaid recipients by 37 percent in calendar year 2012 when compared to those same costs in Medicaid's MediPass (fee-for-service) program during Fiscal Year 2011-2012, due, in part, to the plans' use of step-edit and prior authorization protocols authorized under current law.[26] The bill may increase the cost of providing a prescribed drug to Medicaid enrollees because it makes changes to the step-therapy and fail-first requirements for plan enrollees and provides a mechanism for prescribers to seek an override of that process with documentation. The AHCA would also need to modify existing Medicaid managed care plan contracts to incorporate the revised step-therapy and formulary requirements.

Division of State Group Insurance
According to the Department of Management Services, the bill would have a negative, significant, indeterminate impact on the State Employees' Group Health Self-Insurance Trust Fund. Excerpts of the fiscal analysis provided by the Division of State Group Insurance of the Department of Management Services are provided below:[27]

Prior Authorization Forms*:* The bill's requirement for health plans and pharmacy benefit plans to use a standardized authorization form when requesting a health plan's prior approval of a service or prescription could impede and decrease efficiency for the prior authorization process for both the doctor and the health plan. For example, the two-page form submitted may be incomplete or not have the necessary information to make an informed decision within three business days. It is unclear if there is a mechanism to request additional information to make a decision outside the three -day window, nor does there appear to be a process for unfavorable decisions or for cases needing same-day decisions (e.g., emergency situations). The three-day turnaround is shorter than timelines set by the National Committee on Quality Assurance for non-urgent service decisions.

Further, drugs and services subject to prior authorization vary greatly among health plans; it may not be possible to design a single prior authorization form that meets every medical and/or prescription drug need or use.

[26] Wakely Consulting Group analysis on file with staff of the Committee on Appropriations.
[27] Department of Management Services, *Senate Bill 1354 Analysis* (Mar. 25, 2014) (on file with Senate Committee on Banking and Insurance).

Online Provider Directory*:* Regarding the 24-hour timeframe, the bill does not address situations where the provider may end its network status retroactively.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In several instances, the bill requires an insurer or managed care plan to provide an override process for a prescriber that permits an enrollee to "receive" a certain drug based on the premise that the "use" of medication might be restricted by an insurer or managed care plan. However, insurers and managed care plans cannot prohibit an enrollee or subscriber from receiving or using prescription drugs or medications. Insurers and managed care plans may utilize certain protocols regarding the *payment* for prescription drugs and medications received or used by enrollees or subscribers, but they cannot prohibit any person from receiving or using drugs or medications. The bill's language along these lines creates uncertainty as to the effect of those provisions and how those provisions will be interpreted by state regulatory agencies.

The bill provides a deadline of January 1, 2015, for using a single, standardized prior authorization form. It is unclear whether this deadline would provide adequate time for implementation.

Section 1311(d)(3)(B) of the PPACA requires states to defray the costs of state-mandated benefits in excess of essential health benefits for individuals enrolled in any qualified health plan either in the individual market or in the small group market. The bill requires health insurers and HMOs to grant step-therapy overrides within 72 hours to providers who document that step-therapy protocols could be ineffective or harmful. The bill does not address whether the medication must be a covered benefit under the plan. It is unclear whether a plan would be required to pay for an exclusion, such as an experimental or investigational drug because the provider overrides the step-therapy protocol.

In Section 1 of the bill, a conflict exists in the prior authorization timeframes. For health care providers, the time standard for approval of a prior authorization form is three business days. In the next paragraph for prescribing providers, the time standard for approval is two business days. It is not clear which standard should apply for the prior authorization process for providers.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.967, 627.6131, 627.6471, 627.6515, and 641.3155.

This bill creates the following sections of the Florida Statutes: 627.42392, 627.42393, 641.393, and 641.394.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 22, 2014:
The CS makes the following substantive changes:

- Eliminates the provision requiring coverage through prior authorization by an MMA plan of any new drug approved by the United States Food and Drug Administration until the Medicaid Pharmaceutical and Therapeutics Committee reviews such drug for inclusion on the formulary;
- Removes the provision permitting a Medicaid enrollee to continue receiving a drug after its removal from the formulary upon written request from the prescribing provider and demonstration that the drug is medically necessary;
- Revises the requirements for standardized prior authorization forms for an MMA plan, insurer and a health maintenance organization (HMO) to require a single, standardized form by January 1, 2015, that is accessible to providers electronically and online;
- Modifies the time standard for approval of a medication protocol override request by an MMA plan, insurer, and an HMO from 24 hours to 72 hours;
- Revises the time standard for approval of prior authorization requests by an MMA plan, insurer, and an HMO from one business day to 3 business days;
- Requires prescribing providers under a step therapy or fail first protocol process for an MMA plan, insurer and an HMO to document ineffectiveness of treatment or adverse reaction for an override; and
- Modifies the conditions under which an enrollee may be terminated from a step-therapy or fail first protocol as the customary period for the medication and adds a process for the MMA plan, insurer, or an HMO to extend the customary period under certain circumstances.

CS by Banking and Insurance on April 8, 2014:
The CS provides technical, conforming changes and the following substantive changes:

- Eliminates provision that would have prohibited health insurers and health maintenance organizations from retroactively denying claims because of insured ineligibility if the insurer or health maintenance organization provided the insured/subscriber with an identification card, which at the time of service identifies the insured/subscriber as eligible to receive services.
- Requires health insurers and health maintenance organizations to notify a provider that an insured/subscriber is delinquent in their payment of premiums at the time of eligibility verification for services in order to be able to deny a claim if the insured/subscriber does not pay their premium for a PPACA compliant policy or contract.
- Exempts grandfathered plans from the step-therapy and prior authorization provisions.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (2) of section 409.967, Florida Statutes, is amended to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem

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necessary, the contract must require:

(c) *Access.*—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1, 2013, and a final order has issued in any civil or administrative challenge. Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to ~~both~~ the agency and the public and have the capability <u>of comparing</u> ~~to compare~~ the availability of providers to network adequacy standards and to accept and display feedback from each provider's patients. Each plan shall submit quarterly reports to the agency identifying the number of enrollees assigned to each primary care provider.

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2. If establishing a prescribed drug formulary or preferred drug list, a managed care plan shall:

a. Provide a broad range of therapeutic options for the treatment of disease states which are consistent with the general needs of an outpatient population. If feasible, the formulary or preferred drug list must include at least two products in a therapeutic class.

b. ~~Each managed care plan must~~ Publish the ~~any~~ prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan shall ~~must~~ update the list within 24 hours after making a change. ~~Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers.~~

3. For enrollees ~~Medicaid recipients~~ diagnosed with hemophilia who have been prescribed anti-hemophilic-factor replacement products, the agency shall provide for those products and hemophilia overlay services through the agency's hemophilia disease management program.

~~3. Managed care plans, and their fiscal agents or intermediaries, must accept prior authorization requests for any service electronically.~~

4. Notwithstanding any other law, in order to establish uniformity in the submission of prior authorization forms, effective January 1, 2015, a managed care plan shall use a single standardized form for obtaining prior authorization for a medical procedure, course of treatment, or prescription drug

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benefit. The form may not exceed two pages in length, excluding any instructions or guiding documentation.

a. The managed care plan shall make the form available electronically and online to practitioners. The prescribing provider may electronically submit the completed prior authorization form to the managed care plan.

b. If the managed care plan contracts with a pharmacy benefits manager to perform prior authorization services for a medical procedure, course of treatment, or prescription drug benefit, the pharmacy benefits manager must use and accept the standardized prior authorization form.

c. A completed prior authorization request submitted by a health care provider using the standardized prior authorization form is deemed approved upon receipt by the managed care plan unless the managed care plan responds otherwise within 3 business days.

5. If medications for the treatment of a medical condition are restricted for use by a managed care plan by a step-therapy or fail-first protocol, the prescribing provider must have access to a clear and convenient process to request an override of the protocol from the managed care plan.

a. The managed care plan shall grant an override within 72 hours if the prescribing provider documents that:

(I) Based on sound clinical evidence, the preferred treatment required under the step-therapy or fail-first protocol has been ineffective in the treatment of the enrollee’s disease or medical condition; or

(II) Based on sound clinical evidence or medical and scientific evidence, the preferred treatment required under the

step-therapy or fail-first protocol:

(A) Is expected or is likely to be ineffective based on known relevant physical or mental characteristics of the enrollee and known characteristics of the drug regimen; or

(B) Will cause or will likely cause an adverse reaction or other physical harm to the enrollee.

b. If the prescribing provider allows the enrollee to enter the step-therapy or fail-first protocol recommended by the managed care plan, the duration of the step-therapy or fail-first protocol may not exceed the customary period for use of the medication if the prescribing provider demonstrates such treatment to be clinically ineffective. If the managed care plan can, through sound clinical evidence, demonstrate that the originally prescribed medication is likely to require more than the customary period to provide any relief or amelioration to the enrollee, the step-therapy or fail-first protocol may be extended for an additional period, but no longer than the original customary period for use of the medication. Notwithstanding this provision, a step-therapy or fail-first protocol shall be terminated if the prescribing provider determines that the enrollee is having an adverse reaction or is suffering from other physical harm resulting from the use of the medication.

Section 2. Section 627.42392, Florida Statutes, is created to read:

627.42392 Prior authorization.—

(1) Notwithstanding any other law, in order to establish uniformity in the submission of prior authorization forms, effective January 1, 2015, a health insurer that delivers,

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issues for delivery, renews, amends, or continues an individual or group health insurance policy in this state, including a policy issued to a small employer as defined in s. 627.6699, shall use a single standardized form for obtaining prior authorization for a medical procedure, course of treatment, or prescription drug benefit. The form may not exceed two pages in length, excluding any instructions or guiding documentation.

(a) The health insurer shall make the form available electronically and online to practitioners. The prescribing provider may submit the completed prior authorization form electronically to the health insurer.

(b) If the health insurer contracts with a pharmacy benefits manager to perform prior authorization services for a medical procedure, course of treatment, or prescription drug benefit, the pharmacy benefits manager must use and accept the standardized prior authorization form.

(c) A completed prior authorization request submitted by a health care provider using the standardized prior authorization form is deemed approved upon receipt by the health insurer unless the health insurer responds otherwise within 3 business days.

(2) A completed prior authorization request submitted by a prescribing provider using the standardized prior authorization form required under subsection (1) is deemed approved upon receipt by the health insurer unless the health insurer responds otherwise within 2 business days.

(3) This section does not apply to a grandfathered health plan as defined in s. 627.402.

Section 3. Section 627.42393, Florida Statutes, is created

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to read:

627.42393 Medication protocol override.—If an individual or group health insurance policy, including a policy issued by a small employer as defined in s. 627.6699, restricts medications for the treatment of a medical condition by a step-therapy or fail-first protocol, the prescribing provider must have access to a clear and convenient process to request an override of the protocol from the health insurer.

(1) The health insurer shall authorize an override of the protocol within 72 hours if the prescribing provider documents that:

(a) Based on sound clinical evidence, the preferred treatment required under the step-therapy or fail-first protocol has been ineffective in the treatment of the insured's disease or medical condition; or

(b) Based on sound clinical evidence or medical and scientific evidence, the preferred treatment required under the step-therapy or fail-first protocol:

1. Is expected or is likely to be ineffective based on known relevant physical or mental characteristics of the insured and known characteristics of the drug regimen; or

2. Will cause or is likely to cause an adverse reaction or other physical harm to the insured.

(2) If the prescribing provider allows the insured to enter the step-therapy or fail-first protocol recommended by the health insurer, the duration of the step-therapy or fail-first protocol may not exceed the customary period for use of the medication if the prescribing provider demonstrates such treatment to be clinically ineffective. If the health insurer

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can, through sound clinical evidence, demonstrate that the originally prescribed medication is likely to require more than the customary period for such medication to provide any relief or amelioration to the insured, the step-therapy or fail-first protocol may be extended for an additional period of time, but no longer than the original customary period for the medication. Notwithstanding this provision, a step-therapy or fail-first protocol shall be terminated if the prescribing provider determines that the insured is having an adverse reaction or is suffering from other physical harm resulting from the use of the medication.

(3) This section does not apply to grandfathered health plans, as defined in s. 627.402.

Section 4. Subsection (11) of section 627.6131, Florida Statutes, is amended to read:

627.6131 Payment of claims.—

(11) A health insurer may not retroactively deny a claim because of insured ineligibility:

(a) More than 1 year after the date of payment of the claim; or

(b) If, under a policy compliant with the federal Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, and the regulations adopted pursuant to those acts, the health insurer verified the eligibility of the insured at the time of treatment and provided an authorization number, unless, at the time eligibility was verified, the provider was notified that the insured was delinquent in paying the premium.

Section 5. Subsection (2) of section 627.6471, Florida

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Statutes, is amended to read:

627.6471 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(2) An ~~Any~~ insurer issuing a policy of health insurance in this state~~,~~ which ~~insurance~~ includes coverage for the services of a preferred provider shall~~, must~~ provide each policyholder and certificateholder with a current list of preferred providers, shall ~~and must~~ make the list available for public inspection during regular business hours at the principal office of the insurer within the state, and shall post a link to the list of preferred providers on the home page of the insurer's website. Changes to the list of preferred providers must be reflected on the insurer's website within 24 hours.

Section 6. Paragraph (c) of subsection (2) of section 627.6515, Florida Statutes, is amended to read:

627.6515 Out-of-state groups.—

(2) Except as otherwise provided in this part, this part does not apply to a group health insurance policy issued or delivered outside this state under which a resident of this state is provided coverage if:

(c) The policy provides the benefits specified in ss. 627.419, 627.42392, 627.42393, 627.6574, 627.6575, 627.6579, 627.6612, 627.66121, 627.66122, 627.6613, 627.667, 627.6675, 627.6691, and 627.66911, and complies with the requirements of s. 627.66996.

Section 7. Subsection (10) of section 641.3155, Florida Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(10) A health maintenance organization may not

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retroactively deny a claim because of subscriber ineligibility:

(a) More than 1 year after the date of payment of the claim; or

(b) If, under a policy in compliance with the federal Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, and the regulations adopted pursuant to those acts, the health maintenance organization verified the eligibility of the subscriber at the time of treatment and provided an authorization number, unless, at the time eligibility was verified, the provider was notified that the subscriber was delinquent in paying the premium.

Section 8. Section 641.393, Florida Statutes, is created to read:

641.393 Prior authorization.—Notwithstanding any other law, in order to establish uniformity in the submission of prior authorization forms, effective January 1, 2015, a health maintenance organization shall use a single standardized form for obtaining prior authorization for prescription drug benefits. The form may not exceed two pages in length, excluding any instructions or guiding documentation.

(1) A health maintenance organization shall make the form available electronically and online to practitioners. A health care provider may electronically submit the completed form to the health maintenance organization.

(2) If a health maintenance organization contracts with a pharmacy benefits manager to perform prior authorization services for prescription drug benefits, the pharmacy benefits manager must use and accept the standardized prior authorization

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form.

(3) A completed prior authorization request submitted by a health care provider using the standardized prior authorization form required under this section is deemed approved upon receipt by the health maintenance organization unless the health maintenance organization responds otherwise within 3 business days.

(4) This section does not apply to grandfathered health plans, as defined in s. 627.402.

Section 9. Section 641.394, Florida Statutes, is created to read:

641.394 Medication protocol override.—If a health maintenance organization contract restricts medications for the treatment of a medical condition by a step-therapy or fail-first protocol, the prescribing provider shall have access to a clear and convenient process to request an override of the protocol from the health maintenance organization.

(1) The health maintenance organization shall grant an override within 72 hours if the prescribing provider documents that:

(a) Based on sound clinical evidence, the preferred treatment required under the step-therapy or fail-first protocol has been ineffective in the treatment of the subscriber’s disease or medical condition; or

(b) Based on sound clinical evidence or medical and scientific evidence, the preferred treatment required under the step-therapy or fail-first protocol:

1. Is expected or is likely to be ineffective based on known relevant physical or mental characteristics of the

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subscriber and known characteristics of the drug regimen; or

2. Will cause or is likely to cause an adverse reaction or other physical harm to the subscriber.

(2) If the prescribing provider allows the subscriber to enter the step-therapy or fail-first protocol recommended by the health maintenance organization, the duration of the step-therapy or fail-first protocol may not exceed the customary period for use of the medication if the prescribing provider demonstrates such treatment to be clinically ineffective. If the health maintenance organization can, through sound clinical evidence, demonstrate that the originally prescribed medication is likely to require more than the customary period to provide any relief or amelioration to the subscriber, the step-therapy or fail-first protocol may be extended for an additional period, but no longer than the original customary period for use of the medication. Notwithstanding this provision, a step-therapy or fail-first protocol shall be terminated if the prescribing provider determines that the subscriber is having an adverse reaction or is suffering from other physical harm resulting from the use of the medication.

(3) This section does not apply to grandfathered health plans, as defined in s. 627.402.

Section 10. This act shall take effect July 1, 2014.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

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An act relating to health care; amending s. 409.967, F.S.; revising contract requirements for Medicaid managed care programs; providing requirements for plans establishing a drug formulary or preferred drug list; requiring the use of a standardized prior authorization form; providing requirements for the form and for the availability and submission of the form; requiring a pharmacy benefits manager to use and accept the form under certain circumstances; establishing a process for providers to override certain treatment restrictions; providing requirements for approval of such overrides; providing an exception to the override protocol in certain circumstances; creating s. 627.42392, F.S.; requiring health insurers to use a standardized prior authorization form; providing requirements for the form and for the availability and submission of the form; requiring a pharmacy benefits manager to use and accept the form under certain circumstances; providing an exemption; creating s. 627.42393, F.S.; establishing a process for providers to override certain treatment restrictions; providing requirements for approval of such overrides; providing an exception to the override protocol in certain circumstances; providing an exemption; amending s. 627.6131, F.S.; prohibiting an insurer from retroactively denying a claim in certain circumstances; amending s. 627.6471, F.S.; requiring insurers to post preferred provider information on a website; specifying that changes to such a website

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must be made within a certain time; amending s. 627.6515, F.S.; applying provisions relating to prior authorization and override protocols to out-of-state groups; amending s. 641.3155, F.S.; prohibiting a health maintenance organization from retroactively denying a claim in certain circumstances; creating s. 641.393, F.S.; requiring the use of a standardized prior authorization form by a health maintenance organization; providing requirements for the availability and submission of the form; requiring a pharmacy benefits manager to use and accept the form under certain circumstances; providing an exemption; creating s. 641.394, F.S.; establishing a process for providers to override certain treatment restrictions; providing requirements for approval of such overrides; providing an exception to the override protocol in certain circumstances; providing an exemption; providing an effective date.

By the Committee on Banking and Insurance; and Senator Grimsley

597-04029-14 20141354c1

A bill to be entitled

An act relating to health care; amending s. 409.967, F.S.; revising contract requirements for Medicaid managed care programs; providing requirements for plans establishing a drug formulary or preferred drug list; requiring the plan to authorize an enrollee to continue a drug that is removed or changed, under certain circumstances; requiring the use of a standardized prior authorization form; requiring a pharmacy benefits manager to use and accept the form under certain circumstances; providing requirements for the form and for the availability and submission of the form; establishing a process for providers to override certain treatment restrictions; providing requirements for approval of such overrides; providing an exception to the override protocol in certain circumstances; creating s. 627.42392, F.S.; requiring health insurers to use a standardized prior authorization form; requiring a pharmacy benefits manager to use and accept the form under certain circumstances; providing requirements for the form and for the availability and submission of the form; providing an exemption; creating s. 627.42393, F.S.; establishing a process for providers to override certain treatment restrictions; providing requirements for approval of such overrides; providing an exception to the override protocol in certain circumstances; providing an exemption; amending s. 627.6131, F.S.; prohibiting an insurer from retroactively denying a

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claim in certain circumstances; amending s. 627.6471, F.S.; requiring insurers to post preferred provider information on a website; amending s. 627.6515, F.S.; applying provisions relating to prior authorization and override protocols to out-of-state groups; amending s. 641.3155, F.S.; prohibiting a health maintenance organization from retroactively denying a claim in certain circumstances; creating s. 641.393, F.S.; requiring the use of a standardized prior authorization form by a health maintenance organization; requiring a pharmacy benefits manager to use and accept the form under certain circumstances; providing requirements for the availability and submission of the form; providing an exemption; creating s. 641.394, F.S.; establishing a process for providers to override certain treatment restrictions; providing requirements for approval of such overrides; providing an exception to the override protocol in certain circumstances; providing an exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section 409.967, Florida Statutes, is amended to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem

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necessary, the contract must require:

(c) *Access.*—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1, 2013, and a final order has issued in any civil or administrative challenge. Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to ~~both~~ the agency and the public and have the capability of comparing ~~to compare~~ the availability of providers to network adequacy standards and to accept and display feedback from each provider's patients. Each plan shall submit quarterly reports to the agency identifying the number of enrollees assigned to each primary care provider.

2. If establishing a prescribed drug formulary or preferred drug list, a managed care plan shall:

a. Provide a broad range of therapeutic options for the treatment of disease states which are consistent with the general needs of an outpatient population. If feasible, the formulary or preferred drug list must include at least two products in a therapeutic class.

b. Include coverage through prior authorization for each new drug approved by the United States Food and Drug Administration until the Medicaid Pharmaceutical and Therapeutics Committee reviews such drug for inclusion on the formulary. The timing of the formulary review must comply with s. 409.91195.

c. ~~Each managed care plan must~~ Publish the ~~any~~ prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan shall ~~must~~ update the list within 24 hours after making a change. ~~Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers.~~

d. If a prescription drug on a plan's formulary is removed or changed, permit an enrollee who was receiving the drug to continue to receive the drug if the prescribing provider submits a written request that demonstrates that the drug is medically necessary and that the enrollee meets clinical criteria to receive the drug.

3. For enrollees ~~Medicaid recipients~~ diagnosed with

hemophilia who have been prescribed anti-hemophilic-factor replacement products, the agency shall provide for those products and hemophilia overlay services through the agency's hemophilia disease management program.

4. Notwithstanding any other law, in order to establish uniformity in the submission of prior authorization forms, after January 1, 2015, a managed care plan shall use only the standardized prior authorization form adopted by the Financial Services Commission pursuant to s. 627.42392 for obtaining prior authorization for a medical procedure, a course of treatment, or prescription drug benefits.

a. If a managed care plan contracts with a pharmacy benefits manager to perform prior authorization services for prescription drug benefits, the pharmacy benefits manager shall use and accept the standardized prior authorization form. The Office of Insurance Regulation and the managed care plan shall make the form electronically available on their respective websites.

b.~~3.~~ Managed care plans, and their fiscal agents or intermediaries, must accept prior authorization requests for any service electronically.

c. A completed prior authorization request submitted by a health care provider using the standardized prior authorization form required under this subparagraph is deemed approved upon receipt by the managed care plan unless the managed care plan responds otherwise within 2 business days.

5. If medications for the treatment of a medical condition are restricted for use by a managed care plan by a step-therapy or fail-first protocol, the prescribing provider must have

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access to a clear and convenient process to request an override of the protocol from the managed care plan.

a. The managed care plan shall grant an override within 24 hours if the prescribing provider believes that:

(I) Based on sound clinical evidence, the preferred treatment required under the step-therapy or fail-first protocol has been ineffective in the treatment of the enrollee's disease or medical condition; or

(II) Based on sound clinical evidence or medical and scientific evidence, the preferred treatment required under the step-therapy or fail-first protocol:

(A) Is expected or likely to be ineffective based on known relevant physical or mental characteristics of the enrollee and known characteristics of the drug regimen; or

(B) Will cause or will likely cause an adverse reaction or other physical harm to the enrollee.

b. If the prescribing provider allows the enrollee to enter the step-therapy or fail-first protocol recommended by the managed care plan, the duration of the step-therapy or fail-first protocol may not exceed a period deemed appropriate by the provider. If the prescribing provider deems the treatment clinically ineffective, the enrollee is entitled to receive the recommended course of therapy without requiring the prescribing provider to seek approval for an override of the step-therapy or fail-first protocol.

Section 2. Section 627.42392, Florida Statutes, is created to read:

627.42392 Prior authorization.—Notwithstanding any other law, in order to establish uniformity in the submission of prior

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authorization forms, after January 1, 2015, a health insurer that delivers, issues for delivery, renews, amends, or continues an individual or group health insurance policy in this state, including a policy issued to a small employer as defined in s. 627.6699, shall use only the standardized prior authorization form adopted by the commission for obtaining prior authorization for a medical procedure, course of treatment, or prescription drug benefits.

(1) If a health insurer contracts with a pharmacy benefits manager to perform prior authorization services for prescription drug benefits, the pharmacy benefits manager shall use and accept the standardized prior authorization form. The commission shall adopt rules prescribing the prior authorization form on or before January 1, 2015, and the office may consult with health insurers or other organizations as necessary in the development of the form. The form may not exceed two pages in length, excluding any instructions or guiding documentation. The office and the health insurer shall make the form electronically available on their respective websites. The prescribing provider may electronically submit the completed form to the health insurer. The adoption of the form by the commission does not constitute a determination that affects the substantial interests of a party under chapter 120.

(2) A completed prior authorization request submitted by a prescribing provider using the standardized prior authorization form required under subsection (1) is deemed approved upon receipt by the health insurer unless the health insurer responds otherwise within 2 business days.

(3) This section does not apply to a grandfathered health

plan as defined in s. 627.402.

Section 3. Section 627.42393, Florida Statutes, is created to read:

627.42393 Medication protocol override.—If an individual or group health insurance policy, including a policy issued by a small employer, as defined in s. 627.6699, restricts medications for the treatment of a medical condition by a step-therapy or fail-first protocol, the prescribing provider must have access to a clear and convenient process to request an override of the protocol from the health insurer.

(1) The health insurer shall authorize an override of the protocol within 24 hours if the prescribing provider believes that:

(a) Based on sound clinical evidence, the preferred treatment required under the step-therapy or fail-first protocol has been ineffective in the treatment of the insured's disease or medical condition; or

(b) Based on sound clinical evidence or medical and scientific evidence, the preferred treatment required under the step-therapy or fail-first protocol:

1. Is expected or likely to be ineffective based on known relevant physical or mental characteristics of the insured and known characteristics of the drug regimen; or

2. Will cause or is likely to cause an adverse reaction or other physical harm to the insured.

(2) If the prescribing provider allows the insured to enter the step-therapy or fail-first protocol recommended by the health insurer, the duration of the step-therapy or fail-first protocol may not exceed a period deemed appropriate by the

provider. If the prescribing provider deems the treatment clinically ineffective, the insured is entitled to receive the recommended course of therapy without requiring the prescribing provider to seek approval for an override of the step-therapy or fail-first protocol.

(3) This section does not apply to grandfathered health plans, as defined in s. 627.402.

Section 4. Subsection (11) of section 627.6131, Florida Statutes, is amended to read:

627.6131 Payment of claims.—

(11) A health insurer may not retroactively deny a claim because of insured ineligibility:

(a) More than 1 year after the date of payment of the claim; or

(b) If, under a policy compliant with the federal Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, and regulations adopted pursuant to those acts, the health insurer verified the eligibility of the insured at the time of treatment and provided an authorization number unless, at the time eligibility was verified, the provider was notified that the insured was delinquent in paying the premium.

Section 5. Subsection (2) of section 627.6471, Florida Statutes, is amended to read:

627.6471 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(2) An ~~Any~~ insurer issuing a policy of health insurance in this state~~,~~ which ~~insurance~~ includes coverage for the services of a preferred provider~~,~~ shall ~~must~~ provide each policyholder

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and certificateholder with a current list of preferred providers, shall ~~and must~~ make the list available for public inspection during regular business hours at the principal office of the insurer within the state, and shall post a link to the list of preferred providers on the home page of the insurer's website. Changes to the list of preferred providers must be reflected on the insurer's website within 24 hours.

Section 6. Paragraph (c) of subsection (2) of section 627.6515, Florida Statutes, is amended to read:

627.6515 Out-of-state groups.—

(2) Except as otherwise provided in this part, this part does not apply to a group health insurance policy issued or delivered outside this state under which a resident of this state is provided coverage if:

(c) The policy provides the benefits specified in ss. 627.419, 627.42392, 627.42393, 627.6574, 627.6575, 627.6579, 627.6612, 627.66121, 627.66122, 627.6613, 627.667, 627.6675, 627.6691, and 627.66911, and complies with the requirements of s. 627.66996.

Section 7. Subsection (10) of section 641.3155, Florida Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(10) A health maintenance organization may not retroactively deny a claim because of subscriber ineligibility:

(a) More than 1 year after the date of payment of the claim; or

(b) If, under a policy compliant with the federal Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, and regulations

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adopted pursuant to those acts, the health maintenance organization verified the eligibility of the subscriber at the time of treatment and provided an authorization number unless, at the time eligibility was verified, the provider was notified that the subscriber was delinquent in paying the premium.

Section 8. Section 641.393, Florida Statutes, is created to read:

641.393 Prior authorization.—Notwithstanding any other law, in order to establish uniformity in the submission of prior authorization forms, after January 1, 2015, a health maintenance organization shall use only the standardized prior authorization form adopted by the Financial Services Commission pursuant to s. 627.42392 for obtaining prior authorization for a medical procedure, a course of treatment, or prescription drug benefits.

(1) If a health maintenance organization contracts with a pharmacy benefits manager to perform prior authorization services for prescription drug benefits, the pharmacy benefits manager must use and accept the standardized prior authorization form. The office and health maintenance organization shall make the form electronically available on their respective websites.

(2) A health care provider may submit the completed form electronically to the health maintenance organization.

(3) A completed prior authorization request submitted by a health care provider using the standardized prior authorization form required under this section is deemed approved upon receipt by the health maintenance organization unless the health maintenance organization responds otherwise within 2 business days.

(4) This section does not apply to grandfathered health

plans, as defined in s. 627.402.

Section 9. Section 641.394, Florida Statutes, is created to read:

641.394 Medication protocol override.—If a health maintenance organization contract restricts medications for the treatment of a medical condition by a step-therapy or fail-first protocol, the prescribing provider shall have access to a clear and convenient process to request an override of the protocol from the health maintenance organization.

(1) The health maintenance organization shall grant an override within 24 hours if the prescribing provider believes that:

(a) Based on sound clinical evidence, the preferred treatment required under the step-therapy or fail-first protocol has been ineffective in the treatment of the subscriber's disease or medical condition; or

(b) Based on sound clinical evidence or medical and scientific evidence, the preferred treatment required under the step-therapy or fail-first protocol:

1. Is expected or likely to be ineffective based on known relevant physical or mental characteristics of the subscriber and known characteristics of the drug regimen; or

2. Will cause or is likely to cause an adverse reaction or other physical harm to the subscriber.

(2) If the prescribing provider allows the subscriber to enter the step-therapy or fail-first protocol recommended by the health maintenance organization, the duration of the step-therapy or fail-first protocol may not exceed a period deemed appropriate by the provider. If the prescribing provider deems

the treatment clinically ineffective, the subscriber is entitled to receive the recommended course of therapy without requiring the prescribing provider to seek approval for an override of the step-therapy or fail-first protocol.

(3) This section does not apply to grandfathered health plans, as defined in s. 627.402.

Section 10. This act shall take effect July 1, 2014.

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The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 15, 2014

I respectfully request that **Senate Bill # 1354, 1254 and 1066** be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Act relating to Health Care

Bill Number 1354 *(if applicable)*

Name Audrey Brown

Amendment Barcode _____ *(if applicable)*

Job Title Ceo + President

Address 200 W. College Ave Suite 1041
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-386-2904

E-mail _____

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Association of Health plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Health Care

Bill Number SB 1354 *(if applicable)*

Name Anne Swerlick

Amendment Barcode *(if applicable)*

Job Title Deputy Director

Address 2425 Torreya Dr.
Street
Tall FL 32303
City *State* *Zip*

Phone 850 385-7900

E-mail annep@floridalegal.org

Speaking: ☑ For ☐ Against ☐ Information Wave in Support

Representing Florida Legal Services, Inc

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access

Bill Number 1354 *(if applicable)*

Name Katie Spillman

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2011 Delta Blvd ~~Tallah~~
Street

Tallahassee FL 32303
City *State* *Zip*

Phone _____

E-mail _____

Speaking: [X] For [ ] Against [ ] Information

Representing Central Florida Behavioral Health Network

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic BE Everything Amendment Bill Number SB 1354 *(if applicable)*

Name Paul Sanford Amendment Barcode 782364 *(if applicable)*

Job Title

Address 106 S. Monroe St. Phone 222-7260

Street

Tallahassee, FL 32301 E-mail

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Insurance Council, Florida Blue

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Health Care

Bill Number 1354 *(if applicable)*

Name Tammy Perdue

Amendment Barcode _____ *(if applicable)*

Job Title General Counsel

Address 516 N Adams St
Street
Tallahassee
City *State* *Zip*

Phone 850 224-7173

E-mail tperdue@aif.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Associated Industries

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access

Bill Number 1354 *(if applicable)*

Name Nanette Schimpf

Amendment Barcode *(if applicable)*

Job Title

Address 2011 Delta Blvd. *Street*

Phone

Tallahassee *City* FL *State* 32312 *Zip*

E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing Florida State Hispanic Chamber of Commerce

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access — Bill Number 1354 *(if applicable)*

Name Kayla Krause — Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1718 Ferndale Place *Street* — Phone _____

Tallahassee *City* FL *State* 32301 *Zip* — E-mail _____

Speaking: [X] For [ ] Against [ ] Information

Representing Community Health Charities of FL

Appearing at request of Chair: [ ] Yes [X] No — Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access — Bill Number 1354 *(if applicable)*

Name Monica Fernandez-Hermo — Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2100 continental ave unit 15 *Street* — Phone _____

Tallahassee, FL 32304 *City State Zip* — E-mail _____

Speaking: [X] For [ ] Against [ ] Information

Representing US Pain Foundation

Appearing at request of Chair: [ ] Yes [X] No — Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Health Care

Bill Number 1354 *(if applicable)*

Name David Christian

Amendment Barcode _____ *(if applicable)*

Job Title VP - Government Affairs

Address 136 S. Bronough St.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 521-1211

E-mail _____

Speaking: ☐ For ☑ Against ☐ Information

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access

Bill Number 1354 *(if applicable)*

Name Eric Pouncey

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1501-D Pullen Rd
Street
Tallahassee FL 32303
City *State* *Zip*

Phone _____

E-mail _____

Speaking: [X] For [ ] Against [ ] Information

Representing Lupus Foundation of Florida

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access

Bill Number 1354 *(if applicable)*

Name

Amendment Barcode *(if applicable)*

Job Title Ashlee Weber

Address 2011 Delta Blvd. *Street*
Tallahassee, FL 32303 *City State Zip*

Phone

E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing Alzheimer + Dementia Resource Center

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access — Bill Number 1354 *(if applicable)*

Name Austin Curry — Amendment Barcode _____ *(if applicable)*

Job Title President

Address 4718 Ashton Ct *Street* — Phone _____

Tampa *City* FL *State* 33624 *Zip* — E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Elder Care Advocacy of Florida

Appearing at request of Chair: ☐ Yes ☒ No — Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Health Care

Bill Number 1354 *(if applicable)*

Name FELY CURVA

Amendment Barcode *(if applicable)*

Job Title Partner, Curva & Associate LLC

Address 1212 Piedmont Dr.
Street

Phone (850) 508-2256

Tallahassee FL 32312
City *State* *Zip*

E-mail curva@mindspring.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Budd Bell Clearinghouse on Human Laws

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/27/14
Meeting Date

Topic Patient Access Bill Number 1354 *(if applicable)*

Name Courtney Cox Amendment Barcode *(if applicable)*

Job Title

Address 2011 Delta Blvd. *Street* Phone

Tallahassee FL 32312 *City* *State* *Zip* E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing FL Breast Cancer Foundation

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [ ] Yes [X] No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access

Bill Number 1354 *(if applicable)*

Name Karen Moore

Amendment Barcode *(if applicable)*

Job Title

Address 2011 Delta Blvd.
Street
Tallahassee, FL 32303
City *State* *Zip*

Phone

E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing Patient Access for Florida

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic _____ Bill Number 1354 *(if applicable)*

Name Alisa LaPolt Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ Phone _____

Street

Tallahassee 32302

City *State* *Zip*

E-mail Alisa@gotopsail.com

Speaking: [X] For [ ] Against [ ] Information

Representing Florida CHAIN

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Waive - support

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic _____ Bill Number 1354 *(if applicable)*

Name Alisa LaPolt Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ Phone _____

Street

Tallahassee 32302 E-mail alisa@gotopsail.com

City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Nurses Association

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

WAIVE TIME IN SUPPORT

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-22-2014
Meeting Date

Topic HEALTH CARE (PRIOR AUTHORIZATION) Bill Number SB 1354 *(if applicable)*

Name STEPHEN R. WINN Amendment Barcode *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY Phone 878-7364
Street

TALLAHASSEE, FL 32301 E-mail
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.22.14
Meeting Date

Topic Patient Access — Bill Number 1354 *(if applicable)*

Name Chris Fisher — Amendment Barcode _____ *(if applicable)*

Job Title FL Policy & Advocacy Coordinator

Address 5 Sinclair Circle *Street* — Phone 850 224-1401

Indialantic FL 32903 *City State Zip* — E-mail christinepfisher@aol.com

Speaking: ☑ For ☐ Against ☐ Information Waive in Support

Representing The AIDS Institute + AIDS Alliance for Women, Infants, Children Youth + families

Appearing at request of Chair: ☐ Yes ☑ No — Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic _____ Bill Number 1354 *(if applicable)*

Name Chris Nuland Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115 Phone 904-233-3051
Street

Jacksonville, FL E-mail nulandlawgad.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Chapter, American College of Surgeons / Physicians

Appearing at request of Chair: ☑ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Patient Access — Bill Number 1354 *(if applicable)*

Name Pam Langford — Amendment Barcode _____ *(if applicable)*

Job Title President

Address PO Box 180813 *Street* — Phone _____

Tallahassee *City* FL *State* 32318 *Zip* — E-mail _____

Speaking: [X] For [ ] Against [ ] Information

Representing HEALS of the South

Appearing at request of Chair: [ ] Yes [X] No — Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-22-2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic ~~Health~~ Care

Bill Number SB1354 *(if applicable)*

Name Joy Ryan

Amendment Barcode *(if applicable)*

Job Title Shareholder, Meenan P.A.

Address 310 W. College St *Street*

Tallahassee, FL 32312 *City State Zip*

Phone 425-4000

E-mail joyryan401@comcast.net

Speaking: ☐ For ☒ Against ☐ Information

Representing America's Health Insurance Plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1394 (672552)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education) and Senator Legg
SUBJECT:	Education
DATE:	April 21, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Fav/CS**
3.	Elwell	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1394 increases from one to two the number of industry certifications that a student must earn to attain a Merit designation on his or her standard high school diploma.

Current law provides for Scholar and Merit designations that high school students may earn if they satisfy course and testing requirements above-and-beyond those required for a standard high school diploma.

This bill also expands the membership of the Children and Youth Cabinet by adding a superintendent of schools.

This bill has no fiscal impact on state funds.

The bill is effective upon becoming a law.

II. Present Situation:

Currently, Florida public high school students have four options for obtaining a standard high school diploma -- a traditional 4-year, 24-credit option;[1] an 18-credit graduation option;[2] or completion of an International Baccalaureate (IB) or Advanced International Certificate of Education (AICE) curriculum.[3] In addition, current law requires each school district to adopt an early graduation policy allowing a high school student who completes 24 credits in less than eight semesters and meets the grade point average and assessment requirements to graduate early.[4]

Current law provides for Scholar and Merit designations that high school students may earn if they satisfy course and testing requirements above-and-beyond those required for a standard high school diploma.[5] Students pursuing a Scholar designation must:[6]

- Pass the 11th grade English Language Arts assessment, effective when the state transitions to new assessments;
- Earn one credit in Algebra II and one credit in Statistics or an equally rigorous course. When the state transitions to new assessments, students must pass the Algebra II assessment.
- Pass the Biology I end-of-course (EOC) assessment and earn one credit in Chemistry or Physics and one credit in an equally rigorous course.
- Pass the U.S. History EOC assessment.
- Earn two credits in the same foreign language.
- Earn at least one credit in an Advanced Placement, IB, AICE or a dual enrollment course.

Students pursuing a Merit designation must attain one or more industry certifications.[7]

The Children and Youth Cabinet ensures that public policy relating to children and youth promotes interdepartmental collaboration and program implementation so that services are planned, managed, and delivered in an integrated manner to improve the self-sufficiency, safety, economic stability, health, and quality of life for children.[8] The Children and Youth Cabinet consists of the Governor and the following persons:

- The Secretary of Children and Family Services;
- The Secretary of Juvenile Justice;
- The director of the Agency for Persons with Disabilities;
- The director of the Office of Early Learning;

[1] Section 1003.428, F.S., established high school graduation requirements beginning with students entering grade 9 in the 2007-2008 school year. Section 1003. 4282, F.S., established high school graduation requirements for students entering grade 9 in the 2013-2014 school year and thereafter.
[2] Section 1002.3105(5), F.S. Effective July 1, 2013, students may earn a standard high school diploma in 18 credits by achieving a 2.0 GPA; earning credit in the same 15 English Language Arts, mathematics, science, social studies, and fine and performing arts courses required under the traditional 24-credit option; and earning 3 elective credits, instead of the 6 electives required by the 24-credit option.
[3] Sections 1003.428 and 1003.4282, F.S.
[4] Section 1003.4281, F.S.
[5] Section 1003.4285, F.S.
[6] Section 1003.4285(1)(a), F.S.
[7] Section 1003.4285(1)(b), F.S.
[8] Section 402.56 (3)(a), F.S.

- The State Surgeon General;
- The Secretary of Health Care Administration;
- The Commissioner of Education;
- The director of the Statewide Guardian Ad Litem Office;
- The director of the Office of Child Abuse Prevention; and
- Five members representing children and youth advocacy organizations, who are not service providers and who are appointed by the Governor.[9]

III. Effect of Proposed Changes:

The bill increases from one to two the number of industry certifications that a student must earn to attain a Merit designation on his or her standard high school diploma.

The bill also expands the membership of the Children and Youth Cabinet by adding a superintendent of schools, appointed by the Governor, as an additional member.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/SB 1394 has no fiscal impact on state funds.

[9] Section 402.56 (4)(a), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.56 and 1003.4285.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Education on April 9, 2014:
The committee substitute expands the membership of the Children and Youth Cabinet by adding a superintendent of schools as an additional member.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2014	.	
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	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 33 - 43
and insert:
Section 2. Subsection (3) of section 1003.4281, Florida Statutes, is amended to read:
1003.4281 Early high school graduation.—
(3) A student who graduates early may continue to participate in school activities, ~~and~~ social events, and school-authorized or education-related activities occurring during or

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outside of the regular instructional school day, regardless of location, and attend and participate in graduation events with the student's cohort, as if the student were still enrolled in high school. A student who graduates early will be included in class ranking, honors, and award determinations for the student's cohort. A student who graduates early must comply with district school board rules and policies regarding access to the school facilities and grounds during normal operating hours.

Section 3. Paragraph (b) of subsection (1) of section 1003.4285, Florida Statutes, is amended to read:

1003.4285 Standard high school diploma designations.—

(1) Each standard high school diploma shall include, as applicable, the following designations if the student meets the criteria set forth for the designation:

(b) *Merit designation.*—In addition to the requirements of ss. 1003.428 and 1003.4282, as applicable, in order to earn the Merit designation, a student must attain two ~~one~~ or more industry certifications from the list established under s. 1003.492.

Section 4. Subsection (1) and paragraphs (a), (b), and (f) of subsection (2) of section 1006.20, Florida Statutes, are amended to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools.

(a) If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit

organization to govern athletics with the approval of the State Board of Education.

(b) The FHSAA is not a state agency as defined in s. 120.52. The FHSAA is ~~shall be~~ subject to ~~the provisions of~~ s. 1006.19.

(c) A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA. Any high school in the state, including charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. As used in this paragraph, the term "NFHS" means National Federation of State High School Associations. ~~However,~~

1. Membership in the FHSAA is not mandatory for any school.

2. The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization, or out-of-state schools that are not members of high school athletic associations that are NFHS members or NFHS affiliate members. The FHSAA ~~and~~ may not take any retributory or discriminatory action against any of its member schools that participate in interscholastic competitions ~~competition~~ with non-FHSAA member Florida schools or out-of-state schools that are not affiliate members of the NFHS.

3. The FHSAA may not unreasonably withhold its approval of an application to become a NFHS ~~an~~ affiliate member which is ~~of the National Federation of State High School Associations~~ submitted by any other organization that governs interscholastic athletic competition in this state.

(d) The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by statute.

(e) As used in ~~For the purposes of~~ this section, the term "high school" includes grades 6 through 12.

(2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

(a) The FHSAA shall adopt bylaws that, unless otherwise ~~specifically~~ provided by the Florida Statutes ~~statute~~, presume the ~~establish~~ eligibility of ~~requirements for all~~ students to ~~who~~ participate in the interscholastic ~~high school~~ athletic competitions of ~~competition in~~ its member schools and that specify a limited and enumerated list of violations that may result in the ineligibility of students to participate in any interscholastic athletic competition of its member schools. The bylaws must provide the following:

1. A ~~governing residence and transfer shall allow the~~ student remains ~~to be~~ eligible in the school in which he or she first enrolls each school year or the school in which the student makes himself or herself a candidate for an athletic team by engaging in a practice prior to enrolling in the school.

2. A ~~The bylaws shall also allow the~~ student is ~~to be~~ eligible to participate in interscholastic athletic competitions in the school to which the student has transferred during the school year if the transfer is made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport. These transfers shall be allowed pursuant to the district school board policies in the case of transfer to a public school or pursuant to the private

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school policies in the case of transfer to a private school. The student shall be eligible in that school so long as he or she remains enrolled in that school. Subsequent eligibility shall be determined and enforced through the FHSAA's bylaws. Requirements governing eligibility and transfer between member schools shall be applied similarly to public school students and private school students. A student may transfer schools for academic and athletic purposes if all other applicable eligibility and transfer requirements are met.

3. A student may not be declared ineligible to play in interscholastic athletic competitions based upon a violation of the FHSAA's recruitment policy or otherwise because the student:

a. Participated on a nonschool team or non-school teams affiliated with the school in which the student ultimately enrolls; or

b. Participated in nonschool athletic activities sponsored by a member school if, after participating, the student registers for, enrolls in, or applies to attend the sponsoring school.

As used in this subparagraph, nonschool teams include, but are not limited to, club teams, travel teams, grade school teams, recreational league teams, personal instruction sessions, and summer camp teams. Nonschool athletic activities include, but are not limited to, activities at a summer camp nonschool athletic program.

(b) The FHSAA shall adopt bylaws that specifically prohibit the recruiting of students for athletic purposes. The restrictions applied to any recruiting activities shall be

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expressly listed and clearly defined in the bylaws adopted by the FHSAA. The bylaws must ~~shall~~ prescribe penalties and an appeals process for the enumerated athletic recruiting violations included in the bylaws.

1. If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle, in addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representatives who violate recruiting rules.

2. A student may not be declared ineligible based on violation of recruiting rules unless the student or parent has falsified any enrollment or eligibility document or accepted any benefit or any promise of benefit if such benefit is not generally available to the school's students or family members or is based in any way on athletic interest, potential, or performance.

3. The mass distribution of untargeted mailings, electronic mailings, or preprinted guides or booklets by or on behalf of a member school which include detailed information regarding such member school's interscholastic athletic programs is not a violation of the FHSAA's athletic recruiting or sportsmanship policies.

(f) The FHSAA shall adopt bylaws that establish sanctions for a person ~~coaches~~ who commits ~~have committed~~ major violations of the FHSAA's bylaws and policies. As used in this paragraph, the term "person" means a coach, an administrator, an official, a faculty member, a member of the athletic staff, or any other

individual engaged in representing, supporting, or promoting the athletic interests of a member school in an official capacity or unofficial, school-sanctioned capacity.

1. Major violations include, but are not limited to, knowingly allowing an ineligible student to participate in a contest representing a member school in an interscholastic contest, ~~or~~ committing a violation of the FHSAA's recruiting or sportsmanship policies, or colluding with a person to prevent a member or nonmember school from scheduling competitions among themselves.

2. Sanctions placed upon an individual person ~~coach~~ may include, but are not limited to, prohibiting or suspending the person ~~coach~~ from coaching, participating in, or attending any athletic activity sponsored, recognized, or sanctioned by the FHSAA and the member school for which the person ~~coach~~ committed the violation. If the person ~~a coach~~ is sanctioned by the FHSAA and the person ~~coach~~ transfers to another member school, those sanctions remain in full force and effect during the term of the sanction.

3. If a member school is assessed a financial penalty as a result of a person ~~coach~~ committing a major violation, the person ~~coach~~ shall reimburse the member school before being allowed to coach, participate in, or attend any athletic activity sponsored, recognized, or sanctioned by the FHSAA and a member school.

4. The FHSAA shall establish a due process procedure for persons who are ~~coaches~~ sanctioned under this paragraph, consistent with the appeals procedures set forth in subsection (7).

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185
186 ================ T I T L E A M E N D M E N T ================
187 And the title is amended as follows:
188 Delete lines 5 - 6
189 and insert:
190 s. 1003.4281, F.S.; revising the school activities in
191 which a student who graduates early may participate;
192 amending s. 1003.4285, F.S.; revising the requirements
193 to earn a Merit designation on a standard high school
194 diploma; amending s. 1006.20, F.S.; defining a term;
195 prohibiting the Florida High School Athletic
196 Association (FHSAA) from denying or discouraging
197 interscholastic competition between member schools and
198 non-FHSAA member Florida schools or certain out-of-
199 state schools; revising and providing criteria for
200 bylaws adopted by the FHSAA, including criteria for
201 student eligibility requirements, restrictions
202 regarding recruiting activities, and persons who
203 commit major violations of the FHSAA's bylaws and
204 policies;

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2014	.	
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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete line 44
and insert:
Section 3. Paragraphs (c) through (g) of subsection (3) of section 1009.22, Florida Statutes, are amended to read:
1009.22 Workforce education postsecondary student fees.—
(3)
(c) Effective July 1, 2014 ~~2011~~, for programs leading to a career certificate or an applied technology diploma, the

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standard tuition shall be $2.33 ~~$2.22~~ per contact hour for residents and nonresidents and the out-of-state fee shall be $6.99 ~~$6.66~~ per contact hour. For adult general education programs, a block tuition of $45 per half year or $30 per term shall be assessed ~~for residents and nonresidents, and the out-of-state fee shall be $135 per half year or $90 per term~~. Each district school board and Florida College System institution board of trustees shall adopt policies and procedures for the collection of and accounting for the expenditure of the block tuition. All funds received from the block tuition shall be used only for adult general education programs. Students enrolled in adult general education programs may not be assessed the fees authorized in subsection (5), subsection (6), or subsection (7).

~~(d) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee per contact hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and out-of-state fee shall remain at the same level as~~

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~~the prior fiscal year.~~

(d) ~~(c)~~ Each district school board and each Florida College System institution board of trustees may adopt tuition and out-of-state fees that may vary no more than 5 percent below and 5 percent above the combined total of the standard tuition and out-of-state fees established in paragraph (c).

(e) ~~(f)~~ The maximum increase in resident tuition for any school district or Florida College System institution during the 2007-2008 fiscal year shall be 5 percent over the tuition charged during the 2006-2007 fiscal year.

(f) ~~(g)~~ The State Board of Education may adopt, by rule, the definitions and procedures that district school boards and Florida College System institution boards of trustees shall use in the calculation of cost borne by students.

Section 4. Subsection (3) of section 1009.23, Florida Statutes, is amended to read:

1009.23 Florida College System institution student fees.—

(3)(a) Effective July 1, 2014 ~~2011~~, for advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs, the standard tuition shall be $71.98 ~~$68.56~~ per credit hour for residents and nonresidents, and the out-of-state fee shall be $215.94 ~~$205.82~~ per credit hour.

(b) Effective July 1, 2014 ~~2011~~, for baccalaureate degree programs, the following tuition and fee rates shall apply:

1. The tuition shall be $91.79 ~~$87.42~~ per credit hour for students who are residents for tuition purposes.

2. The sum of the tuition and the out-of-state fee per credit hour for students who are nonresidents for tuition

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purposes shall be no more than 85 percent of the sum of the tuition and the out-of-state fee at the state university nearest the Florida College System institution.

~~(c) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and the out-of-state fee per credit hour shall remain at the same levels as the prior fiscal year.~~

Section 5. Paragraphs (a), (b), and (e) of subsection (4) and paragraph (b) of subsection (16) of section 1009.24, Florida Statutes, are amended, to read:

1009.24 State university student fees.—

(4)(a) Effective July 1, 2014 ~~2011~~, the resident undergraduate tuition for lower-level and upper-level coursework shall be $105.07 ~~$103.32~~ per credit hour.

~~(b) Beginning with the 2008-2009 fiscal year and each year thereafter, the resident undergraduate tuition per credit hour~~

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~~shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Board of Governors each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the resident undergraduate tuition shall remain at the same level as the prior fiscal year.~~

(d) ~~(c)~~ The sum of the activity and service, health, and athletic fees a student is required to pay to register for a course may ~~shall~~ not exceed 40 percent of the tuition established in law or in the General Appropriations Act. No university shall be required to lower any fee in effect on the effective date of this act in order to comply with this subsection. Within the 40 percent cap, universities may not increase the aggregate sum of activity and service, health, and athletic fees more than 5 percent per year~~, or the same percentage increase in tuition authorized under paragraph (b), whichever is greater,~~ unless specifically authorized in law or in the General Appropriations Act. A university may increase its athletic fee to defray the costs associated with changing National Collegiate Athletic Association divisions. Any such increase in the athletic fee may exceed both the 40 percent cap

and the 5 percent cap imposed by this subsection. Any such increase must be approved by the athletic fee committee in the process outlined in subsection (12) and may not ~~cannot~~ exceed $2 per credit hour. Notwithstanding ~~the provisions of~~ ss. 1009.534, 1009.535, and 1009.536, that portion of any increase in an athletic fee pursuant to this subsection which ~~that~~ causes the sum of the activity and service, health, and athletic fees to exceed the 40 percent cap or the annual increase in such fees to exceed the 5 percent cap may ~~shall~~ not be included in calculating the amount a student receives for a Florida Academic Scholars award, a Florida Medallion Scholars award, or a Florida Gold Seal Vocational Scholars award. Notwithstanding this paragraph and subject to approval by the board of trustees, each state university may ~~is authorized to~~ exceed the 5 percent ~~5-percent~~ cap on the annual increase to the aggregate sum of activity and service, health, and athletic fees for the 2010-2011 fiscal year. Any such increase may ~~shall~~ not exceed 15 percent or the amount required to reach the 2009-2010 fiscal year statewide average for the aggregate sum of activity and service, health, and athletic fees at the main campuses, whichever is greater. The aggregate sum of the activity and service, health, and athletic fees may ~~shall~~ not exceed 40 percent of tuition. Any increase in the activity and service fee, health fee, or athletic fee must be approved by the appropriate fee committee pursuant to subsection (10), subsection (11), or subsection (12).

(16) Each university board of trustees may establish a tuition differential for undergraduate courses upon receipt of approval from the Board of Governors. The tuition differential

shall promote improvements in the quality of undergraduate education and shall provide financial aid to undergraduate students who exhibit financial need.

(b) Each tuition differential is subject to the following conditions:

1. The tuition differential may be assessed on one or more undergraduate courses or on all undergraduate courses at a state university.

2. The tuition differential may vary by course or courses, campus or center location, and by institution. Each university board of trustees shall strive to maintain and increase enrollment in degree programs related to math, science, high technology, and other state or regional high-need fields when establishing tuition differentials by course.

3. For each state university that is designated as a preeminent state research university by the Board of Governors, pursuant to s. 1001.7065, ~~that has total research and development expenditures for all fields of at least $100 million per year as reported annually to the National Science Foundation,~~ the aggregate sum of tuition and the tuition differential may ~~not~~ be increased by no more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year if the university meets or exceeds each performance standard target for that university established annually by the Board of Governors for the following performance standards, each amounting to no more than a 2 percent increase in tuition differential:

a. Increase in the 6-year graduation rate for full-time, first-time-in-college students, as reported annually to the

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Integrated Postsecondary Education Data System;

b. Increase in the total annual research expenditures; and

c. Increase in the total patents awarded by the United States Patent and Trademark Office for the most recent years.

~~For each state university that has total research and development expenditures for all fields of less than $100 million per year as reported annually to the National Science Foundation, the aggregate sum of tuition and the tuition differential may not be increased by more than 15 percent of the total charged for the aggregate sum of these fees in the preceding fiscal year.~~

4. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.

5. The tuition differential shall not be included in any award under the Florida Bright Futures Scholarship Program established pursuant to ss. 1009.53-1009.538.

6. Beneficiaries having prepaid tuition contracts pursuant to s. 1009.98(2)(b) which were in effect on July 1, 2007, and which remain in effect, are exempt from the payment of the tuition differential.

7. The tuition differential may not be charged to any student who was in attendance at the university before July 1, 2007, and who maintains continuous enrollment.

8. The tuition differential may be waived by the university for students who meet the eligibility requirements for the Florida public student assistance grant established in s. 1009.50.

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9. Subject to approval by the Board of Governors, the tuition differential authorized pursuant to this subsection may take effect with the 2009 fall term.

Section 6. Subsection (8) of section 1009.26, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

1009.26 Fee waivers.—

(8) A state university, a ~~or~~ Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive undergraduate tuition for each recipient of a Purple Heart or another combat decoration superior in precedence who:

(a) Is enrolled as a full-time, part-time, or summer-school student in an undergraduate program that terminates in a degree or certificate;

(b) Is currently, and was at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, a resident of this state; and

(c) Submits to the state university or the Florida College System institution the DD-214 form issued at the time of separation from service as documentation that the student has received a Purple Heart or another combat decoration superior in precedence. If the DD-214 is not available, other documentation may be acceptable if recognized by the United States Department of Defense or the United States Department of Veterans Affairs as documenting the award.

Such a waiver for a Purple Heart recipient or recipient of

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another combat decoration superior in precedence shall be applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled.

(12)(a) A state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive out-of-state fees for students, including but not limited to students who are undocumented for federal immigration purposes, who meet the following conditions:

1. Attended a secondary school in this state, which is not the Florida Virtual School Global, for 3 consecutive years immediately before graduating from a high school in this state;

2. Enrolled in a degree or certificate program at an institution of higher education within 24 months after high school graduation; and

3. Submitted an official Florida high school transcript as evidence of attendance and graduation.

(b) Tuition and fees charged to a student who qualifies for the out-of-state fee waiver under this subsection may not exceed the tuition and fees charged to a resident student. The waiver is applicable for 110 percent of the required credit hours of the degree or certificate program for which the student is enrolled. Each state university, Florida College System institution, career center operated by a school district under s. 1001.44, and charter technical career center shall report to the Board of Governors and the State Board of Education, as appropriate, the number and value of all fee waivers granted annually under this subsection. The Board of Governors for the

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state universities and the State Board of Education for Florida College System institutions, career centers operated by a school district under s. 1001.44, and charter technical career centers shall annually certify within their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as the 2013-2014 resident student enrollment systemwide.

(c) A student who is granted an out-of-state fee waiver under this subsection is not eligible for state financial aid under part III of chapter 1009.

Section 7. Subsection (10) of section 1009.98, Florida Statutes, is amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds ~~exceed~~ the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2)(d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2)(b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2)(b)3. The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at $37.03 per credit hour. The base rate for the tuition differential in subsequent years is the

amount assessed ~~paid by the board~~ for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.

(b) Effective with the 2009-2010 academic year and thereafter, and notwithstanding the provisions of s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose contract was purchased before July 1, 2024 ~~2009~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.

2. As to the tuition differential, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 5

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percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the base rate for the tuition differential fee in the preceding fiscal year.

3. As to local fees, the board shall pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.

4. As to dormitory fees, the board shall pay the state universities 6 percent above the amount assessed for dormitory fees in the preceding fiscal year.

5. Qualified beneficiaries of advance payment contracts purchased before July 1, 2007, are exempt from paying any tuition differential fee.

(c) Notwithstanding the amount assessed for registration fees, the tuition differential fee, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for the aggregate sum of those fees.

(d) Notwithstanding the amount assessed for dormitory fees,

the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for dormitory fees.

(e) ~~(c)~~ The board shall pay state universities the actual amount assessed in accordance with law for registration fees, the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2024 ~~2009~~.

(f) ~~(d)~~ The board shall annually evaluate or cause to be evaluated the actuarial soundness of the trust fund.

Section 8. Subsection (10) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(10) A high school student dually enrolled under s. 1007.271 in a workforce education program operated by a Florida College System institution or school district career center generates the amount calculated for workforce education funding, including any payment of performance funding, and the proportional share of full-time equivalent enrollment generated through the Florida Education Finance Program for the student's enrollment in a high school. If a high school student is dually enrolled in a Florida College System institution program, including a program conducted at a high school, the Florida College System institution earns the funds generated for workforce education funding, and the school district earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually

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enrolled in a career center operated by the same district as the district in which the student attends high school, that district earns the funds generated for workforce education funding and also earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a workforce education program provided by a career center operated by a different school district, the funds must be divided between the two school districts proportionally from the two funding sources. A student may not be reported for funding in a dual enrollment workforce education program unless the student has completed the basic skills assessment pursuant to s. 1004.91. A student who is coenrolled in a K-12 education program and an adult education program may be reported for purposes of funding in an adult education program. If a student is coenrolled in core curricula courses for credit recovery or dropout prevention purposes and does not have a pattern of excessive absenteeism or habitual truancy or a history of disruptive behavior in school, the student may be reported for funding for up to two courses per year. Such a student is exempt from the payment of the block tuition for adult general education programs provided in s. 1009.22(3)(c) ~~s. 1009.22(3)(d)~~. The Department of Education shall develop a list of courses to be designated as core curricula courses for the purposes of coenrollment.

Section 9. A dependent child who is a citizen of the United States of America may not be denied residency classification for tuition purposes based solely on the parent's undocumented immigration status. All applicable laws apply.

Section 10. This act shall take effect July 1, 2014.

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418 ================ T I T L E A M E N D M E N T ================
419 And the title is amended as follows:
420 Between lines 6 and 7
421 insert:
422 amending ss. 1009.22 and 1009.23, F.S.; revising the
423 standard tuition and out-of-state fees for workforce
424 education postsecondary programs leading to certain
425 certificates and diplomas and certain other programs
426 at Florida College System institutions; deleting a
427 provision relating to an increase in tuition and out-
428 of-state fees at a rate equal to inflation; deleting a
429 requirement that the Office of Economic and
430 Demographic Research annually report the rate of
431 inflation to the Governor, the Legislature, and the
432 State Board of Education; deleting the definition of
433 the term "rate of inflation"; amending s. 1009.24,
434 F.S.; revising the resident undergraduate tuition for
435 lower-level and upper-level coursework; deleting a
436 provision related to an increase of the resident
437 undergraduate tuition at state universities at a rate
438 equal to inflation; deleting the requirement of the
439 Office of Economic and Demographic Research to
440 annually report the rate of inflation to the Governor,
441 the Legislature, and the Board of Governors; deleting
442 the definition of the term "rate of inflation";
443 conforming provisions to changes made by the act;
444 authorizing a state university board of trustees to
445 increase the aggregate sum of tuition and tuition

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differential for up to 6 percent of the total charged for the aggregate sum of such fees in the preceding year if the state university meets the specified conditions; amending s. 1009.26, F.S.; requiring a state university, a Florida College System institution, a career center operated by a school district, or a charter technical career center to waive undergraduate tuition for a recipient of a Purple Heart or another combat decoration superior in precedence under certain conditions; requiring a state university, a Florida College System institution, a career center operated by a school district, and a charter technical career center to waive out-of-state fees for certain students who meet specified conditions; requiring a state university, a Florida College System institution, a career center operated by a school district, and a charter technical career center to report to the Board of Governors and the State Board of Education, as appropriate, the number and value of all fee waivers; requiring the Board of Governors for the state universities and the State Board of Education for the Florida College System institutions, career centers operated by a school district, and charter technical career centers to annually certify within their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as the resident student enrollment systemwide in a specified academic year; providing that a student who is granted

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the out-of-state fee waiver is not eligible for state financial aid; amending s. 1009.98, F.S.; redefining the term "tuition differential"; revising the purchase date of an advance payment contract as it relates to the amount paid by the Florida Prepaid College Board to a state university on behalf of a qualified beneficiary; prohibiting the amount of the aggregate sum of registration fees, the tuition differential fee, and local fees paid by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for the aggregate sum of those fees; prohibiting the amount of the dormitory fees paid for by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for those fees; conforming provisions to changes made by the act; amending s. 1011.80, F.S.; conforming a cross-reference; prohibiting certain dependent children from being denied residency classification for tuition purposes based solely on a parent's undocumented immigration status;

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (601364)

Delete line 9
and insert:
(c) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for programs leading to a

Delete line 57
and insert:
(3)(a) Unless otherwise provided in the General

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Appropriations Act, effective July 1, 2014 ~~2011~~, for advanced and

Delete line 63
and insert:
(b) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for baccalaureate degree

Delete line 93
and insert:
(4)(a) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, the resident

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Substitute for Amendment (601364) (with title amendment)

Delete line 44
and insert:
Section 3. Paragraphs (c) through (g) of subsection (3) of section 1009.22, Florida Statutes, are amended to read:
1009.22 Workforce education postsecondary student fees.—
(3)
(c) Unless otherwise provided in the General Appropriations

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Act, effective July 1, 2014 ~~2011~~, for programs leading to a career certificate or an applied technology diploma, the standard tuition shall be $2.33 ~~$2.22~~ per contact hour for residents and nonresidents and the out-of-state fee shall be $6.99 ~~$6.66~~ per contact hour. For adult general education programs, a block tuition of $45 per half year or $30 per term shall be assessed for residents and nonresidents, and the out-of-state fee shall be $135 per half year or $90 per term. Each district school board and Florida College System institution board of trustees shall adopt policies and procedures for the collection of and accounting for the expenditure of the block tuition. All funds received from the block tuition shall be used only for adult general education programs. Students enrolled in adult general education programs may not be assessed the fees authorized in subsection (5), subsection (6), or subsection (7).

~~(d) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee per contact hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous~~

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~~year. In the event the percentage change is negative, the tuition and out-of-state fee shall remain at the same level as the prior fiscal year.~~

(d) ~~(e)~~ Each district school board and each Florida College System institution board of trustees may adopt tuition and out-of-state fees that may vary no more than 5 percent below and 5 percent above the combined total of the standard tuition and out-of-state fees established in paragraph (c).

(e) ~~(f)~~ The maximum increase in resident tuition for any school district or Florida College System institution during the 2007-2008 fiscal year shall be 5 percent over the tuition charged during the 2006-2007 fiscal year.

(f) ~~(g)~~ The State Board of Education may adopt, by rule, the definitions and procedures that district school boards and Florida College System institution boards of trustees shall use in the calculation of cost borne by students.

Section 4. Subsection (3) of section 1009.23, Florida Statutes, is amended to read:

1009.23 Florida College System institution student fees.—

(3)(a) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs, the standard tuition shall be $71.98 ~~$68.56~~ per credit hour for residents and nonresidents, and the out-of-state fee shall be $215.94 ~~$205.82~~ per credit hour.

(b) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for baccalaureate degree programs, the following tuition and fee rates shall apply:

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1. The tuition shall be $91.79 ~~$87.42~~ per credit hour for students who are residents for tuition purposes.

2. The sum of the tuition and the out-of-state fee per credit hour for students who are nonresidents for tuition purposes shall be no more than 85 percent of the sum of the tuition and the out-of-state fee at the state university nearest the Florida College System institution.

~~(c) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and the out-of-state fee per credit hour shall remain at the same levels as the prior fiscal year.~~

Section 5. Paragraphs (a), (b), and (e) of subsection (4) and paragraph (b) of subsection (16) of section 1009.24, Florida Statutes, are amended, to read:

1009.24 State university student fees.—

(4)(a) Unless otherwise provided in the General

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Appropriations Act, effective July 1, 2014 ~~2011~~, the resident undergraduate tuition for lower-level and upper-level coursework shall be $105.07 ~~$103.32~~ per credit hour.

~~(b) Beginning with the 2008-2009 fiscal year and each year thereafter, the resident undergraduate tuition per credit hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Board of Governors each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the resident undergraduate tuition shall remain at the same level as the prior fiscal year.~~

(d) ~~(c)~~ The sum of the activity and service, health, and athletic fees a student is required to pay to register for a course may ~~shall~~ not exceed 40 percent of the tuition established in law or in the General Appropriations Act. No university shall be required to lower any fee in effect on the effective date of this act in order to comply with this subsection. Within the 40 percent cap, universities may not increase the aggregate sum of activity and service, health, and athletic fees more than 5 percent per year, or the same percentage increase in tuition authorized under paragraph (a)

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~~(b)~~, whichever is greater, unless specifically authorized in law or in the General Appropriations Act. A university may increase its athletic fee to defray the costs associated with changing National Collegiate Athletic Association divisions. Any such increase in the athletic fee may exceed both the 40 percent cap and the 5 percent cap imposed by this subsection. Any such increase must be approved by the athletic fee committee in the process outlined in subsection (12) and may not ~~cannot~~ exceed $2 per credit hour. Notwithstanding ~~the provisions of~~ ss. 1009.534, 1009.535, and 1009.536, that portion of any increase in an athletic fee pursuant to this subsection which ~~that~~ causes the sum of the activity and service, health, and athletic fees to exceed the 40 percent cap or the annual increase in such fees to exceed the 5 percent cap may ~~shall~~ not be included in calculating the amount a student receives for a Florida Academic Scholars award, a Florida Medallion Scholars award, or a Florida Gold Seal Vocational Scholars award. Notwithstanding this paragraph and subject to approval by the board of trustees, each state university may ~~is authorized to~~ exceed the 5 percent ~~5-percent~~ cap on the annual increase to the aggregate sum of activity and service, health, and athletic fees for the 2010-2011 fiscal year. Any such increase may ~~shall~~ not exceed 15 percent or the amount required to reach the 2009-2010 fiscal year statewide average for the aggregate sum of activity and service, health, and athletic fees at the main campuses, whichever is greater. The aggregate sum of the activity and service, health, and athletic fees may ~~shall~~ not exceed 40 percent of tuition. Any increase in the activity and service fee, health fee, or athletic fee must be approved by the

appropriate fee committee pursuant to subsection (10), subsection (11), or subsection (12).

(16) Each university board of trustees may establish a tuition differential for undergraduate courses upon receipt of approval from the Board of Governors. The tuition differential shall promote improvements in the quality of undergraduate education and shall provide financial aid to undergraduate students who exhibit financial need.

(b) Each tuition differential is subject to the following conditions:

1. The tuition differential may be assessed on one or more undergraduate courses or on all undergraduate courses at a state university.

2. The tuition differential may vary by course or courses, campus or center location, and by institution. Each university board of trustees shall strive to maintain and increase enrollment in degree programs related to math, science, high technology, and other state or regional high-need fields when establishing tuition differentials by course.

3. For each state university that has total research and development expenditures for all fields of at least $100 million per year as reported annually to the National Science Foundation, the aggregate sum of tuition and the tuition differential may ~~not~~ be increased by no more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year. For each state university that has total research and development expenditures for all fields of less than $100 million per year as reported annually to the National Science Foundation, the aggregate sum of tuition and the tuition

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differential may not be increased by more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year.

4. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.

5. The tuition differential may ~~shall~~ not be included in any award under the Florida Bright Futures Scholarship Program established pursuant to ss. 1009.53-1009.538.

6. Beneficiaries having prepaid tuition contracts pursuant to s. 1009.98(2)(b) which were in effect on July 1, 2007, and which remain in effect, are exempt from the payment of the tuition differential.

7. The tuition differential may not be charged to any student who was in attendance at the university before July 1, 2007, and who maintains continuous enrollment.

8. The tuition differential may be waived by the university for students who meet the eligibility requirements for the Florida public student assistance grant established in s. 1009.50.

9. Subject to approval by the Board of Governors, the tuition differential authorized pursuant to this subsection may take effect with the 2009 fall term.

Section 6. Subsection (10) of section 1009.98, Florida Statutes, is amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

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1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds ~~exceed~~ the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2)(d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2)(b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2)(b)3. The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at $37.03 per credit hour. The base rate for the tuition differential in subsequent years is the amount assessed ~~paid by the board~~ for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.

(b) Effective with the 2009-2010 academic year and thereafter, and notwithstanding the provisions of s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose contract was purchased before July 1, 2024 ~~2009~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If

the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.

2. As to the tuition differential, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the base rate for the tuition differential fee in the preceding fiscal year.

3. As to local fees, the board shall pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.

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4. As to dormitory fees, the board shall pay the state universities 6 percent above the amount assessed for dormitory fees in the preceding fiscal year.

5. Qualified beneficiaries of advance payment contracts purchased before July 1, 2007, are exempt from paying any tuition differential fee.

(c) Notwithstanding the amount assessed for registration fees, the tuition differential fee, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for the aggregate sum of those fees.

(d) Notwithstanding the amount assessed for dormitory fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for dormitory fees.

(e) ~~(c)~~ The board shall pay state universities the actual amount assessed in accordance with law for registration fees, the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2024 ~~2009~~.

(f) ~~(d)~~ The board shall annually evaluate or cause to be evaluated the actuarial soundness of the trust fund.

Section 7. Subsection (10) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(10) A high school student dually enrolled under s. 1007.271 in a workforce education program operated by a Florida College System institution or school district career center generates the amount calculated for workforce education funding, including any payment of performance funding, and the proportional share of full-time equivalent enrollment generated through the Florida Education Finance Program for the student's enrollment in a high school. If a high school student is dually enrolled in a Florida College System institution program, including a program conducted at a high school, the Florida College System institution earns the funds generated for workforce education funding, and the school district earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a career center operated by the same district as the district in which the student attends high school, that district earns the funds generated for workforce education funding and also earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a workforce education program provided by a career center operated by a different school district, the funds must be divided between the two school districts proportionally from the two funding sources. A student may not be reported for funding in a dual enrollment workforce education program unless the student has completed the basic skills assessment pursuant to s. 1004.91. A student who is coenrolled in a K-12 education program and an adult education program may be reported for purposes of funding in an adult education program. If a student is coenrolled in core curricula courses

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for credit recovery or dropout prevention purposes and does not have a pattern of excessive absenteeism or habitual truancy or a history of disruptive behavior in school, the student may be reported for funding for up to two courses per year. Such a student is exempt from the payment of the block tuition for adult general education programs provided in s. 1009.22(3)(c) ~~s. 1009.22(3)(d)~~. The Department of Education shall develop a list of courses to be designated as core curricula courses for the purposes of coenrollment.

Section 8. This act shall take effect July 1, 2014.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Between lines 6 and 7

insert:

amending ss. 1009.22 and 1009.23, F.S.; revising the standard tuition and out-of-state fees for workforce education postsecondary programs leading to certain certificates and diplomas and certain other programs at Florida College System institutions; deleting a provision relating to an increase in tuition and out-of-state fees at a rate equal to inflation; deleting a requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, and the State Board of Education; deleting the definition of the term "rate of inflation"; amending s. 1009.24, F.S.; revising the resident undergraduate tuition for lower-level and upper-level coursework; deleting a

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provision related to an increase of the resident undergraduate tuition at state universities at a rate equal to inflation; deleting the requirement of the Office of Economic and Demographic Research to annually report the rate of inflation to the Governor, the Legislature, and the Board of Governors; deleting the definition of the term "rate of inflation"; conforming provisions to changes made by the act; authorizing a state university board of trustees to increase the aggregate sum of tuition and tuition differential for up to 6 percent of the total charged for the aggregate sum of such fees in the preceding year; amending s. 1009.98, F.S.; redefining the term "tuition differential"; revising the purchase date of an advance payment contract as it relates to the amount paid by the Florida Prepaid College Board to a state university on behalf of a qualified beneficiary; prohibiting the amount of the aggregate sum of registration fees, the tuition differential fee, or local fees paid by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for the aggregate sum of those fees; prohibiting the amount of the dormitory fees paid for by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for those fees; conforming provisions to

944838

changes made by the act; amending s. 1011.80, F.S.;
conforming a cross-reference;

672552

576-04099A-14

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to education; amending s. 402.56, F.S.; adding a superintendent of schools to the membership of the Children and Youth Cabinet; amending s. 1003.4285, F.S.; revising the requirements to earn a Merit designation on a standard high school diploma; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 402.56, Florida Statutes, is amended to read:

402.56 Children's cabinet; organization; responsibilities; annual report.—

(4) MEMBERS.—The cabinet shall consist of 16 ~~14~~ members including the Governor and the following persons:

(a)1. The Secretary of Children and Family Services;

2. The Secretary of Juvenile Justice;

3. The director of the Agency for Persons with Disabilities;

4. The director of the Office of Early Learning;

5. The State Surgeon General;

6. The Secretary of Health Care Administration;

7. The Commissioner of Education;

8. The director of the Statewide Guardian Ad Litem Office;

9. The director of the Office of Child Abuse Prevention;

~~and~~

672552

576-04099A-14

10. A superintendent of schools, appointed by the Governor; and

11.~~10.~~ Five members representing children and youth advocacy organizations, who are not service providers and who are appointed by the Governor.

Section 2. Paragraph (b) of subsection (1) of section 1003.4285, Florida Statutes, is amended to read:

1003.4285 Standard high school diploma designations.—

(1) Each standard high school diploma shall include, as applicable, the following designations if the student meets the criteria set forth for the designation:

(b) *Merit designation.*—In addition to the requirements of ss. 1003.428 and 1003.4282, as applicable, in order to earn the Merit designation, a student must attain two ~~one~~ or more industry certifications from the list established under s. 1003.492.

Section 3. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1394
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education) and Senator Legg
SUBJECT:	Education
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Fav/CS**
3.	Elwell	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1394 increases from one to two the number of industry certifications that a student must earn to attain a Merit designation on his or her standard high school diploma.

Current law provides for Scholar and Merit designations that high school students may earn if they satisfy course and testing requirements above-and-beyond those required for a standard high school diploma.

This bill also expands the membership of the Children and Youth Cabinet by adding a superintendent of schools.

This bill has no fiscal impact on state funds.

The bill is effective upon becoming a law.

II. Present Situation:

Currently, Florida public high school students have four options for obtaining a standard high school diploma -- a traditional 4-year, 24-credit option;[1] an 18-credit graduation option;[2] or completion of an International Baccalaureate (IB) or Advanced International Certificate of Education (AICE) curriculum.[3] In addition, current law requires each school district to adopt an early graduation policy allowing a high school student who completes 24 credits in less than eight semesters and meets the grade point average and assessment requirements to graduate early.[4]

Current law provides for Scholar and Merit designations that high school students may earn if they satisfy course and testing requirements above-and-beyond those required for a standard high school diploma.[5] Students pursuing a Scholar designation must:[6]

- Pass the 11th grade English Language Arts assessment, effective when the state transitions to new assessments;
- Earn one credit in Algebra II and one credit in Statistics or an equally rigorous course. When the state transitions to new assessments, students must pass the Algebra II assessment.
- Pass the Biology I end-of-course (EOC) assessment and earn one credit in Chemistry or Physics and one credit in an equally rigorous course.
- Pass the U.S. History EOC assessment.
- Earn two credits in the same foreign language.
- Earn at least one credit in an Advanced Placement, IB, AICE or a dual enrollment course.

Students pursuing a Merit designation must attain one or more industry certifications.[7]

The Children and Youth Cabinet ensures that public policy relating to children and youth promotes interdepartmental collaboration and program implementation so that services are planned, managed, and delivered in an integrated manner to improve the self-sufficiency, safety, economic stability, health, and quality of life for children.[8] The Children and Youth Cabinet consists of the Governor and the following persons:

- The Secretary of Children and Family Services;
- The Secretary of Juvenile Justice;
- The director of the Agency for Persons with Disabilities;
- The director of the Office of Early Learning;

[1] Section 1003.428, F.S., established high school graduation requirements beginning with students entering grade 9 in the 2007-2008 school year. Section 1003. 4282, F.S., established high school graduation requirements for students entering grade 9 in the 2013-2014 school year and thereafter.
[2] Section 1002.3105(5), F.S. Effective July 1, 2013, students may earn a standard high school diploma in 18 credits by achieving a 2.0 GPA; earning credit in the same 15 English Language Arts, mathematics, science, social studies, and fine and performing arts courses required under the traditional 24-credit option; and earning 3 elective credits, instead of the 6 electives required by the 24-credit option.
[3] Sections 1003.428 and 1003.4282, F.S.
[4] Section 1003.4281, F.S.
[5] Section 1003.4285, F.S.
[6] Section 1003.4285(1)(a), F.S.
[7] Section 1003.4285(1)(b), F.S.
[8] Section 402.56 (3)(a), F.S.

- The State Surgeon General;
- The Secretary of Health Care Administration;
- The Commissioner of Education;
- The director of the Statewide Guardian Ad Litem Office;
- The director of the Office of Child Abuse Prevention; and
- Five members representing children and youth advocacy organizations, who are not service providers and who are appointed by the Governor.[9]

III. Effect of Proposed Changes:

The bill increases from one to two the number of industry certifications that a student must earn to attain a Merit designation on his or her standard high school diploma.

The bill also expands the membership of the Children and Youth Cabinet by adding a superintendent of schools, appointed by the Governor, as an additional member.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1394 has no fiscal impact on state funds.

[9] Section 402.56 (4)(a), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.56 and 1003.4285.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 22, 2014:
The committee substitute expands the membership of the Children and Youth Cabinet by adding a superintendent of schools as an additional member.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Legg

17-00831A-14 20141394__

A bill to be entitled

An act relating to education; amending s. 1003.4285, F.S.; revising the requirements to earn a Merit designation on a standard high school diploma; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 1003.4285, Florida Statutes, is amended to read:

1003.4285 Standard high school diploma designations.—

(1) Each standard high school diploma shall include, as applicable, the following designations if the student meets the criteria set forth for the designation:

(b) *Merit designation.*—In addition to the requirements of ss. 1003.428 and 1003.4282, as applicable, in order to earn the Merit designation, a student must attain <u>two</u> ~~one~~ or more industry certifications from the list established under s. 1003.492.

Section 2. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic _____ Bill Number 1394 *(if applicable)*

Name JIM HORNE Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO Box 8339 Phone 904-759-4596
Street

FLEMING ISL, FL 32006 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AIF (Wave in Support)

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

FHSAA Amendment

Topic Amendment #616272 Bill Number SB 1394 *(if applicable)*

Name Juhan Mixon Amendment Barcode 616272 *(if applicable)*

Job Title President, Mixon & Associates

Address 119 East Park Avenue Phone 850-222-2591
Street

Tallahassee FL 32301 E-mail juhan@mixonandassociates.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida High School Athletic Association

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic Education

Bill Number SB 1394 *(if applicable)*

Name Veronica Perez

Amendment Barcode 601364 *(if applicable)*

Job Title Student

Address 5519 Lake Van Rd, Lot 28
Street
Auburndale FL 33823
City *State* *Zip*

Phone 813 703 5902

E-mail Veronicap@uwdtampabay

Speaking: ☑ For ☐ Against ☐ Information
Amendment

Representing Young American Dreamers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic Education

Bill Number SB 1394 *(if applicable)*

Name Mariana Castro

Amendment Barcode 601364 *(if applicable)*

Job Title –

Address 249 windsor dr
Street

Phone 470 269 4962

kissimmee FL 34746
City *State* *Zip*

E-mail mariana.ach@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Amendment Gators for Tuition Equity

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic Education — Bill Number SB 1394 *(if applicable)*

Name Oscar Hernandez — Amendment Barcode 601364 *(if applicable)*

Job Title

Address 1312 E 149th Ave *Street* — Phone (813) 784-3760

Lutz *City* FL *State* 33549 *Zip* — E-mail hernandez23936@gmail.com

Speaking: ☑ For amendment ☐ Against ☐ Information

Representing United We Dream Tampa Bay

Appearing at request of Chair: ☐ Yes ☑ No — Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/22/2014
Meeting Date

Topic Education

Bill Number SB 1394 *(if applicable)*

Name Evelyn Rivera

Amendment Barcode 601364 *(if applicable)*

Job Title Organizer

Address 1900 L St NW
Street

Phone

Washington DC 20036
City *State* *Zip*

E-mail evelyn@unitedwedream.org

Speaking: ☑ For (Amendment) ☐ Against ☐ Information

Representing United We Dream Action Fund

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic Education Bill Number SB 1394 *(if applicable)*

Name Francesca Menes Amendment Barcode 601364 *(if applicable)*

Job Title Policy and Advocacy Coordinator

Address 2800 Biscayne Blvd. Suite 300 Phone (305) 571-7254
Street

Miami FL 33137 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Amendment Florida Immigrant Coalition

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1474
INTRODUCER:	Community Affairs Committee; Ethics and Elections Committee; and Senator Abruzzo
SUBJECT:	Public Officers and Employees
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/CS**
2.	Stearns	Yeatman	CA	**Fav/CS**
3.	Shettle	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1474 allows the electors of a political subdivision to impose on its officers and employees additional or more stringent standards of conduct than are required in the Code of Ethics. The bill provides that a respondent charged with an ethics violation is entitled to a public hearing. The local ethics ordinance shall establish procedures concerning the hearing. The bill provides that the respondent may choose whether the local ethics board or a hearing officer will preside over the hearing.

The bill is not expected to have a significant fiscal impact.

II. Present Situation:

Pursuant to s. 112.326, F.S., the governing body of any political subdivision, by ordinance, or agency, by rule, is permitted to impose additional or more stringent standards of conduct and disclosure requirements than are contained in the Code of Ethics. The governing body of a political subdivision or agency may not adopt standards of conduct and disclosure requirements that conflict with the Code of Ethics.

III. Effect of Proposed Changes:

Section 1 amends s. 112.236, F.S., to allow the electors of a political subdivision to impose on its officers and employees additional or more stringent standards of conduct than are required in the Code of Ethics.

The bill provides that, if a local ethics agency determines that probable cause exists that a violation of the local ethics ordinance has occurred, then a respondent charged with an ethics violation is entitled to a public hearing. The local ethics ordinance shall establish procedures concerning the request of and/or waiver of the right to a hearing. The respondent may choose whether the local ethics board or a hearing officer will preside over the hearing. The bill does not prohibit a respondent and a local ethics agency from entering into a consent agreement or stipulation to resolve the allegations.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 1474 is not expected to have a significant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.326 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on April 1, 2014:

- Removes language stating that the local complaint-related procedures are to follow the procedures set forth by the Commission on Ethics.
- States that the respondent is entitled to a public hearing upon a determination of probable cause of a violation of the local ethics ordinance.
- Requires the local ethics ordinance to establish procedures concerning the request of or waiver of the hearing.
- Provides that the respondent may choose whether the local ethics board or a public hearing officer will preside over the hearing.
- Provides that the bill does not prohibit the parties from entering into a consent agreement to resolve the allegations.

CS by Ethics and Elections on March 17, 2014:

- Does not require the Florida Commission on Ethics to investigate alleged violations of a local ethics code;
- Does not require the Florida Commission on Ethics to render advisory opinions on the applicability of local ethics codes;
- Removes the conforming provisions relating to imposition of penalties, the applicable statute of limitations, providing materials to assist in complying with the local ethics codes;
- No longer requires that the Florida Commission on Ethics serve as the official custodian of records for complaints and related documents that alleges violations of local ethics codes; and
- Does not extend the prohibition on contingency fees in s. 112.3217, F.S., to local government action.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committees on Community Affairs; and Ethics and Elections; and Senator Abruzzo

578-03585-14 20141474c2

A bill to be entitled

An act relating to public officers and employees; amending s. 112.326, F.S.; authorizing the electors of a political subdivision to impose additional or more stringent standards of conduct and disclosure requirements upon the political subdivision's officers and employees; providing that a respondent is entitled to a public hearing upon a finding of probable cause of a violation of a local ethics ordinance; requiring a local ethics ordinance to establish certain procedures; providing for construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 112.326, Florida Statutes, is amended to read:

112.326 Additional requirements by political subdivisions and agencies not prohibited. ~~Nothing in~~ This part does not prohibit the electors or ~~act shall prohibit~~ the governing body of a ~~any~~ political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, if ~~provided that~~ those standards of conduct and disclosure requirements do not otherwise conflict with ~~the provisions of~~ this part. If a local ethics agency, board, or commission determines that probable cause exists to believe a violation of a local ethics ordinance occurred, the respondent is entitled to a public hearing. The

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-03585-14 20141474c2

local ethics ordinance shall establish procedures concerning request of, and waiver of the right to, a public hearing. The respondent may elect to have the public hearing conducted by the local ethics agency, board, or commission, or by a hearing officer who is not a member of the local ethics agency, board, or commission. This section does not prohibit a respondent and the local ethics agency, board or commission from entering into a stipulation or consent agreement to resolve the allegations.

Section 2. This act shall take effect July 1, 2014.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Vice Chair*
Environmental Preservation and Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Gaming
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO
25th District

April 3rd, 2014

The Honorable Joe Negron
The Florida Senate
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that Senate Bill 1474, related to Public Officers and Employees, be placed on the Appropriations committee agenda. This legislation will require local ethics agencies or commissions to establish a standard of procedures.

Please let me know if you have any further questions. Thank you for your consideration.

Sincerely,

Joseph Abruzzo

cc: Cindy Kynoch, Staff Director

REPLY TO:
❒ 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
❒ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1486
INTRODUCER:	Senator Garcia
SUBJECT:	Transitional Living Facilities
DATE:	April 23, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.	Looke	Stovall	HP	**Favorable**
3.	Brown	Kynoch	AP	**Pre-meeting**

I. Summary:

SB 1486 revises regulations for transitional living facilities (TLF or facility). The purpose of these facilities is to provide rehabilitative care in a small residential setting for persons with brain or spinal cord injuries and who need significant care and services to regain their independence. The bill provides admission criteria, client evaluations, and treatment plans. The bill establishes rights for clients in these facilities, screening requirements for facility employees, and penalties for violations.

The bill may have an indeterminate, but likely insignificant, fiscal impact on the Agency for Health Care Administration.

II. Present Situation:

Brain and Spinal Cord Injuries

The human spinal cord operates much like a telephone line, relaying messages from the brain to the rest of the body. Spinal cord injuries are caused by bruising, crushing, or tearing of the delicate cord tissue. Swelling of the spinal cord after the injury can cause further damage. After an injury, the "messages" sent between the brain and the other parts of the body no longer flow through the damaged area. Many times the functions of the body which are located above the injury point will continue to work properly without impairment. However, the area below the injury point will be impaired to some degree, which may include any combination of the

following: motor deficit, sensory deficit, initial breathing difficulty, and/or bowel or bladder dysfunction.[1]

The Brain and Spinal Cord Injury Program (BSCIP) is administered by the Department of Health (DOH).[2] The program is funded through a percentage of traffic-related fines and surcharges for driving or boating under the influence of alcohol or drugs, fees on temporary license tags, and a percentage of fees from a motorcycle specialty tag.

The BSCIP is operated through a statewide system of case managers and rehabilitation technicians. The program also employs regional managers who supervise staff in their regions and who oversee the local operation, development, and evaluation of the program's services and supports. Services include: case management, acute care, inpatient and outpatient rehabilitation, transitional living, assistive technology, home and vehicle modifications, nursing home transition facilitation, and long-term supports for survivors and families through contractual agreements with community-based agencies.

In addition to providing resource facilitation and funding for the services above, the program funds education, prevention, and research activities. The program expands its services by funding a contract with the Brain Injury Association of Florida and the Florida Disabled Outdoors Association. Other services are provided through working relationships with the Florida Centers for Independent Living and the Florida Department of Education's Division of Vocational Rehabilitation.

Section 381.76, F.S., requires that an individual receiving services must be a legal Florida resident who has sustained a brain or spinal cord injury meeting the state's definition of such injuries;[3] has been referred to the BSCIP central registry; and must be medically stable. There must also be a reasonable expectation that with the provision of appropriate services and supports, the person can return to a community-based setting, rather than reside in a skilled nursing facility.

Transitional Living Facilities

Transitional living facilities (TLFs or facility) provide specialized health care services, including, but not limited to: rehabilitative services, community reentry training, aids for independent living, and counseling to persons with spinal cord or head injuries. There are currently 13 facilities located in the state.[4] Most of the facilities are small and have between five and 10 beds. One facility, however, is licensed for 116 beds (Florida Institute for Neurologic Rehabilitation in Wauchula). The facilities are located primarily in central Florida. The Agency for Health Care Administration (AHCA) is the licensing authority and one of the regulatory authorities which

[1]Florida Spinal Cord Injury Resource Center, *Family and Survivor's Guide*, http://fscirc.com/what-is-a-sci (last visited April 3, 2014).
[2] Florida Department of Health, http://www.floridahealth.gov/licensing-and-regulation/brain-and-spinal-cord-injury-program-site-survey-inspections/BSCIP%20Rules%20and%20Statutes/index.html. (Last visited April 3, 2014).
[3] Section 381.745, F.S., defines "brain or spinal cord injury" as either a lesion to the spinal cord or cauda equina, resulting from external trauma, with evidence of significant involvement of two of the following deficits or dysfunctions: motor deficit, sensory deficit, or bowel and bladder dysfunction; or an insult to the skull, brain, or its covering, resulting from external trauma that produces an altered state of consciousness or anatomic motor, sensory, cognitive, or behavioral deficits.
[4] The AHCA, *Florida Health Finder* http://www.floridahealthfinder.gov/index.html (last visited Mar. 13, 2014).

oversees TLFs under part II of ch. 408, F.S., part V of ch. 400, F.S., and Rule 59A-17 of the Florida Administrative Code. The current licensure fee is $4,588 plus a $90 per-bed fee per biennium.[5]

The AHCA governs the physical plant and fiscal management of these facilities and adopts rules in conjunction with the DOH to monitor services provided for persons with traumatic brain and spinal cord injuries. The Department of Children and Families investigates allegations of abuse and neglect of children and vulnerable adults.[6]

Section 400.805, F.S., provides requirements for TLFs. Section 400.805(2), F.S., sets licensure requirements and fees for operation of a facility, as well as requiring all facility personnel to submit to a level 2 background screening. Section 400.805(3)(a), F.S., requires the AHCA, in consultation with the DOH, to adopt rules governing the physical plan and the fiscal management of TLFs.[7]

The Brain and Spinal Cord Injury Advisory Council has the right to enter and inspect transitional living facilities.[8] In addition, designated representatives of the AHCA, the local fire marshal, and other agencies have access to the facilities and clients.[9]

According to a news report from Bloomberg, dated January 24, 2012, clients at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida, were abused, neglected, and confined. The news report was based on information from 20 current and former clients and their family members, criminal charging documents, civil complaints, and advocates for the disabled.[10] The report stated that three former employees face criminal charges for abusing clients. Subsequent news reports stated the facility and three affiliated corporations filed Chapter 11 bankruptcy in U.S. Bankruptcy Court in Tampa.[11] As of March 13, 2014, the facility remains licensed.

III. Effect of Proposed Changes:

Section 1 creates and designates ss. 400.997 through 400.9985, F.S., as part XI of ch. 400, F.S., entitled "Transitional Living Facilities."

Under s. 400.997, F.S., the bill provides legislative intent that transitional living facilities (TLFs) are to assist persons with brain and spinal cord injuries to achieve independent living and return to the community.

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[5] The AHCA, *House Bill 799 Analysis* (Feb. 7, 2014) (on file with the Senate Committee on Health Policy).
[6] Supra n. 5
[7] Supra n. 5
[8] Section 400.805(4), F.S.
[9] Supra n. 5
[10] David Armstrong, *Abuse of Brain Injured Americans Scandalizes U.S.*, BLOOMBERG, Jan. 7, 2012. http://www.bloomberg.com/news/2012-07-24/brain-injured-abuse-at-for-profit-center-scandalizes-u-s-.html (last visited April 3, 2014)
[11] David Armstrong, *Florida Brain-Injury Facility Files for Bankruptcy*, BLOOMBERG, Jan. 5, 2013. http://www.bloomberg.com/news/2013-01-05/florida-brain-injury-facility-files-for-bankruptcy.html (last visited April 3, 2014)

Under s. 400.9971. F.S., the bill defines the terms:

- "Chemical restraint" as a pharmacologic drug that physically limits, restricts, or deprives a person of movement or mobility and which is used for client protection or safety and is not required for the treatment of medical conditions or symptoms;
- "Physical restraint" as any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body which cannot easily be removed and restricts freedom of movement or normal access to one's own body; and
- "Seclusion" as the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving, while not meaning isolation due to a person's medical condition or symptoms.

The bill also moves the definition of a TLF from s. 381.475, F.S., and defines "agency" as the AHCA and "department" as the DOH.

Under s. 400.9972, F.S., the bill provides licensure requirements and application fees for TLFs. The bill codifies the current license fee of $4,588 and the per-bed fee of $90.[12] The bill requires certain information from the licensure applicant, including the facility location, proof that local zoning requirements have been met, proof of liability insurance, proof of a satisfactory fire safety inspection, and documentation of satisfactory sanitation inspection by a county health department. The bill also requires facilities to be accredited by an accrediting organization specializing in rehabilitation facilities. The AHCA may conduct an inspection of a facility after the facility submits proof of accreditation.

Admission Criteria

Under s. 400.9973, F.S., the bill sets standards that TLFs must meet for client admission, transfer, and discharge from the facility. The facility is required to establish admission, transfer, and discharge policies and procedures in writing.

Only clients who have a brain or spinal cord injury may be admitted to a TLF. Clients may be admitted to the facility only through a prescription by a licensed physician, physician assistant (PA), or advanced registered nurse practitioner (ARNP) and must remain under the care of a health care practitioner for the duration of the client's stay in the facility. Clients whose diagnosis does not positively identify a cause may be admitted for an evaluation period of up to 90 days.

A facility may not admit a client whose primary diagnosis is a mental illness or an intellectual or developmental disability. The facility may not admit clients who present significant risk of infection to other clients or personnel. Documentation indicating the person is free of apparent signs and symptoms of communicable disease is required. The facility may not admit clients who are a danger to themselves or others as determined by a physician, PA, ARNP, or mental health practitioner. The facility may not admit clients requiring nursing supervision on a 24-hour basis or who are bedridden.

[12] Section 400.805(2)(b), F.S., authorizes a license fee of $4,000 and a per bed fee of $75.50. Pursuant to s. 408.805(2), F.S., The AHCA can increase the fees each year by up to the increase in the consumer price index for that year. The current fee is $4,588 and $90 per bed and bill uses these amounts.

A facility's nursing or medical director must complete an initial evaluation of a client's functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after a client's admission to the facility. An initial treatment plan must be implemented within four days of admission. A facility must also develop, and update at least monthly, a discharge plan for each client and must discharge a client who no longer requires the facility's specialized services as soon as practicable. A facility must provide at least 30 days' notice to the client before transferring or discharging him or her.

Client Plans and Evaluation

Under s. 400.9974, F.S., the bill requires that a facility must develop a comprehensive treatment plan for each client within 30 days after an initial treatment plan is developed. An interdisciplinary team, including the client, as appropriate, must develop the plan. Each plan must be updated at least monthly and include the following:

- The physician's, PA's, or ARNP's orders, diagnosis, medical history, physical exams and rehabilitation needs;
- A nursing evaluation with physician, PA, or ARNP orders for immediate care completed at admission; and
- A comprehensive assessment of the client's functional status and the services needed to become independent and return to the community.

A facility must have qualified staff to carry out and monitor rehabilitation services in accordance with the stated goals of the treatment plan.

Under s. 400.9975, F.S., the bill provides for certain rights of each client. Specifically, a facility must ensure that each client:

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity, and privacy;
- Retains use of his or her own clothes and personal property;
- Has unrestricted private communications, which includes mail, telephone, and visitors; and
- Has the opportunity to:
  - Participate in community services and activities;
  - Manage his or her own financial affairs, unless the client or the client's representative authorizes the administrator of the facility to provide safekeeping for funds;
  - Have regular exercise and to be outdoors several times a week;
  - Exercise civil and religious liberties;
  - Have adequate access to appropriate health care services; and
  - Present grievances and recommend changes in policies, procedures, and services.

A facility must:

- Promote participation of client's representative in the process of treatment for the client;
- Answer communications from a client's family and friends promptly;
- Promote visits by individuals with a relationship to the client at any reasonable hour;
- Allow residents to leave from the facility to visit or to take trips or vacations; and
- Promptly notify client representatives of any significant incidents or changes in condition.

The bill requires the administrator to post a written notice of provider responsibilities in a prominent place in the facility that includes the statewide toll-free telephone number for reporting complaints to the AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call the AHCA, the central abuse hotline, or Disabilities Rights of Florida. The facility cannot take retaliatory action against a client for filing a complaint or grievance. These are similar to protections provided to residents of nursing homes and assisted living facilities.

Medication

Under s. 400.9976, F.S., the bill requires the TLF to record the client's medication administration, including self-administration, and each dose of medication. The medication must be administered in compliance with the physician's, PA's, or ARNP's orders. Drug administration errors and adverse drug reactions must be recorded and reported immediately to the physician, PA, or ARNP. The interdisciplinary team that develops the client's treatment plan must determine whether a client is capable of self-administration of medications.

Under s. 400.9977, F.S., the bill provides that unlicensed direct care services staff may assist residents[13] with repackaged medications that are prescribed, prepackaged, and premeasured. The bill requires that the facility must provide training, develop procedures, and maintain records regarding assistance with medication by unlicensed staff. Training must be conducted by a registered nurse, a licensed physician, or a licensed pharmacist. The AHCA is required to adopt rules to implement this section.

Under s. 400.9979, F.S., the bill requires that physical and chemical restraints must be ordered for clients before such restraints may be used by a facility. The bill requires that an order for restraints must be documented by the client's physician, PA, or ARNP and be consistent with the policies and procedures adopted by the facility. The client's representative or responsible party must be notified as soon as practicable after the use of restraints. Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess:

- Continued need for the medication;
- Level of the medication in client's blood; and
- The need to adjust the prescription.

A facility must ensure clients are free from unnecessary drugs and physical restraints. All interventions to manage inappropriate client behaviors must be administered with sufficient safeguards and supervision.

Employees

Under s. 400.9978, F.S., the bill states that the facility is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients, and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. This includes the facility identifying clients whose history renders the client a risk for abusing other clients. The facility must implement procedures to:

[13] In both TLF and assisted living facilities.

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;
- Train employees through orientation and ongoing sessions on abuse prohibition practices;
- Provide clients, families, and staff information on how and to whom they may report concerns, incidents, and grievances without fear of retribution;
- Identify events, such as suspicious bruising of clients, that may constitute abuse to determine the direction of the investigation;
- Investigate different types of incidents and identify staff members responsible for the initial internal reporting and the reporting of results to the proper authorities;
- Protect clients from harm during an investigation; and
- Report all alleged violations and all substantiated incidents as required under chs. 39 and 415, F.S., to the appropriate licensing authorities.

Under s. 400.998, F.S., the bill requires all TLF personnel to complete a level 2 background screening and requires the facility to maintain personnel records which contain the staff's background screening, job description, training requirements, compliance documentation, and a copy of all licenses or certification held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations. In addition, the bill requires a facility to:

- Implement infection control policies and procedures;
- Maintain liability insurance, as defined by s. 624.605, F.S., at all times;
- Designate one person as administrator who is responsible for the overall management of the facility;
- Designate one person as program director who is responsible for supervising the therapeutic and behavioral staff;
- Designate in writing a person responsible for the facility when the administrator is absent for more than 24 hours;
- Designate a person to be responsible when the program director is absent;
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency; and
- Maintain written records in a form and system that complies with standard medical and business practices and which is available for submission to the AHCA upon request. The records must include:
  - A daily census record;
  - A report of all accidental or unusual incidents involving clients or a staff member that caused or had the potential to cause injury or harm to any person or property within the facility;
  - Agreements with third party providers;
  - Agreements with consultants employed by the facility; and
  - Documentation of each consultant's visits and required written, dated reports.

Under s. 400.9981, F.S., the bill grants clients the option of using their own personal belongings and choosing a roommate whenever possible. The admission of a client to a facility and his or her presence therein does not confer on a licensee, administrator, employee, or representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator, employee, or representative may not act as the client's guardian, trustee, or payee for social security or other benefits. The licensee, administrator, employee, or representative may be

granted power of attorney for a client if the licensee has filed a surety bond with the AHCA in an amount equal to twice the average monthly income of the client. If the power of attorney is granted to the licensee, administrator, staff, or representative, he or she must notify the client on a monthly basis of any transactions made on the client's behalf and a copy of such statement must be given to the client and retained in the client's file and be available for inspection by the AHCA.

The bill states that a facility, upon consent of the client, shall provide for the safekeeping in the facility of personal effects not in excess of $1,000 and funds of the client not in excess of $500 in cash, and shall keep complete and accurate records of all funds and personal effects received.

The bill provides for any funds or other property belonging to, or due to, a client, or expendable for his or her account, which is received by licensee, shall be trust funds which shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. At least once every month, unless upon order of a court of competent jurisdiction, the facility shall furnish the client and the client's representative a complete and verified statement of all funds and other property, detailing the amount and items received, together with their sources and disposition.

The bill mandates that any person who intentionally withholds a client's property or funds; demands, beneficially receives, or contracts for payment of all or any part of a client's personal property in satisfaction of the facility rate for supplies or services; or borrows from a client's personal funds, unless agreed to by written contract, commits a misdemeanor of the first degree. The bill mandates any licensee, administrator or staff, or representative thereof, who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power, commits a felony of the third degree.

In the event of the death of a client, a TLF must return all refunds, funds, and property held in trust to the client's personal representative. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code.

The bill authorizes the AHCA, by rule, to clarify terms and specify procedures and documentation necessary to administer the provisions relating to the proper management of clients' funds and personal property and the execution of surety bonds.

Under s. 400.9982, F.S., the bill authorizes the AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. The AHCA may adopt and enforce rules to implement this part and part II of ch. 408, F.S., including:

- The location of TLFs;
- The qualifications of personnel;
- The requirements for personnel procedures, reporting procedures, and documentation;
- Services provided to clients; and
- The preparation and annual update of a comprehensive emergency management plan.

Under s. 400.9983, F.S., the bill revises penalties for violations. Current law requires the AHCA to determine if violations in health care related facilities are isolated, patterned, or widespread.[14] The penalties in the bill take into account the frequency of the problems within the facility as well. Violations are also separated into class I through class IV based on severity with class I violations being the most serious and class IV being the least serious. Class I violations put clients in imminent danger. Class II violations directly threaten the safety of clients. Class III violations indirectly threaten the safety of clients. Class IV violations are primarily for paperwork violations that would not harm clients. The classifications must be included on the written notice of the violation provided to the facility.[15]

Under the bill, fines for violations will be levied at the following amounts, but fines for Class III and Class IV violations will not be levied if the violations are corrected within timeframes specified by the AHCA:

Class of Violation/Correction	Isolated	Patterned	Widespread
I - Regardless of correction	$5,000	$7,500	$10,000
II - Regardless of correction	$1,000	$2,500	$5,000
III - Only if uncorrected	$500	$750	$1,000
IV - Only if uncorrected	Fines for Class IV violations may range from $100 to $200.		

Under s. 400.9984, F.S., the bill authorizes the AHCA to petition a court for the appointment of a receiver for TLFs using the provisions of s. 429.22, F.S.

Under s. 400.9985, F.S., the bill requires the AHCA, the DOH, the Agency for Persons with Disabilities, and the Department of Children and Families to develop an electronic database to ensure that relevant information pertaining to the regulation of TLFs and clients is communicated timely among all agencies for the protection of clients. This system must include the Brain and Spinal Cord Registry and the abuse registries.

Section 2 repeals s. 400.805, F.S. This section of law contains the current regulations for TLFs. These provisions are replaced by new provisions in the bill.

Section 3 renames the title of part V of chapter 400 as "Intermediate Care Facilities" to remove "Transitional Living Facilities" from the title as the bill creates a new statutory part for such facilities.

Section 4 amends s. 381.745, F.S., to conform to changes in the definition of a TLF.

Section 5 amends s. 381.75, F.S., to eliminate a reference to the responsibility of the DOH to develop rules with the AHCA, for the regulation of transitional living facilities. Provisions in this statutory section are moved and revised in the newly-created sections 400.997 through 400.9984, F.S.

[14] *See* s. 408.813(2), F.S.
[15] *See* s. 408.813, F.S.

Section 6 amends s. 381.78, F.S., relating to the Brain and Spinal Cord Injury Advisory Council's appointment of a committee to regulate TLFs. These duties are duplicative of the regulation by the AHCA under the bill and, as a result, are removed.

Section 7 amends s. 400.93, F.S., to conform a reference to TLFs.

Section 8 amends s. 408.802, F.S., to conform a reference to TLFs.

Section 9 amends s. 408.820, F.S., to conform a reference to TLFs.

Section 10 creates a non-statutory section of Florida law requiring that transitional living facilities that were licensed prior to the effective date of the bill must be licensed under the new requirements of the bill no later than July 1, 2015.

Section 11 provides for an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Transitional living facilities may incur indeterminate increased costs based on the increased requirements under SB 1486.

C. Government Sector Impact:

The AHCA may experience costs associated with rulemaking that may be absorbed within existing resources. The AHCA may experience increased revenue due to the new fine structure established by the bill.

VI. Technical Deficiencies:

Section 1 of the bill creates s. 400.9977, F.S., allowing certain direct care services staff in both TLFs and assisted living facilities to assist residents with the administration of certain medication. Since this portion of the bill affects assisted living facilities as well as TLFs, it may not be germane to the title of the bill, "an act relating to transitional living facilities."

Line 285 requires participation of an ARNP on an interdisciplinary team that develops the comprehensive treatment plan. The bill does not require an ARNP to be a staff member. The bill refers to an ARNP as one of three types of healthcare practitioners who may prescribe placement in a TLF and who will continue to provide healthcare to the client while at the facility. It is unclear who the ARNP on the interdisciplinary team will be.

VII. Related Issues:

Lines 272-276 address providing at least 30 days' notice to a client if a TLF plans to transfer or discharge the client. It may be appropriate to also require the notice to be provided to the client's representative as well.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.745, 381.75, 381.78, 400.93, 408.802, and 408.820.

This bill creates the following sections of the Florida Statutes: 400.997, 400.9971, 400.9972, 400.9973, 400.9974, 400.9975, 400.9976, 400.9977, 400.9978, 400.9979, 400.998, 400.9981, 400.9982, 400.9983, 400.9984, and 400.9985.

This bill repeals section 400.805 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Garcia

38-00318A-14 20141486__

A bill to be entitled

An act relating to transitional living facilities; creating part XI of ch. 400, F.S.; providing legislative intent; providing definitions; requiring the licensure of transitional living facilities; providing license fees and application requirements; requiring accreditation of licensed facilities; providing requirements for transitional living facility policies and procedures governing client admission, transfer, and discharge; requiring a comprehensive treatment plan to be developed for each client; providing plan and staffing requirements; requiring certain consent for continued treatment in a transitional living facility; providing licensee responsibilities; providing notice requirements; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or take other retaliatory action under certain circumstances; requiring the client and client's representative to be provided with certain information; requiring the licensee to develop and implement certain policies and procedures; providing licensee requirements relating to administration of medication; requiring maintenance of medication administration records; providing requirements for administration of medications by unlicensed staff; specifying who may conduct training of staff; requiring licensees to adopt policies and procedures for administration of medications by trained staff;

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requiring the Agency for Health Care Administration to adopt rules; providing requirements for the screening of potential employees and training and monitoring of employees for the protection of clients; requiring licensees to implement certain policies and procedures to protect clients; providing conditions for investigating and reporting incidents of abuse, neglect, mistreatment, or exploitation of clients; providing requirements and limitations for the use of physical restraints, seclusion, and chemical restraint medication on clients; providing a limitation on the duration of an emergency treatment order; requiring notification of certain persons when restraint or seclusion is imposed; authorizing the agency to adopt rules; providing background screening requirements; requiring the licensee to maintain certain personnel records; providing administrative responsibilities for licensees; providing recordkeeping requirements; providing licensee responsibilities with respect to the property and personal affairs of clients; providing requirements for a licensee with respect to obtaining surety bonds; providing recordkeeping requirements relating to the safekeeping of personal effects; providing requirements for trust funds or other property received by a licensee and credited to the client; providing a penalty for certain misuse of a client's personal funds, property, or personal needs allowance; providing criminal penalties for violations; providing for the disposition of property

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in the event of the death of a client; authorizing the agency to adopt rules; providing legislative intent; authorizing the agency to adopt and enforce rules establishing standards for transitional living facilities and personnel thereof; classifying violations and providing penalties therefor; providing administrative fines for specified classes of violations; authorizing the agency to apply certain provisions with regard to receivership proceedings; requiring the agency, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop electronic information systems for certain purposes; repealing s. 400.805, F.S., relating to transitional living facilities; revising the title of part V of ch. 400, F.S.; amending s. 381.745, F.S.; revising the definition of the term "transitional living facility," to conform; amending s. 381.75, F.S.; revising the duties of the Department of Health and the agency relating to transitional living facilities; amending ss. 381.78, 400.93, 408.802, and 408.820, F.S.; conforming provisions to changes made by the act; providing applicability with respect to transitional living facilities licensed before a specified date; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part XI of chapter 400, Florida Statutes,

consisting of sections 400.997 through 400.9985, is created to read:

PART XI

TRANSITIONAL LIVING FACILITIES

400.997 Legislative intent.—It is the intent of the Legislature to provide for the licensure of transitional living facilities and require the development, establishment, and enforcement of basic standards by the Agency for Health Care Administration to ensure quality of care and services to clients in transitional living facilities. It is the policy of the state that the least restrictive appropriate available treatment be used based on the individual needs and best interest of the client, consistent with optimum improvement of the client's condition. The goal of a transitional living program for persons who have brain or spinal cord injuries is to assist each person who has such an injury to achieve a higher level of independent functioning and to enable the person to reenter the community. It is also the policy of the state that the restraint or seclusion of a client is justified only as an emergency safety measure used in response to danger to the client or others. It is therefore the intent of the Legislature to achieve an ongoing reduction in the use of restraint or seclusion in programs and facilities that serve persons who have brain or spinal cord injuries.

400.9971 Definitions.—As used in this part, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives a person of movement

or mobility, is used for client protection or safety, and is not required for the treatment of medical conditions or symptoms.

(3) "Client's representative" means the parent of a child client or the client's guardian, designated representative, designee, surrogate, or attorney in fact.

(4) "Department" means the Department of Health.

(5) "Physical restraint" means a manual method to restrict freedom of movement of or normal access to a person's body, or a physical or mechanical device, material, or equipment attached or adjacent to the person's body that the person cannot easily remove and that restricts freedom of movement of or normal access to the person's body, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, or a Posey restraint. The term includes any device that is not specifically manufactured as a restraint but is altered, arranged, or otherwise used for this purpose. The term does not include bandage material used for the purpose of binding a wound or injury.

(6) "Seclusion" means the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. Such prevention may be accomplished by imposition of a physical barrier or by action of a staff member to prevent the person from leaving the room or area. For purposes of this part, the term does not mean isolation due to a person's medical condition or symptoms.

(7) "Transitional living facility" means a site where specialized health care services are provided to persons who have brain or spinal cord injuries, including, but not limited

to, rehabilitative services, behavior modification, community reentry training, aids for independent living, and counseling.

400.9972 License required; fee; application.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for licensure from the agency pursuant to this part. A license issued by the agency is required for the operation of a transitional living facility in this state. However, this part does not require a provider licensed by the agency to obtain a separate transitional living facility license to serve persons who have brain or spinal cord injuries as long as the services provided are within the scope of the provider's license.

(2) In accordance with this part, an applicant or a licensee shall pay a fee for each license application submitted under this part. The license fee shall consist of a $4,588 license fee and a $90 per-bed fee per biennium and shall conform to the annual adjustment authorized in s. 408.805.

(3) An applicant for licensure must provide:

(a) The location of the facility for which the license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

(b) Proof of liability insurance as defined in s. 624.605(1)(b).

(c) Proof of compliance with local zoning requirements, including compliance with the requirements of chapter 419 if the proposed facility is a community residential home.

(d) Proof that the facility has received a satisfactory

firesafety inspection.

(e) Documentation that the facility has received a satisfactory sanitation inspection by the county health department.

(4) The applicant's proposed facility must attain and continuously maintain accreditation by an accrediting organization that specializes in evaluating rehabilitation facilities whose standards incorporate licensure regulations comparable to those required by the state. An applicant for licensure as a transitional living facility must acquire accreditation within 12 months after issuance of an initial license. The agency shall accept the accreditation survey report of the accrediting organization in lieu of conducting a licensure inspection if the standards included in the survey report are determined by the agency to document that the facility substantially complies with state licensure requirements. Within 10 days after receiving the accreditation survey report, the applicant shall submit to the agency a copy of the report and evidence of the accreditation decision as a result of the report. The agency may conduct an inspection of a transitional living facility to ensure compliance with the licensure requirements of this part, to validate the inspection process of the accrediting organization, to respond to licensure complaints, or to protect the public health and safety.

400.9973 Client admission, transfer, and discharge.—

(1) A transitional living facility shall have written policies and procedures governing the admission, transfer, and discharge of clients.

(2) The admission of a client to a transitional living

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facility must be in accordance with the licensee's policies and procedures.

(3) A client admitted to a transitional living facility must have a brain or spinal cord injury, such as a lesion to the spinal cord or cauda equina syndrome, with evidence of significant involvement of at least two of the following deficits or dysfunctions:

(a) A motor deficit.

(b) A sensory deficit.

(c) Bowel and bladder dysfunction.

(d) An acquired internal or external injury to the skull, the brain, or the brain's covering, whether caused by a traumatic or nontraumatic event, which produces an altered state of consciousness or an anatomic motor, sensory, cognitive, or behavioral deficit.

(4) A client whose medical condition and diagnosis do not positively identify a cause of the client's condition, whose symptoms are inconsistent with the known cause of injury, or whose recovery is inconsistent with the known medical condition may be admitted to a transitional living facility for evaluation for a period not to exceed 90 days.

(5) A client admitted to a transitional living facility must be admitted upon prescription by a licensed physician, physician assistant, or advanced registered nurse practitioner and must remain under the care of a licensed physician, physician assistant, or advanced registered nurse practitioner for the duration of the client's stay in the facility.

(6) A transitional living facility may not admit a person whose primary admitting diagnosis is mental illness or an

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intellectual or developmental disability.

(7) A person may not be admitted to a transitional living facility if the person:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide documentation that the person is free of apparent signs and symptoms of communicable disease;

(b) Is a danger to himself or herself or others as determined by a physician, physician assistant, or advanced registered nurse practitioner or a mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.

(8) If the client meets the admission criteria, the medical or nursing director of the facility must complete an initial evaluation of the client's functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after the client's admission to the facility. An initial comprehensive treatment plan that delineates services to be provided and appropriate sources for such services must be implemented within the first 4 days after admission.

(9) A transitional living facility shall develop a discharge plan for each client before or upon admission to the facility. The discharge plan must identify the intended discharge site and possible alternative discharge sites. For each discharge site identified, the discharge plan must identify

the skills, behaviors, and other conditions that the client must achieve to be eligible for discharge. A discharge plan must be reviewed and updated as necessary but at least once monthly.

(10) A transitional living facility shall discharge a client as soon as practicable when the client no longer requires the specialized services described in s. 400.9971(7), when the client is not making measurable progress in accordance with the client's comprehensive treatment plan, or when the transitional living facility is no longer the most appropriate and least restrictive treatment option.

(11) A transitional living facility shall provide at least 30 days' notice to a client of transfer or discharge plans, including the location of an acceptable transfer location if the client is unable to live independently. This subsection does not apply if a client voluntarily terminates residency.

400.9974 Client comprehensive treatment plans; client services.—

(1) A transitional living facility shall develop a comprehensive treatment plan for each client as soon as practicable but no later than 30 days after the initial comprehensive treatment plan is developed. The comprehensive treatment plan must be developed by an interdisciplinary team consisting of the case manager, the program director, the advanced registered nurse practitioner, and appropriate therapists. The client or, if appropriate, the client's representative must be included in developing the comprehensive treatment plan. The comprehensive treatment plan must be reviewed and updated if the client fails to meet projected improvements outlined in the plan or if a significant change in

the client's condition occurs. The comprehensive treatment plan must be reviewed and updated at least once monthly.

(2) The comprehensive treatment plan must include:

(a) Orders obtained from the physician, physician assistant, or advanced registered nurse practitioner and the client's diagnosis, medical history, physical examination, and rehabilitative or restorative needs.

(b) A preliminary nursing evaluation, including orders for immediate care provided by the physician, physician assistant, or advanced registered nurse practitioner, which shall be completed when the client is admitted.

(c) A comprehensive, accurate, reproducible, and standardized assessment of the client's functional capability; the treatments designed to achieve skills, behaviors, and other conditions necessary for the client to return to the community; and specific measurable goals.

(d) Steps necessary for the client to achieve transition into the community and estimated length of time to achieve those goals.

(3) The client or, if appropriate, the client's representative must consent to the continued treatment at the transitional living facility. Consent may be for a period of up to 3 months. If such consent is not given, the transitional living facility shall discharge the client as soon as practicable.

(4) A client must receive the professional program services needed to implement the client's comprehensive treatment plan.

(5) The licensee must employ qualified professional staff to carry out and monitor the various professional interventions

in accordance with the stated goals and objectives of the client's comprehensive treatment plan.

(6) A client must receive a continuous treatment program that includes appropriate, consistent implementation of specialized and general training, treatment, health services, and related services and that is directed toward:

(a) The acquisition of the behaviors and skills necessary for the client to function with as much self-determination and independence as possible.

(b) The prevention or deceleration of regression or loss of current optimal functional status.

(c) The management of behavioral issues that preclude independent functioning in the community.

400.9975 Licensee responsibilities.—

(1) The licensee shall ensure that each client:

(a) Lives in a safe environment free from abuse, neglect, and exploitation.

(b) Is treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retains and uses his or her own clothes and other personal property in his or her immediate living quarters to maintain individuality and personal dignity, except when the licensee demonstrates that such retention and use would be unsafe, impractical, or an infringement upon the rights of other clients.

(d) Has unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visits with any person of his or her choice. Upon

request, the licensee shall modify visiting hours for caregivers and guests. The facility shall restrict communication in accordance with any court order or written instruction of a client's representative. Any restriction on a client's communication for therapeutic reasons shall be documented and reviewed at least weekly and shall be removed as soon as no longer clinically indicated. The basis for the restriction shall be explained to the client and, if applicable, the client's representative. The client shall retain the right to call the central abuse hotline, the agency, and Disability Rights Florida at any time.

(e) Has the opportunity to participate in and benefit from community services and activities to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Has the opportunity to manage his or her financial affairs unless the client or, if applicable, the client's representative authorizes the administrator of the facility to provide safekeeping for funds as provided under this part.

(g) Has reasonable opportunity for regular exercise more than once per week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(h) Has the opportunity to exercise civil and religious liberties, including the right to independent personal decisions. However, a religious belief or practice, including attendance at religious services, may not be imposed upon any client.

(i) Has access to adequate and appropriate health care consistent with established and recognized community standards.

(j) Has the opportunity to present grievances and recommend changes in policies, procedures, and services to the staff of the licensee, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. A licensee shall establish a grievance procedure to facilitate a client's ability to present grievances, including a system for investigating, tracking, managing, and responding to complaints by a client or, if applicable, the client's representative and an appeals process. The appeals process must include access to Disability Rights Florida and other advocates and the right to be a member of, be active in, and associate with advocacy or special interest groups.

(2) The licensee shall:

(a) Promote participation of the client's representative in the process of providing treatment to the client unless the representative's participation is unobtainable or inappropriate.

(b) Answer communications from the client's family, guardians, and friends promptly and appropriately.

(c) Promote visits by persons with a relationship to the client at any reasonable hour, without requiring prior notice, in any area of the facility that provides direct care services to the client, consistent with the client's and other clients' privacy, unless the interdisciplinary team determines that such a visit would not be appropriate.

(d) Promote opportunities for the client to leave the facility for visits, trips, or vacations.

(e) Promptly notify the client's representative of a significant incident or change in the client's condition, including, but not limited to, serious illness, accident, abuse,

unauthorized absence, or death.

(3) The administrator of a facility shall ensure that a written notice of licensee responsibilities is posted in a prominent place in each building where clients reside and is read or explained to clients who cannot read. This notice shall be provided to clients in a manner that is clearly legible, shall include the statewide toll-free telephone number for reporting complaints to the agency, and shall include the words: "To report a complaint regarding the services you receive, please call toll-free ...[telephone number]... or Disability Rights Florida ...[telephone number]...." The statewide toll-free telephone number for the central abuse hotline shall be provided to clients in a manner that is clearly legible and shall include the words: "To report abuse, neglect, or exploitation, please call toll-free ...[telephone number]...." The licensee shall ensure a client's access to a telephone where telephone numbers are posted as required by this subsection.

(4) A licensee or employee of a facility may not serve notice upon a client to leave the premises or take any other retaliatory action against another person solely because of the following:

(a) The client or other person files an internal or external complaint or grievance regarding the facility.

(b) The client or other person appears as a witness in a hearing inside or outside the facility.

(5) Before or at the time of admission, the client and, if applicable, the client's representative shall receive a copy of the licensee's responsibilities, including grievance procedures and telephone numbers, as provided in this section.

(6) The licensee must develop and implement policies and procedures governing the release of client information, including consent necessary from the client or, if applicable, the client's representative.

400.9976 Administration of medication.—

(1) An individual medication administration record must be maintained for each client. A dose of medication, including a self-administered dose, shall be properly recorded in the client's record. A client who self-administers medication shall be given a pill organizer. Medication must be placed in the pill organizer by a nurse. A nurse shall document the date and time that medication is placed into each client's pill organizer. All medications must be administered in compliance with orders of a physician, physician assistant, or advanced registered nurse practitioner.

(2) If an interdisciplinary team determines that self-administration of medication is an appropriate objective, and if the physician, physician assistant, or advanced registered nurse practitioner does not specify otherwise, the client must be instructed by the physician, physician assistant, or advanced registered nurse practitioner to self-administer his or her medication without the assistance of a staff person. All forms of self-administration of medication, including administration orally, by injection, and by suppository, shall be included in the training. The client's physician, physician assistant, or advanced registered nurse practitioner must be informed of the interdisciplinary team's decision that self-administration of medication is an objective for the client. A client may not self-administer medication until he or she demonstrates the

competency to take the correct medication in the correct dosage at the correct time, to respond to missed doses, and to contact the appropriate person with questions.

(3) Medication administration discrepancies and adverse drug reactions must be recorded and reported immediately to a physician, physician assistant, or advanced registered nurse practitioner.

400.9977 Assistance with medication.—

(1) Notwithstanding any provision of part I of chapter 464, the Nurse Practice Act, unlicensed direct care services staff who provide services to clients in a facility licensed under this chapter or chapter 429 may administer prescribed, prepackaged, and premeasured medications under the general supervision of a registered nurse as provided under this section and applicable rules.

(2) Training required by this section and applicable rules shall be conducted by a registered nurse licensed under chapter 464, a physician licensed under chapter 458 or chapter 459, or a pharmacist licensed under chapter 465.

(3) A facility that allows unlicensed direct care service staff to administer medications pursuant to this section shall:

(a) Develop and implement policies and procedures that include a plan to ensure the safe handling, storage, and administration of prescription medications.

(b) Maintain written evidence of the expressed and informed consent for each client.

(c) Maintain a copy of the written prescription, including the name of the medication, the dosage, and the administration schedule and termination date.

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(d) Maintain documentation of compliance with required training.

(4) The agency shall adopt rules to implement this section.

400.9978 Protection of clients from abuse, neglect, mistreatment, and exploitation.—The licensee shall develop and implement policies and procedures for the screening and training of employees; the protection of clients; and the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. The licensee shall identify clients whose personal histories render them at risk for abusing other clients, develop intervention strategies to prevent occurrences of abuse, monitor clients for changes that would trigger abusive behavior, and reassess the interventions on a regular basis. A licensee shall:

(1) Screen each potential employee for a history of abuse, neglect, mistreatment, or exploitation of clients. The screening shall include an attempt to obtain information from previous and current employers and verification of screening information by the appropriate licensing boards.

(2) Train employees through orientation and ongoing sessions regarding issues related to abuse prohibition practices, including identification of abuse, neglect, mistreatment, and exploitation; appropriate interventions to address aggressive or catastrophic reactions of clients; the process for reporting allegations without fear of reprisal; and recognition of signs of frustration and stress that may lead to abuse.

(3) Provide clients, families, and staff with information regarding how and to whom they may report concerns, incidents,

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and grievances without fear of retribution and provide feedback regarding the concerns that are expressed. A licensee shall identify, correct, and intervene in situations in which abuse, neglect, mistreatment, or exploitation is likely to occur, including:

(a) Evaluating the physical environment of the facility to identify characteristics that may make abuse or neglect more likely to occur, such as secluded areas.

(b) Providing sufficient staff on each shift to meet the needs of the clients and ensuring that the assigned staff have knowledge of each client's care needs.

(c) Identifying inappropriate staff behaviors, such as using derogatory language, rough handling of clients, ignoring clients while giving care, and directing clients who need toileting assistance to urinate or defecate in their beds.

(d) Assessing, monitoring, and planning care for clients with needs and behaviors that might lead to conflict or neglect, such as a history of aggressive behaviors including entering other clients' rooms without permission, exhibiting self-injurious behaviors or communication disorders, requiring intensive nursing care, or being totally dependent on staff.

(4) Identify events, such as suspicious bruising of clients, occurrences, patterns, and trends that may constitute abuse and determine the direction of the investigation.

(5) Investigate alleged violations and different types of incidents, identify the staff member responsible for initial reporting, and report results to the proper authorities. The licensee shall analyze the incidents to determine whether policies and procedures need to be changed to prevent further

incidents and take necessary corrective actions.

(6) Protect clients from harm during an investigation.

(7) Report alleged violations and substantiated incidents, as required under chapters 39 and 415, to the licensing authorities and all other agencies, as required, and report any knowledge of actions by a court of law that would indicate an employee is unfit for service.

400.9979 Restraint and seclusion; client safety.—

(1) A facility shall provide a therapeutic milieu that supports a culture of individual empowerment and responsibility. The health and safety of the client shall be the facility's primary concern at all times.

(2) The use of physical restraints must be ordered and documented by a physician, physician assistant, or advanced registered nurse practitioner and must be consistent with the policies and procedures adopted by the facility. The client or, if applicable, the client's representative shall be informed of the facility's physical restraint policies and procedures when the client is admitted.

(3) The use of chemical restraints shall be limited to prescribed dosages of medications as ordered by a physician, physician assistant, or advanced registered nurse practitioner and must be consistent with the client's diagnosis and the policies and procedures adopted by the facility. The client and, if applicable, the client's representative shall be informed of the facility's chemical restraint policies and procedures when the client is admitted.

(4) Based on the assessment by a physician, physician assistant, or advanced registered nurse practitioner, if a

client exhibits symptoms that present an immediate risk of injury or death to himself or herself or others, a physician, physician assistant, or advanced registered nurse practitioner may issue an emergency treatment order to immediately administer rapid-response psychotropic medications or other chemical restraints. Each emergency treatment order must be documented and maintained in the client's record.

(a) An emergency treatment order is not effective for more than 24 hours.

(b) Whenever a client is medicated under this subsection, the client's representative or a responsible party and the client's physician, physician assistant, or advanced registered nurse practitioner shall be notified as soon as practicable.

(5) A client who is prescribed and receives a medication that can serve as a chemical restraint for a purpose other than an emergency treatment order must be evaluated by his or her physician, physician assistant, or advanced registered nurse practitioner at least monthly to assess:

(a) The continued need for the medication.

(b) The level of the medication in the client's blood.

(c) The need for adjustments to the prescription.

(6) The licensee shall ensure that clients are free from unnecessary drugs and physical restraints and are provided treatment to reduce dependency on drugs and physical restraints.

(7) The licensee may only employ physical restraints and seclusion as authorized by the facility's written policies, which shall comply with this section and applicable rules.

(8) Interventions to manage dangerous client behavior shall be employed with sufficient safeguards and supervision to ensure

that the safety, welfare, and civil and human rights of a client are adequately protected.

(9) A facility shall notify the parent, guardian, or, if applicable, the client's representative when restraint or seclusion is employed. The facility must provide the notification within 24 hours after the restraint or seclusion is employed. Reasonable efforts must be taken to notify the parent, guardian, or, if applicable, the client's representative by telephone or e-mail, or both, and these efforts must be documented.

(10) The agency may adopt rules that establish standards and procedures for the use of restraints, restraint positioning, seclusion, and emergency treatment orders for psychotropic medications, restraint, and seclusion. These rules must include duration of restraint, staff training, observation of the client during restraint, and documentation and reporting standards.

400.998 Personnel background screening; administration and management procedures.—

(1) The agency shall require level 2 background screening for licensee personnel as required in s. 408.809(1)(e) and pursuant to chapter 435 and s. 408.809.

(2) The licensee shall maintain personnel records for each staff member that contain, at a minimum, documentation of background screening, a job description, documentation of compliance with the training requirements of this part and applicable rules, the employment application, references, a copy of each job performance evaluation, and, for each staff member who performs services for which licensure or certification is required, a copy of all licenses or certification held by that

staff member.

(3) The licensee must:

(a) Develop and implement infection control policies and procedures and include the policies and procedures in the licensee's policy manual.

(b) Maintain liability insurance as defined in s. 624.605(1)(b).

(c) Designate one person as an administrator to be responsible and accountable for the overall management of the facility.

(d) Designate in writing a person to be responsible for the facility when the administrator is absent from the facility for more than 24 hours.

(e) Designate in writing a program director to be responsible for supervising the therapeutic and behavioral staff, determining the levels of supervision, and determining room placement for each client.

(f) Designate in writing a person to be responsible when the program director is absent from the facility for more than 24 hours.

(g) Obtain approval of the comprehensive emergency management plan, pursuant to s. 400.9982(2)(e), from the local emergency management agency. Pending the approval of the plan, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management. Appropriate volunteer organizations shall also be given the opportunity to review the plan. The local emergency management

agency shall complete its review within 60 days after receipt of the plan and either approve the plan or advise the licensee of necessary revisions.

(h) Maintain written records in a form and system that comply with medical and business practices and make the records available by the facility for review or submission to the agency upon request. The records shall include:

1. A daily census record that indicates the number of clients currently receiving services in the facility, including information regarding any public funding of such clients.

2. A record of each accident or unusual incident involving a client or staff member that caused, or had the potential to cause, injury or harm to any person or property within the facility. The record shall contain a clear description of each accident or incident; the names of the persons involved; a description of medical or other services provided to these persons, including the provider of the services; and the steps taken to prevent recurrence of such accident or incident.

3. A copy of current agreements with third-party providers.

4. A copy of current agreements with each consultant employed by the licensee and documentation of a consultant's visits and required written and dated reports.

400.9981 Property and personal affairs of clients.—

(1) A client shall be given the option of using his or her own belongings, as space permits; choosing a roommate if practical and not clinically contraindicated; and, whenever possible, unless the client is adjudicated incompetent or incapacitated under state law, managing his or her own affairs.

(2) The admission of a client to a facility and his or her

presence therein does not confer on a licensee or administrator, or an employee or representative thereof, any authority to manage, use, or dispose of the property of the client, and the admission or presence of a client does not confer on such person any authority or responsibility for the personal affairs of the client except that which may be necessary for the safe management of the facility or for the safety of the client.

(3) A licensee or administrator, or an employee or representative thereof, may:

(a) Not act as the guardian, trustee, or conservator for a client or a client's property.

(b) Act as a competent client's payee for social security, veteran's, or railroad benefits if the client provides consent and the licensee files a surety bond with the agency in an amount equal to twice the average monthly aggregate income or personal funds due to the client, or expendable for the client's account, that are received by a licensee.

(c) Act as the attorney in fact for a client if the licensee files a surety bond with the agency in an amount equal to twice the average monthly income of the client, plus the value of a client's property under the control of the attorney in fact.

The surety bond required under paragraph (b) or paragraph (c) shall be executed by the licensee as principal and a licensed surety company. The bond shall be conditioned upon the faithful compliance of the licensee with the requirements of licensure and is payable to the agency for the benefit of a client who suffers a financial loss as a result of the misuse or

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misappropriation of funds held pursuant to this subsection. A surety company that cancels or does not renew the bond of a licensee shall notify the agency in writing at least 30 days before the action, giving the reason for cancellation or nonrenewal. A licensee or administrator, or an employee or representative thereof, who is granted power of attorney for a client of the facility shall, on a monthly basis, notify the client in writing of any transaction made on behalf of the client pursuant to this subsection, and a copy of the notification given to the client shall be retained in the client's file and available for agency inspection.

(4) A licensee, with the consent of the client, shall provide for safekeeping in the facility of the client's personal effects of a value not in excess of $1,000 and the client's funds not in excess of $500 cash and shall keep complete and accurate records of the funds and personal effects received. If a client is absent from a facility for 24 hours or more, the licensee may provide for safekeeping of the client's personal effects of a value in excess of $1,000.

(5) Funds or other property belonging to or due to a client or expendable for the client's account that are received by a licensee shall be regarded as funds held in trust and shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. The funds held in trust shall be used or otherwise expended only for the account of the client. At least once every month, except pursuant to an order of a court of competent jurisdiction, the licensee shall furnish the client and, if applicable, the client's representative with a complete and verified statement

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of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. The licensee shall furnish the statement annually and upon discharge or transfer of a client. A governmental agency or private charitable agency contributing funds or other property to the account of a client is also entitled to receive a statement monthly and upon the discharge or transfer of the client.

(6)(a) In addition to any damages or civil penalties to which a person is subject, a person who:

1. Intentionally withholds a client's personal funds, personal property, or personal needs allowance;

2. Demands, beneficially receives, or contracts for payment of all or any part of a client's personal property or personal needs allowance in satisfaction of the facility rate for supplies and services; or

3. Borrows from or pledges any personal funds of a client, other than the amount agreed to by written contract under s. 429.24,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A licensee or administrator, or an employee, or representative thereof, who is granted power of attorney for a client and who misuses or misappropriates funds obtained through this power commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) In the event of the death of a client, a licensee shall return all refunds, funds, and property held in trust to the

client's personal representative, if one has been appointed at the time the licensee disburses such funds, or, if not, to the client's spouse or adult next of kin named in a beneficiary designation form provided by the licensee to the client. If the client does not have a spouse or adult next of kin or such person cannot be located, funds due to be returned to the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code. The funds shall be kept separate from the funds and property of the licensee and other clients of the facility. If the funds of the deceased client are not disbursed pursuant to the Florida Probate Code within 2 years after the client's death, the funds shall be deposited in the Health Care Trust Fund administered by the agency.

(8) The agency, by rule, may clarify terms and specify procedures and documentation necessary to administer the provisions of this section relating to the proper management of clients' funds and personal property and the execution of surety bonds.

400.9982 Rules establishing standards.—

(1) It is the intent of the Legislature that rules adopted and enforced pursuant to this part and part II of chapter 408 include criteria to ensure reasonable and consistent quality of care and client safety. The rules should make reasonable efforts to accommodate the needs and preferences of the client to enhance the client's quality of life while residing in a transitional living facility.

(2) The agency may adopt and enforce rules to implement

this part and part II of chapter 408, which shall include reasonable and fair criteria with respect to:

(a) The location of transitional living facilities.

(b) The qualifications of personnel, including management, medical, nursing, and other professional personnel and nursing assistants and support staff, who are responsible for client care. The licensee must employ enough qualified professional staff to carry out and monitor interventions in accordance with the stated goals and objectives of each comprehensive treatment plan.

(c) Requirements for personnel procedures, reporting procedures, and documentation necessary to implement this part.

(d) Services provided to clients of transitional living facilities.

(e) The preparation and annual update of a comprehensive emergency management plan in consultation with the Division of Emergency Management. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of clients and transfer of records; communication with families; and responses to family inquiries.

400.9983 Violations; penalties.—A violation of this part or any rule adopted pursuant thereto shall be classified according to the nature of the violation and the gravity of its probable effect on facility clients. The agency shall indicate the classification on the written notice of the violation as

follows:

(1) Class "I" violations are defined in s. 408.813. The agency shall issue a citation regardless of correction and impose an administrative fine of $5,000 for an isolated violation, $7,500 for a patterned violation, or $10,000 for a widespread violation. Violations may be identified, and a fine must be levied, notwithstanding the correction of the deficiency giving rise to the violation.

(2) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine of $1,000 for an isolated violation, $2,500 for a patterned violation, or $5,000 for a widespread violation. A fine must be levied notwithstanding the correction of the deficiency giving rise to the violation.

(3) Class "III" violations are defined in s. 408.813. The agency shall impose an administrative fine of $500 for an isolated violation, $750 for a patterned violation, or $1,000 for a widespread violation. If a deficiency giving rise to a class III violation is corrected within the time specified by the agency, the fine may not be imposed.

(4) Class "IV" violations are defined in s. 408.813. The agency shall impose for a cited class IV violation an administrative fine of at least $100 but not exceeding $200 for each violation. If a deficiency giving rise to a class IV violation is corrected within the time specified by the agency, the fine may not be imposed.

400.9984 Receivership proceedings.—The agency may apply s. 429.22 with regard to receivership proceedings for transitional living facilities.

400.9985 Interagency communication.—The agency, the department, the Agency for Persons with Disabilities, and the Department of Children and Families shall develop electronic systems to ensure that relevant information pertaining to the regulation of transitional living facilities and clients is timely and effectively communicated among agencies in order to facilitate the protection of clients. Electronic sharing of information shall include, at a minimum, a brain and spinal cord injury registry and a client abuse registry.

Section 2. Section 400.805, Florida Statutes, is repealed.

Section 3. The title of part V of chapter 400, Florida Statutes, consisting of sections 400.701-400.801, is redesignated as "INTERMEDIATE CARE FACILITIES."

Section 4. Subsection (9) of section 381.745, Florida Statutes, is amended to read:

381.745 Definitions; ss. 381.739-381.79.—As used in ss. 381.739-381.79, the term:

(9) "Transitional living facility" means a state-approved facility~~,~~ as defined and licensed under chapter 400 ~~or chapter 429, or a facility approved by the brain and spinal cord injury program in accordance with this chapter~~.

Section 5. Section 381.75, Florida Statutes, is amended to read:

381.75 Duties and responsibilities of the department~~, of transitional living facilities, and of residents~~.—Consistent with the mandate of s. 381.7395, the department shall develop and administer a multilevel treatment program for individuals who sustain brain or spinal cord injuries and who are referred to the brain and spinal cord injury program.

(1) Within 15 days after any report of an individual who has sustained a brain or spinal cord injury, the department shall notify the individual or the most immediate available family members of their right to assistance from the state, the services available, and the eligibility requirements.

(2) The department shall refer individuals who have brain or spinal cord injuries to other state agencies to ensure ~~assure~~ that rehabilitative services, if desired, are obtained by that individual.

(3) The department, in consultation with emergency medical service, shall develop standards for an emergency medical evacuation system that will ensure that all individuals who sustain traumatic brain or spinal cord injuries are transported to a department-approved trauma center that meets the standards and criteria established by the emergency medical service and the acute-care standards of the brain and spinal cord injury program.

(4) The department shall develop standards for designation of rehabilitation centers to provide rehabilitation services for individuals who have brain or spinal cord injuries.

(5) The department shall determine the appropriate number of designated acute-care facilities, inpatient rehabilitation centers, and outpatient rehabilitation centers~~,~~ needed based on incidence, volume of admissions, and other appropriate criteria.

(6) The department shall develop standards for designation of transitional living facilities to provide transitional living services for individuals who participate in the brain and spinal cord injury program ~~the opportunity to adjust to their disabilities and to develop physical and functional skills in a~~

~~supported living environment~~.

~~(a) The Agency for Health Care Administration, in consultation with the department, shall develop rules for the licensure of transitional living facilities for individuals who have brain or spinal cord injuries.~~

~~(b) The goal of a transitional living program for individuals who have brain or spinal cord injuries is to assist each individual who has such a disability to achieve a higher level of independent functioning and to enable that person to reenter the community. The program shall be focused on preparing participants to return to community living.~~

~~(c) A transitional living facility for an individual who has a brain or spinal cord injury shall provide to such individual, in a residential setting, a goal-oriented treatment program designed to improve the individual's physical, cognitive, communicative, behavioral, psychological, and social functioning, as well as to provide necessary support and supervision. A transitional living facility shall offer at least the following therapies: physical, occupational, speech, neuropsychology, independent living skills training, behavior analysis for programs serving brain-injured individuals, health education, and recreation.~~

~~(d) All residents shall use the transitional living facility as a temporary measure and not as a permanent home or domicile. The transitional living facility shall develop an initial treatment plan for each resident within 3 days after the resident's admission. The transitional living facility shall develop a comprehensive plan of treatment and a discharge plan for each resident as soon as practical, but no later than 30~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~days after the resident's admission. Each comprehensive treatment plan and discharge plan must be reviewed and updated as necessary, but no less often than quarterly. This subsection does not require the discharge of an individual who continues to require any of the specialized services described in paragraph (c) or who is making measurable progress in accordance with that individual's comprehensive treatment plan. The transitional living facility shall discharge any individual who has an appropriate discharge site and who has achieved the goals of his or her discharge plan or who is no longer making progress toward the goals established in the comprehensive treatment plan and the discharge plan. The discharge location must be the least restrictive environment in which an individual's health, well-being, and safety is preserved.~~

~~(7) Recipients of services, under this section, from any of the facilities referred to in this section shall pay a fee based on ability to pay.~~

Section 6. Subsection (4) of section 381.78, Florida Statutes, is amended to read:

381.78 Advisory council on brain and spinal cord injuries.—

(4) The council shall~~:~~

~~(a)~~ provide advice and expertise to the department in the preparation, implementation, and periodic review of the brain and spinal cord injury program.

~~(b) Annually appoint a five-member committee composed of one individual who has a brain injury or has a family member with a brain injury, one individual who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~groups: physicians, other allied health professionals,~~ ~~administrators of brain and spinal cord injury programs, and~~ ~~representatives from support groups with expertise in areas~~ ~~related to the rehabilitation of individuals who have brain or~~ ~~spinal cord injuries, except that one and only one member of the~~ ~~committee shall be an administrator of a transitional living~~ ~~facility. Membership on the council is not a prerequisite for~~ ~~membership on this committee.~~

~~1. The committee shall perform onsite visits to those~~ ~~transitional living facilities identified by the Agency for~~ ~~Health Care Administration as being in possible violation of the~~ ~~statutes and rules regulating such facilities. The committee~~ ~~members have the same rights of entry and inspection granted~~ ~~under s. 400.805(4) to designated representatives of the agency.~~

~~2. Factual findings of the committee resulting from an~~ ~~onsite investigation of a facility pursuant to subparagraph 1.~~ ~~shall be adopted by the agency in developing its administrative~~ ~~response regarding enforcement of statutes and rules regulating~~ ~~the operation of the facility.~~

~~3. Onsite investigations by the committee shall be funded~~ ~~by the Health Care Trust Fund.~~

~~4. Travel expenses for committee members shall be~~ ~~reimbursed in accordance with s. 112.061.~~

~~5. Members of the committee shall recuse themselves from~~ ~~participating in any investigation that would create a conflict~~ ~~of interest under state law, and the council shall replace the~~ ~~member, either temporarily or permanently.~~

Section 7. Subsection (5) of section 400.93, Florida Statutes, is amended to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

400.93 Licensure required; exemptions; unlawful acts; penalties.—

(5) The following are exempt from home medical equipment provider licensure, unless they have a separate company, corporation, or division that is in the business of providing home medical equipment and services for sale or rent to consumers at their regular or temporary place of residence pursuant to the provisions of this part:

(a) Providers operated by the Department of Health or Federal Government.

(b) Nursing homes licensed under part II.

(c) Assisted living facilities licensed under chapter 429, when serving their residents.

(d) Home health agencies licensed under part III.

(e) Hospices licensed under part IV.

(f) Intermediate care facilities and~~,~~ homes for special services~~, and transitional living facilities~~ licensed under part V.

(g) Transitional living facilities licensed under part XI.

(h) ~~(g)~~ Hospitals and ambulatory surgical centers licensed under chapter 395.

(i) ~~(h)~~ Manufacturers and wholesale distributors when not selling directly to consumers.

(j) ~~(i)~~ Licensed health care practitioners who use ~~utilize~~ home medical equipment in the course of their practice~~,~~ but do not sell or rent home medical equipment to their patients.

(k) ~~(j)~~ Pharmacies licensed under chapter 465.

Section 8. Subsection (21) of section 408.802, Florida Statutes, is amended to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

408.802 Applicability.—The provisions of this part apply to the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765:

(21) Transitional living facilities, as provided under part XI ~~V~~ of chapter 400.

Section 9. Subsection (20) of section 408.820, Florida Statutes, is amended to read:

408.820 Exemptions.—Except as prescribed in authorizing statutes, the following exemptions shall apply to specified requirements of this part:

(20) Transitional living facilities, as provided under part XI ~~V~~ of chapter 400, are exempt from s. 408.810(10).

Section 10. Effective July 1, 2015, a transitional living facility licensed before the effective date of this act pursuant to s. 400.805, Florida Statutes, must be licensed under part XI of chapter 400, Florida Statutes, as created by this act.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1512 (532862)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Stargel and others
SUBJECT:	Students with Disabilities
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Fav/CS**
3.	Elwell	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1512 creates a new scholarship program called "Personal Learning Scholarship Accounts" for kindergarten through grade 12 students with a disability, repeals the Special Diploma, and creates new pathways for students with disabilities who meet the requirements to earn a standard diploma.

The new scholarship program created by the bill:

- Specifies parent and student eligibility requirements, prohibitions, responsibilities and obligations;
- Delineates allowable expenditures related to elementary, secondary and postsecondary education expenses; and
- Provides funding, payment, and accountability responsibilities.

In addition to repealing the Special Diploma and Special Certificate of Completion as options for public school students effective July 1, 2015, the bill:

- Requires postsecondary goals and career transition planning processes begin before a student with a disability turns age 14.
- Provides students with disabilities with an additional opportunity to satisfy the requirements for a standard high school diploma.

Additionally, the bill allows a student with a disability to defer receipt of the standard high school diploma if the individual education plan (IEP) prescribes special education or services through age 21 and the student meets high school graduation and other requirements.

Under the bill, the Commissioner of Education must grant a permanent exemption to a student who suffers from such a severe cognitive disability or physical disability that the student permanently lacks the capacity to take statewide, standardized assessments. The State Board of Education must adopt rules that include expediting the exemption process.

The bill prohibits a school district from imposing any additional requirements and from charging fees associated with private instructional personnel who are employed by the parent or under contract to observe a student in a public school setting or provide services in the educational setting.

Finally, the bill provides that parents of a student with a substantial reading deficiency must be provided with specific information related to the criteria, policies, and evidence used to review a portfolio. The bill also creates a new, good cause exemption from retaining a 3rd grade student and prohibits a student from being retained more than once in the 3rd grade.

This bill and Senate Bill 2500, First Engrossed, the General Appropriations Bill for Fiscal Year 2014-2015, appropriate $18.4 million to the Agency for Persons with Disabilities for implementation of this program. $1.5 million of this amount is provided as startup funding for planning and implementation of the statewide pilot program which will begin enrolling parents and students on a first-come, first-served basis, no later than January 31, 2015.

The bill takes effect upon becoming a law, unless otherwise provided.

II. Present Situation:

Individuals with Disabilities Education Act (IDEA)[1]

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school.[2] As the state educational agency, the Florida Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.[3]

For each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.[4] In developing an IEP, the IEP team is required

[1] 20 U.S.C. §.1400 et. seq., as amended by P.L. 108-446; 34 C.F.R. § 300.17.
[2] 20 U.S.C. § 1412(a)(1).
[3] 20 U.S.C. § 1412(a)(11). 34 C.F.R. § 300.149.
[4] Rule 6A-6.03028(3), F.A.C.

to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.[5]

States receiving Individuals with Disabilities Education (IDEA) funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.[6]

Transition to Postsecondary Education and the Workforce

Citing research that students with disabilities are less likely than their peers to successfully transition from high school to postsecondary education or the workforce, the U.S. General Accounting Office (GAO) notes that those students face several longstanding challenges accessing services that may assist them, including services such as tutoring, vocational training, and assistive technology.[7] Eligible students with disabilities are entitled to transition planning services during high school, but after leaving high school, to receive services that facilitate their transition they must apply as adults and establish eligibility for programs administered by multiple federal agencies.[8] Students with disabilities may face delays in service and end up on waitlists if these programs are full.[9]

The IDEA requires that beginning not later than the first IEP to be in effect when the student turns 16, school officials must include in the IEP measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills.[10] The IEP also must specify the transition services[11] needed to assist the student in reaching those goals.[12] School officials are required to invite the student to a meeting where the transition services

[5] 20 U.S.C. s. 1414(d)(3)(A) and (B).
[6] 20 U.S.C. § 1415.
[7] *Students with Disabilities, Better Coordination Could Lessen Challenges in the Transition from High School*, U.S. Government Accounting Office (GAO), GAO-12-594, July 12, 2012. *See* http://gao.gov/products/GAO-12-594 (last visited February 22, 2014). Florida participated in the GAO review of federal programs.
[8] *Id.* Students remain eligible for transition planning and services, as well as other IDEA services, until they graduate from high school with a regular high school diploma or exceed the earlier of age 21 or the eligibility age for a free appropriate public education under state law. 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i) and (ii), and Rule 6A-6.03028(1)(a), F.A.C. While federal law authorizes students to receive a free appropriate public education up until age 22, eligibility for students aged 18-21 is determined by states. 20 U.S.C. § 1412(a)(1) and 34 C.F.R. § 300.102. In addition to IDEA, there are a range of services to support students with disabilities in their transition out of high school. The programs vary in the target population served, services provided, grant funding amounts, and other characteristics. In addition, they are administered through various federal agencies, each with its own eligibility requirements and application processes. GAO-12-594, July 12, 2012. Federally funded programs that provide transition services, as defined in the GAO report, are often delivered through state and local entities that have flexibility on how to administer services. *Id.*
[9] *Students with Disabilities, Better Coordination Could Lessen Challenges in the Transition from High School*, U.S. Government Accounting Office (GAO), GAO-12-594, July 12, 2012.
[10] 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).
[11] Under IDEA, transition services are defined as a coordinated set of activities that (1) is designed to be within a results-oriented process focused on improving the academic and functional achievement of a child with a disability to facilitate the child's movement from school to post-school activities; (2) is based on the individual child's needs, strengths, preferences, and interests; and (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 U.S.C. § 1401(34). Transition services are also defined in Rule 6A-6.03411(1)(nn), F.A.C.
[12] 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

detailed in the IEP are discussed.[13] When appropriate, they also must invite a representative of any participating outside agency that is likely to be responsible for providing or paying for services, with the prior consent of the parent or student who has reached the age of majority.[14]

During a Florida student's eighth grade year or during the school year of the student's 14th birthday, whichever occurs first, the IEP for a student with a disability must contain a statement of whether he or she is pursuing a course of study leading to a standard high school diploma or a special diploma.[15] Current law provides that nothing limits or restricts the right of an exceptional student solely to a special diploma or special certificate of completion.[16] A student must, upon proper request, be afforded the opportunity to fully meet all requirements and procedures in law[17] and qualify for a standard diploma upon graduation.[18]

Florida High School Diploma

Currently Florida public high school students have four options for obtaining a standard high school diploma -- a traditional 4-year, 24-credit option;[19] an 18-credit graduation option;[20] or completion of an International Baccalaureate (IB) or Advanced International Certificate of Education (AICE) curriculum.[21] In addition, current law requires each school district to adopt an early graduation policy allowing a high school student who completes 24 credits in less than eight semesters and meets the GPA and assessment requirements to graduate early.[22] A student who fails to meet the required credits or achieve a 2.0 GPA must be awarded a certificate of completion.[23] The state is not obligated to provide special education and related services to a student with a disability who has graduated from high school with a standard diploma.[24] This provision does not apply to a student who has graduated from high school, but has not been awarded a regular high school diploma.[25] A standard diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate of completion or a general educational development credential (GED).[26]

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[13] 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321, and Rule 6A-6.03028(3)(c)7., F.A.C.
[14] 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321(b)(3), and Rule 6A-6.03028(3)(c)8., F.A.C. At the discretion of the parent or the agency, the IEP team may include other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321(a)(6) and (c), and Rule 6A-6-6.03028(3)(c)6., F.A.C.
[15] Rule 6A-1.09961(2)(b), F.A.C., and Rule 6A-6.03028(3)(h)8., F.A.C.
[16] Section 1003.438, F.S.
[17] Sections 1003.428 or 1003.4282, F.S., as applicable.
[18] Section 1003.438, F.S.
[19] Section 1003.428, F.S., established high school graduation requirements beginning with students entering grade 9 in the 2007-2008 school year. Section 1003. 4282, F.S., established high school graduation requirements for students entering grade 9 in the 2013-2014 school year and thereafter.
[20] Section 1002.3105(5), F.S. Effective July 1, 2013, students may earn a standard high school diploma in 18 credits by achieving a 2.0 GPA; earning credit in the same 15 English Language Arts, mathematics, science, social studies, and fine and performing arts courses required under the traditional 24-credit option; and earning 3 elective credits, instead of the 6 electives required by the 24-credit option.
[21] Sections 1003.428 and 1003.4282, F.S.
[22] Section 1003.4281, F.S.,
[23] Section 1003.4282(7), F.S.
[24] 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i), and Rule 6A-6.03028(1)(a), F.A.C.
[25] 34 C.F.R. § 300.102(a)(3)(ii).
[26] 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i), and Rule 6A-6.03028(1)(a), F.A.C.

Florida Special Diploma

A student with a disability[27] must be awarded a special diploma upon meeting a combination of state and district school board requirements that are included in the district-adopted student progression plan.[28] School boards may award special diplomas based on two options.[29] For students entering ninth grade in or after 1999-2000, special diploma requirements for the first option must include:[30]

- Demonstration of proficiency at the independent, supported, or participatory level of each Florida academic standard for a special diploma, as determined through the IEP process;[31] or
- Mastery of Florida's academic standards through successful completion of courses that meet graduation requirements for a standard diploma;[32] and
- Completion of the minimum number of course credits for a special diploma as prescribed by the school board.[33]

The second option requires district school boards to include procedures for determining and certifying mastery of demonstrated employment and community competencies to ensure that the student:[34]

- Has achieved all the annual goals and short-term objectives which were specified on the IEP related to the employment and community competencies;
- Is employed in a community-based job, for the number of hours per week specified in the student's training plan, for the equivalent of one semester, and paid a minimum wage in compliance with the requirements of the Fair Labor Standards Act; and
- Has mastered the employment and community competencies specified in a training plan. The training plan must be developed and signed by the student, parent, teacher, and employer prior to placement in employment.

Each school board must develop procedures for ensuring that students may select and move between the special diploma options, if both options are provided by the school district, and between courses of study leading to standard or special diplomas, as appropriate.[35] A student who meets all special requirements of the district school board, but fails to meet the appropriate special state minimum requirements must be awarded a special certificate of completion.[36]

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[27] Section 1003.438, F.S., applies to a student who has been identified, in accordance with State Board of Education rules, as a student with a disability who has an intellectual disability; an autism spectrum disorder; a language impairment; an orthopedic impairment; and other health impairment; a traumatic brain injury; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; or a student who is deaf or hard of hearing or dual sensory impaired.
[28] Section 1003.438, F.S., Rule 6A-1.09401(1) and (3), F.A.C., and Rule 6A-1.09961(2)(c), F.A.C.
[29] Rule 6A-1.09961(1), F.A.C.
[30] Rule 6A-1.09961(1), F.A.C.
[31] Rule 6A-1.09961(12)(a), F.A.C.
[32] Rule 6A-1.09961(13), F.A.C.
[33] Rule 6A-1.09961(12)(b), F.A.C.
[34] Rule 6A-1.09961(14), F.A.C. The DOE notes that students seeking this option may also earn course credits, which are determined by the school board. The DOE also notes that in 2012, eight districts reported that they did not offer this option. DOE correspondence, February 24, 2014. On file with the Senate Education committee.
[35] Rule 6A-1.09961(2)(a), F.A.C.
[36] Section 1003.438, F.S.

Extraordinary Exemption

Current law provides a process for granting an extraordinary exemption from administration of a statewide, standardized assessment for a student with a disability who is prevented by a circumstance or condition from physically demonstrating the mastery of acquired skills that are measured by a statewide standardized assessment.[37] The IEP team may request an exemption from testing during a particular testing window.[38] The request must be made to the district superintendent who must make a recommendation to the Commissioner of Education. A parent is permitted to appeal the Commissioner's decision.[39]

III. Effect of Proposed Changes:

Personal Learning Scholarship Accounts

The bill creates a Personal Learning Scholarship Accounts program for kindergarten through grade 12 students who have a disability. The bill authorizes creation of personalized accounts for individual students, specifies parent and student obligations, delineates allowable expenditures related to elementary, secondary and postsecondary education, and provides funding and payment responsibilities. [40]

Student Eligibility

A parent may establish and maintain a personal account if his or her child:

- Is a resident of this state;
- Is eligible to enroll in kindergarten through grade 12 in a Florida public school;
- Has a disability that meets the Agency for Persons with Disabilities (APD) eligibility criteria;
- Is meeting "regular school attendance" requirements;
- Is the subject of an Individual Learning Services Plan (ILSP);[41] and
- Is a public school student, private school student, home education program student, a student receiving a McKay or FTC scholarship, or a student participating in a private tutoring program?

Students are not eligible if:

- The student or student's parent has accepted any payment, refund, or rebate from a provider of any services received while participating in the program;

[37] Section 1008.212, F.S.
[38] *Id.*
[39] *Id.*
[40] Disability means autism, as defined in s. 393.063(3), F.S.; cerebral palsy, as defined in s. 393.063(4), F.S.; Down syndrome, as defined in s. 393.063(13), F.S.; an intellectual disability, as defined in s. 393.063(21), F.S.; Prader-Willi syndrome, as defined in s. 393.063(25), F.S.; or Spina bifida, as defined in s. 393.063(36), F.S.; Williams syndrome; and, for a student in kindergarten, being a high-risk child, as defined in s. 393.063(20)(a), F.S.
[41] The ILSP is developed by APD, in consultation with the parent, for each student and documents the following: the student has an eligible disability; learning goals and objectives for the student that are linked directly to how program funds will be spent; how attendance requirements will be met (public school, private school, home education program, or a private tutoring program); and how progress towards meeting the individual learning goals and objectives specified in the plan will be assessed and documented for purposes of continued participation in the program.

- The student's participation in the program has been denied or revoked by the Executive Director for the Agency for Persons with Disabilities; or
- The student's parent has forfeited participation in the program for failure to comply with the program's requirements.

Parent and Student Obligations

A parent who applies for program participation is exercising his or her parental option to determine the appropriate placement or services that best meet the needs of his or her child. Parents are responsible for the following:

- Signing an agreement with the APD and annually submitting a notarized, sworn compliance statement to the department to:
  - Affirm that the student meets minimum student attendance requirements;[42]
  - Use funds only for authorized purposes to meet the student's goals and objectives in the ILSP;
  - Affirm that the student takes all appropriate assessments, in accordance with the academic program selected by the parent who enrolls the student in a private school, a home education program, or a scholarship program pursuant to ss. 1002.39 or 1002.395, F.S.;
- Requesting participation in the program at least 60 days before the date of the first program payment;
- Affirming that the student remains in good standing with the provider or school if those options are selected by the parent;
- Affirming that the parent will not transfer any college savings funds to another beneficiary and will not take possession of any funding contributed by the state;
- Applying for admission of his or her child to a private school if this option is selected by the parent;
- Annually renewing participation in the program;
- Be responsible for payment of eligible expenses in excess of the amount of the personal account; and
- Maintaining a portfolio of records for two years to document student learning and requiring it to be available for inspection upon 15 days written notice from the district school superintendent.

A parent who fails to comply with these requirements forfeits the personal account.

Allowable Expenditures

Funds from the personalized account may be used for the following, as specified in the student's ILSP:

[42] Pursuant to s. 1003.01, F.S., "regular school attendance" means the actual attendance of a student during the school day as defined by law and rules of the State Board of Education. Regular attendance within the intent of s. 1003.21, F.S., may be achieved by attendance in: a public school supported by public funds; a parochial, religious, or denominational school; a private school supported in whole or in part by tuition charges or by endowments or gifts; a home education program that meets the requirements of chapter 1002, F.S.; or a private tutoring program that meets the requirements of chapter 1002, F.S. *See also* ss. 1003.21 and 1003.24, F.S.

- Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content;
- Curriculum;
- Specialized services selected by the parent and specified in the student's ILSP, including, but not limited to applied behavior analysis services[43] and services provided by speech-language pathologists,[44] occupational therapists,[45] physical therapists,[46] and listening and spoken language specialists;[47]
- Enrollment in, or tuition or fees associated with enrollment in, an eligible private school, an eligible postsecondary educational institution, a private tutoring program,[48] a virtual program offered by a DOE-approved private online provider,[49] or an approved online course;[50]
- Fees for assessments specified in the student's ILSP;
- Contributions to a Coverdell education savings account for the benefit of the eligible student;[51] and
- Contracted services provided by a public school or school district, including classes and extracurricular programs for the services specified in the ILSP or additional services.

A student who receives services under a contract is not considered to be enrolled in a public school for eligibility purposes.

A specialized service provider, eligible private school, eligible postsecondary educational institution, private tutoring program provider, online or virtual program provider, public school, school district, or other entity receiving payments may not share, refund, or rebate any moneys from the personalized account to the parent or participating student.

Term of the Program

Under the bill, the payments made remain in force until a student fails to comply with the program requirements, has funds revoked by the APD Executive Director, graduates from high school, or reaches 22 years of age, whichever occurs first.

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[43] *See* ss. 627.6686 and 641.31098, F.S.
[44] *See* s. 468.1125, F.S.
[45] *See* s. 468.203, F.S.
[46] *See* s. 486.021, F.S.
[47] Providers must be approved by the DOE or the Agency for Persons with Disabilities (APD). The DOE maintains a list of approved providers. Providers may request approval from the department. If a provider is not on the current DOE-approved list, parents may request approval of a specified provider who must meet criteria (e.g., licensure or certification in an applicable field of study and delivery of services according to professionally accepted standards). Rule 6A-6.03033, F.A.C. See also http://www.floridaearlylearning.com/providers/provider_menu/specialized_instructional_services_providers.aspx (last visited March 19, 2014). All APD iBudget Waiver providers must be enrolled by the Agency for Healthcare Administration as a Medicaid provider and also sign a contract with APD to render waiver services. E-mail, APD, March 13, 2014. On file with the Senate Committee on Education. Service descriptions and a list eligible providers are available at http://www.flddresources.org/html/service_descriptions.htm (last visited March 19, 2014).
[48] *See* s. 1002.43, F.S.
[49] *See* s. 1002.45(2)(a), F.S.
[50] *See* ss. 1003.499 or 1004.0961, F.S.
[51] 26 U.S.C. § 530 of the Internal Revenue Code.

APD Executive Director

The bill requires the Executive Director to deny, suspend, or revoke a student's participation in the program or the use of program funds, if the student's health, safety, or welfare is in jeopardy or fraud is suspected. The Executive Director may also deny, suspend, or revoke the use of program funds for material noncompliance with law and rules.

APD

The bill authorizes the APD to perform direct program oversight and contract for some services. Under the bill, the APD may receive an administrative fee of up to ten percent from the appropriation for the program. The agency responsibilities include:

- Receiving applications and determines student eligibility;
- Developing individual learning services plans in consultation with the parent;
- Assigning a level of service category for each student that documents the nature and intensity of services needed to meet the learning outcomes specified in the plan;[52]
- Establishing and maintaining a separate Personal Learning Account for each eligible student;
- Verifying qualifying expenditures;
- Establishing a list of eligible providers;
- Requiring working with an Advisory Work Group to develop a newly created Individual Learning Services Plan, levels of services requirements, a system for payment of claims and providers, and a system to document and assess progress toward meeting the individual learning goals and objectives in the services plan; and
- Requiring rules to implement the program and enroll the first students in a statewide pilot program on a first-come, first-served basis no later than January 31, 2015.

Department of Education

The DOE's responsibilities are to maintain a list of eligible private schools and compare the list of students participating in the program with the public school enrollment lists before each program payment to avoid duplicate payments.

Florida K-20 Education Code

The Commissioner of Education, the Department of Education, and the school districts retain all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

Auditor General

The Auditor General must conduct an annual financial and operational audit related to the program. As a part of this audit, the Auditor General must verify, at a minimum, the total amount of students served and eligibility of reimbursement made by the APD and transmit that information to the APD.

[52] The level of service category will be used to determine the amount of the award for the student.

Transition Planning

Under the bill, the postsecondary goals and career transition planning process begins before a student with a disability turns 14 so that a plan is in place by the time he or she turns 16. The IEP must include specific components, including a statement of measurable, long term postsecondary and career education goals, a statement of intent to pursue a standard high school diploma, as determined by the parent, and a description of how the student will fully meet the standard high school diploma requirements. Any change in goals must be approved by the parent and is subject to an independent review.

High School Graduation[53]

The bill repeals the special diploma and the special certificate of completion as graduation options for students with disabilities, effective July 1, 2015.[54]

The bill provides a student who has a disability and for whom the Florida Alternate Assessment (FAA) is the most appropriate measure of the student's skills with the opportunity to satisfy the requirements for a standard high school diploma through the following:[55]

- A combination of appropriate course substitutions, assessments, industry certifications, and other options that meet the criteria specified in State Board of Education rule.
- A portfolio of quantifiable evidence documenting a student's mastery of academic standards using rigorous metrics that are specified in State Board of Education rule.[56]

These provisions apply to students entering grade 9 in the 2014-2015 school year and thereafter.

The bill allows a student to defer receipt of the standard high school diploma if the IEP prescribes special education or services through age 21, the student meets the high school graduation requirements, and is enrolled in accelerated college credit instruction, industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or pre-apprenticeship program. Additionally, the bill allows a student who receives a certificate of completion and has an IEP that prescribes special education, transition planning, transition

[53] The importance of making informed decisions about diploma options for students with disabilities has been underscored in recent reports by the National Center for Learning Disabilities, *A Critical Look at the Graduation Rate of Students with Disabilities*, 2013, and the National Center on Educational Outcomes, *Diploma Options, Graduation Requirements, and Exit Exams for Youth with Disabilities*, 2012. *See* http://www.ncld.org/?__utma=56814325.123698153.1394924720.1394924720.1394924720.1&__utmb=56814325.1.10.1394924720&__utmc=56814325&__utmx=-&__utmz=56814325.1394924720.1.1.utmcsr=bing|utmccn=(organic)|utmcmd=organic|utmctr=National%20Center%20for%20Learning%20Disabilities%2C%20A%20Critical%20Look%20at%20the%20Graduation%20Rate%20of%20Students%20with%20Disabilities%2C%202013%2C%20See&__utmv=-&__utmk=227182617http://ici.umn.edu/index.php?products/view/460 (last visited March 15, 2014).

[54] The 2013 K-20 Students with Disabilities Education Pathway Task Force recommended the repeal of Florida's special diploma. The task force was created pursuant to Special Appropriation 129 in the General Appropriations Act, chapter 2013-40, L.O.F.

[55] According to the DOE, the percent of students assessed on the FAA, as compared to students assessed on other statewide, standardized assessments (i.e., FCAT, FCAT 2.0, and end-of-course assessments) was 1.2 percent for 2009-2010, 2010-2011, and 2011-2012. DOE e-mail, April 3, 2014. On file with the Senate Education Committee.

[56] A portfolio may consist of documented work experience, internships, and community service.

services, or related services through 21 years of age to continue to receive the specified instruction and services.

Statewide, Standardized Assessments

A student who has a disability and for whom the IEP team determines that the statewide, standardized assessments cannot accurately measure the student's abilities, taking into consideration all allowable accommodations, must have assessment results waived for the purpose of receiving a course grade and a standard high school diploma.[57] The waiver must be designated on the student's transcript.

Based on information that a reasonably prudent person would rely upon, the Commissioner of Education must grant a permanent exemption to a student who suffers from such a severe cognitive disability or physical disability that the student permanently lacks the capacity to take statewide, standardized assessments. The State Board of Education must adopt rules that include expediting the exemption process.

Other

Current law authorizes private instructional personnel who are employed by the parent or under contract to observe a student in a public school setting or provide services in the educational setting at a time agreed upon by the private instructional personnel and the school.[58] The bill prohibits a school district from imposing any additional requirements and from charging fees in such circumstances.

Any third-grade student scoring Level 1 on a statewide, standardized assessment for grade 3 students must be retained in third grade.[59] Some students may qualify for a good cause exemption and be promoted to fourth grade.[60] Through a student portfolio, a student may be promoted to fourth grade if he or she demonstrates at least a Level 2 performance on the statewide standardized assessment.[61]

The bill provides that parents of a student with a substantial reading deficiency must be provided with specific information related to the criteria, policies and evidence used to review a portfolio. The bill allows the parent of a third grade student who is at risk of retention to request that the school immediately start compiling a portfolio. The bill also requires that a student who was granted a good cause exemption be provided with intensive reading instruction and intervention. The bill creates a new good cause exemption from retention of a 3rd grade student who was previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of two years and

[57] Section 1008.22(3)(c)2., F.S. This applies to any student who is documented as having an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; an emotional or behavioral disability; an orthopedic or other health impairment; an autism spectrum disorder; a traumatic brain injury; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia. Section 1007.02(2), F.S.
[58] Section 1003.572(3), F.S. These personnel include licensed speech-language pathologists, occupational therapists, physical therapists, and psychologists and must meet the background screening requirements in s. 1012.32 or s. 1012.321, F.S.
[59] Section 1008.25(5)(b), F.S.
[60] Section 1008.25(6)(b), F.S.
[61] Section 1008.25(6)(b)4., F.S.

received intensive reading intervention for two or more years, but still demonstrates a deficiency in reading. Additionally, the bill prohibits a student from being retained in 3rd grade more than once.

The bill takes effect upon becoming a law, unless otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article IX, s. 1, Fla. Const., provides in part that "[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people require." The Opportunity Scholarship Program (OSP) was found unconstitutional as fostering plural, nonuniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools in *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006). However, the Florida Supreme Court also noted that "[w]e reject the suggestion by the State and amici that other publicly funded educational and welfare programs would necessarily be affected by our decision. Other educational programs, such as the program for exceptional students at issue in *Scavella*, are structurally different from the OSP, which provides a systematic private school alternative to the public school system mandated by our constitution." *Id.* at 412.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A family of a student with a disability eligible to participate in this program would decide which services would best meet their student's needs and spend funds accordingly, within the limitations of the personal account established under CS/CS/SB 1512. Families of students not currently enrolled in a public school would be eligible for funding for authorized services, making those services more accessible and affordable.

C. Government Sector Impact:

Student eligibility for funding under the Personal Learning Scholarship Accounts for program is determined based on the student having a disability as defined in the bill and meeting the APD eligibility requirements.

This bill and Senate Bill 2500, First Engrossed, the General Appropriations Bill for Fiscal Year 2014-2015, appropriate $18.4 million to the Agency for Persons with Disabilities for implementation of this program. $1.5 million of this amount is provided as startup funding for planning and implementation of the statewide pilot program which will begin enrolling parents and students on a first-come, first-served basis, no later than January 31, 2015.

For the pilot program, the Agency for Persons with Disabilities will provide scholarships for eligible students in amounts from $5,000 to $19,000 based on service levels established by the agency. Eligible students in public school, students who participate in the McKay Scholarship program or the Florida Tax Credit Scholarship program will receive 50% of the scholarship amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.81, 409.1451, 1003.4282, 1003.572, 1007.263, and 1008.25.

This bill creates the following sections of the Florida Statutes: 1002.385, 1003.5716, and 1008.2121.

This bill repeals section 1003.438 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Education on April 2, 2014:
The Committee Substitute:

- Reassigns the major responsibilities for the program from the school districts, the Department of Education, and the Commissioner of Education to the Agency for Persons with Disabilities;
- Revises the eligibility requirements for students whose parents choose to participate in the program;
- Revises the source of funding for the program;
- Requires the APD to work with an Advisory Work Group to develop a newly created Individual Learning Service Plan, levels of services requirements, a system for payment of claims and providers, and a system to document and assess progress toward meeting the individual learning goals and objectives in the services plan;
- Requires rules to implement the program and enroll the first students in a statewide pilot program on a first-come, first-served basis no later than January 31, 2015; and
- Provides that the new requirements for attaining a standard high school diploma apply to students for whom the Florida Alternate Assessment is the most appropriate measure of the student's skills.

CS by Education on March 18, 2014:
The committee substitute:

- Adds a definition of an "approved provider" to mean a provider approved by the Agency for Persons with Disabilities or approved by the Department of Education pursuant to s. 1002.66, F.S.;
- Adds that a student having Williams syndrome is eligible to participate in the program;
- Adds a new requirement that parents maintain a portfolio of records for two years to document student learning and further requires the portfolio to be available for inspection upon 15 days written notice from the district school superintendent;
- Adds a requirement for the State Board of Education to adopt rules to administer an electronic system of payment for authorized expenditures;
- Re-assigns to the Department of Education the Chief Financial Officer's responsibility for payments to fund personalized accounts;
- Clarifies that only a student who has an intellectual or cognitive disability and who takes the Florida Alternate Assessment may use new criteria to satisfy standard high school diploma requirements;
- Adds a provision allowing the parent of a third grade student who is at risk of retention to request that the school immediately start compiling a portfolio;
- Adds a requirement that a student who was granted a good cause exemption be provided with intensive reading instruction and intervention and requires the school district to help schools and teachers meet this requirement;
- Creates a new good cause exemption from retaining a 3rd grade student who:
  - Received intensive reading intervention for two or more years, but still demonstrates a deficiency in reading; and
  - Was previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of two years;
- Adds a provision that prohibits a student from being retained in 3rd grade more than once;
- Eliminates the specialty high school diploma designation; and

- Makes technical and conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 94 and 95
insert:

Section 1. Paragraph (c) is added to subsection (1), paragraph (f) of subsection (2), subsection (3), subsection (5), subsection (6), paragraph (e) of subsection (7), paragraphs (c) and (e) of subsection (8), paragraphs (d), (j) and (o) of subsection (9), and paragraph (a) of subsection (12) of section 1002.395, Florida Statutes, are amended, paragraphs (h) through

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(j) of subsection (2) are redesignated as paragraphs (i) through (k), respectively, and a new paragraph (h) is added to that subsection, paragraph (g) is added to subsection (7), and subsection (16) is added to that section, to read:

1002.395 Florida Tax Credit Scholarship Program.—

(1) FINDINGS AND PURPOSE.—

(c) The purpose of this section is not to prescribe the standards or curriculum for private schools. A private school retains the authority to determine its own standards and curriculum.

(2) DEFINITIONS.—As used in this section, the term:

(f) "Eligible nonprofit scholarship-funding organization" means a state university; or an independent college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; or is a charitable organization that:

1. Is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code;

2. Is a Florida entity formed under chapter 607, chapter 608, or chapter 617 and whose principal office is located in the state; and

3. Complies with subsections ~~the provisions of subsection~~ (6) and (16).

(h) "Household income" has the same meaning as the term "income" is defined in the Income Eligibility Guidelines for free and reduced price meals under the National School Lunch Program in 7 C.F.R. part 210 as published in the Federal

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Register by the United States Department of Agriculture.

(3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

(a) The Florida Tax Credit Scholarship Program is established.

(b) For the 2014-2015 and 2015-2016 school years, contingent upon available funds, a student is eligible for a Florida tax credit scholarship under this section if the student meets one or more of the following criteria:

1. The student qualifies for free or reduced-price school lunches under the National School Lunch Act or is on the direct certification list; ~~and:~~

~~a. Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;~~

~~b. Received a scholarship from an eligible nonprofit scholarship-funding organization or from the State of Florida during the previous school year; or~~

~~c. Is eligible to enter kindergarten through fifth grade.~~

2. The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care as defined in s. 39.01; or~~.~~

3. The student continues in the scholarship program as long as the student’s household income level does not exceed 230 percent of the federal poverty level.

~~4. The student, who is a first-time tax credit scholarship recipient, is a sibling of a student who is continuing in the scholarship program and who resides in the same household as the student if the sibling meets one or more of the criteria specified in subparagraphs 1. and 2. and as long as the~~

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~~student's and sibling's household income level does not exceed 230 percent of the federal poverty level.~~

(c) For the 2016-2017 school year and thereafter, contingent upon available funds, a student is eligible for a Florida tax credit scholarship under this section if the student meets one or more of the following criteria:

1. The student is on the direct certification list or the student's household income level does not exceed 185 percent of the federal poverty level; or

2. The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care as defined in s. 39.01.

A student who initially receives a scholarship based on eligibility under subparagraph (b)2. or subparagraph (c)2. remains eligible until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student's household income level. A sibling of a student who is participating in the scholarship program under this subsection is eligible for a scholarship if the student resides in the same household as the sibling.

(5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

(a)1. The tax credit cap amount is $229 million in the 2012-2013 state fiscal year.

2. In the 2013-2014 state fiscal year and each state fiscal year thereafter, the tax credit cap amount is the tax credit cap amount in the prior state fiscal year. However, in any state fiscal year when the annual tax credit amount for the prior state fiscal year is equal to or greater than 90 percent of the

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tax credit cap amount applicable to that state fiscal year, the tax credit cap amount shall increase by 25 percent. The Department of Education and Department of Revenue~~department~~ shall publish on their websites~~its website~~ information identifying the tax credit cap amount when it is increased pursuant to this subparagraph.

(b) A taxpayer may submit an application to the department for a tax credit or credits under one or more of s. 211.0251, s. 212.1831, s. 220.1875, s. 561.1211, or s. 624.51055.

1. The taxpayer shall specify in the application each tax for which the taxpayer requests a credit and the applicable taxable year for a credit under s. 220.1875 or s. 624.51055 or the applicable state fiscal year for a credit under s. 211.0251, s. 212.1831, or s. 561.1211. The department shall approve tax credits on a first-come, first-served basis and must obtain the division's approval before ~~prior to~~ approving a tax credit under s. 561.1211.

2. Within 10 days after approving an application, the department shall provide a copy of its approval letter to the eligible nonprofit scholarship-funding organization specified by the taxpayer in the application.

(c) If a tax credit approved under paragraph (b) is not fully used within the specified state fiscal year for credits under s. 211.0251, s. 212.1831, or s. 561.1211 or against taxes due for the specified taxable year for credits under s. 220.1875 or s. 624.51055 because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. However, any taxpayer that seeks to carry forward an unused amount of tax credit must

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submit an application to the department for approval of the carryforward tax credit in the year that the taxpayer intends to use the carryforward. The department must obtain the division's approval prior to approving the carryforward of a tax credit under s. 561.1211.

(d) A taxpayer may not convey, assign, or transfer an approved tax credit or a carryforward tax credit to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. However, a tax credit under s. 211.0251, s. 212.1831, s. 220.1875, s. 561.1211, or s. 624.51055 may be conveyed, transferred, or assigned between members of an affiliated group of corporations if the type of tax credit under s. 211.0251, s. 212.1831, s. 220.1875, s. 561.1211, or s. 624.51055 remains the same. A taxpayer shall notify the department of its intent to convey, transfer, or assign a tax credit to another member within an affiliated group of corporations. The amount conveyed, transferred, or assigned is available to another member of the affiliated group of corporations upon approval by the department. The department shall obtain the division's approval before approving a conveyance, transfer, or assignment of a tax credit under s. 561.1211.

(e) Within any state fiscal year, a taxpayer may rescind all or part of a tax credit approved under paragraph (b). The amount rescinded shall become available for that state fiscal year to another eligible taxpayer as approved by the department if the taxpayer receives notice from the department that the rescindment has been accepted by the department. The department must obtain the division's approval prior to accepting the

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rescindment of a tax credit under s. 561.1211. Any amount rescinded under this paragraph shall become available to an eligible taxpayer on a first-come, first-served basis based on tax credit applications received after the date the rescindment is accepted by the department.

(f) For purposes of calculating the underpayment of estimated corporate income taxes pursuant to s. 220.34 and tax installment payments for taxes on insurance premiums or assessments under s. 624.5092, the final amount due is the amount after credits earned under s. 220.1875 or s. 624.51055 for contributions to eligible nonprofit scholarship-funding organizations are deducted.

1. For purposes of determining if a penalty or interest shall be imposed for underpayment of estimated corporate income tax pursuant to s. 220.34(2)(d)1., a taxpayer may, after earning a credit under s. 220.1875, reduce the following estimated payment in that taxable year by the amount of the credit. This subparagraph applies to contributions made on or after July 1, 2014.

2. For purposes of determining if a penalty under s. 624.5092 shall be imposed, an insurer may, after earning a credit under s. 624.51055, reduce the following installment payment of 27 percent of the amount of the net tax due as reported on the return for the preceding year under s. 624.5092(2)(b) by the amount of the credit. This subparagraph applies to contributions made on or after July 1, 2014.

(6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS.—An eligible nonprofit scholarship-funding organization:

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(a) Must comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.

(b) Must comply with the following background check requirements:

1. All owners and operators as defined in subparagraph (2)(i)1. ~~(2)(h)1.~~ are, before ~~upon~~ employment or engagement to provide services, subject to level 2 background screening as provided under chapter 435. The fingerprints for the background screening must be electronically submitted to the Department of Law Enforcement and can be taken by an authorized law enforcement agency or by an employee of the eligible nonprofit scholarship-funding organization or a private company who is trained to take fingerprints. However, the complete set of fingerprints of an owner or operator may not be taken by the owner or operator. The results of the state and national criminal history check shall be provided to the Department of Education for screening under chapter 435. The cost of the background screening may be borne by the eligible nonprofit scholarship-funding organization or the owner or operator.

2. Every 5 years following employment or engagement to provide services or association with an eligible nonprofit scholarship-funding organization, each owner or operator must meet level 2 screening standards as described in s. 435.04, at which time the nonprofit scholarship-funding organization shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for level 2 screening. If the fingerprints of an owner or operator are not retained by the Department of Law Enforcement under subparagraph 3., the owner or operator must electronically file a complete

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set of fingerprints with the Department of Law Enforcement. Upon submission of fingerprints for this purpose, the eligible nonprofit scholarship-funding organization shall request that the Department of Law Enforcement forward the fingerprints to the Federal Bureau of Investigation for level 2 screening, and the fingerprints shall be retained by the Department of Law Enforcement under subparagraph 3.

3. ~~All~~ Fingerprints submitted to the Department of Law Enforcement as required by this paragraph must be retained by the Department of Law Enforcement in a manner approved by rule and entered in the statewide automated biometric identification system authorized by s. 943.05(2)(b). The fingerprints must thereafter be available for all purposes and uses authorized for arrest fingerprints entered in the statewide automated biometric identification system pursuant to s. 943.051.

4. The Department of Law Enforcement shall search all arrest fingerprints received under s. 943.051 against the fingerprints retained in the statewide automated biometric identification system under subparagraph 3. Any arrest record that is identified with an owner’s or operator’s fingerprints must be reported to the Department of Education. The Department of Education shall participate in this search process by paying an annual fee to the Department of Law Enforcement and by informing the Department of Law Enforcement of any change in the employment, engagement, or association status of the owners or operators whose fingerprints are retained under subparagraph 3. The Department of Law Enforcement shall adopt a rule setting the amount of the annual fee to be imposed upon the Department of Education for performing these services and establishing the

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procedures for the retention of owner and operator fingerprints and the dissemination of search results. The fee may be borne by the owner or operator of the nonprofit scholarship-funding organization.

5. A nonprofit scholarship-funding organization whose owner or operator fails the level 2 background screening is not ~~shall not be~~ eligible to provide scholarships under this section.

6. A nonprofit scholarship-funding organization whose owner or operator in the last 7 years has filed for personal bankruptcy or corporate bankruptcy in a corporation of which he or she owned more than 20 percent shall not be eligible to provide scholarships under this section.

7. In addition to the offenses listed in s. 435.04, a person required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, and must not have been adjudicated delinquent, and the record must not have been sealed or expunged for, any of the following offenses or any similar offense of another jurisdiction:

a. Any authorizing statutes, if the offense was a felony.

b. This chapter, if the offense was a felony.

c. Section 409.920, relating to Medicaid provider fraud.

d. Section 409.9201, relating to Medicaid fraud.

e. Section 741.28, relating to domestic violence.

f. Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.

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g. Section 817.234, relating to false and fraudulent insurance claims.

h. Section 817.505, relating to patient brokering.

i. Section 817.568, relating to criminal use of personal identification information.

j. Section 817.60, relating to obtaining a credit card through fraudulent means.

k. Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.

l. Section 831.01, relating to forgery.

m. Section 831.02, relating to uttering forged instruments.

n. Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.

o. Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

p. Section 831.30, relating to fraud in obtaining medicinal drugs.

q. Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

(c) Must not have an owner or operator who owns or operates an eligible private school that is participating in the scholarship program.

(d) Must provide scholarships, from eligible contributions, to eligible students for the cost of:

1. Tuition and fees for an eligible private school; or

2. Transportation to a Florida public school that is located outside the district in which the student resides or to

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a lab school as defined in s. 1002.32.

(e) Must give first priority to eligible students who received a scholarship from an eligible nonprofit scholarship-funding organization or from the State of Florida during the previous school year. Beginning in the 2016-2017 school year, an eligible nonprofit scholarship-funding organization shall give priority to new applicants whose household income levels do not exceed 185 percent of the federal poverty level or who are in foster care or out-of-home care.

(f) Must provide a scholarship to an eligible student on a first-come, first-served basis unless the student qualifies for priority pursuant to paragraph (e).

(g) May not restrict or reserve scholarships for use at a particular private school or provide scholarships to a child of an owner or operator.

(h) Must allow a student in foster care or out-of-home care to apply for a scholarship at any time.

(i) ~~(h)~~ Must allow an eligible student to attend any eligible private school and must allow a parent to transfer a scholarship during a school year to any other eligible private school of the parent’s choice.

(j) ~~(i)~~ 1. May use up to 3 percent of eligible contributions received during the state fiscal year in which such contributions are collected for administrative expenses if the organization has operated under this section for at least 3 state fiscal years and did not have any negative financial findings in its most recent audit under paragraph (m) ~~(l)~~. Such administrative expenses must be reasonable and necessary for the organization’s management and distribution of eligible

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contributions under this section. No funds authorized under this subparagraph shall be used for lobbying or political activity or expenses related to lobbying or political activity. Up to ~~No more than~~ one-third of the funds authorized for administrative expenses under this subparagraph may be used for expenses related to the recruitment of contributions from taxpayers. In any year an eligible non-profit scholarship funding organization is permitted under this subparagraph to use eligible contributions for administrative expenses, any application fee charged by the organization for an application for scholarship shall be expended for scholarships to students.

2. Must expend for annual or partial-year scholarships an amount equal to or greater than 75 percent of the net eligible contributions remaining after administrative expenses during the state fiscal year in which such contributions are collected. No more than 25 percent of such net eligible contributions may be carried forward to the following state fiscal year. All amounts carried forward, for audit purposes, must be specifically identified for particular students, by student name and the name of the school to which the student is admitted, subject to the requirements of s. 1002.22, s. 1002.221, 20 U.S.C. s. 1232g, and the applicable rules and regulations issued pursuant thereto. Any amounts carried forward shall be expended for annual or partial-year scholarships in the following state fiscal year. Net eligible contributions remaining on June 30 of each year that are in excess of the 25 percent that may be carried forward shall be returned to the State Treasury for deposit in the General Revenue Fund.

3. Must, before granting a scholarship for an academic

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year, document each scholarship student's eligibility for that academic year. A scholarship-funding organization may not grant multiyear scholarships in one approval process.

(k) ~~(j)~~ Must maintain separate accounts for scholarship funds and operating funds.

(l) ~~(k)~~ With the prior approval of the Department of Education, may transfer funds to another eligible nonprofit scholarship-funding organization if additional funds are required to meet scholarship demand at the receiving nonprofit scholarship-funding organization. A transfer is ~~shall be~~ limited to the greater of $500,000 or 20 percent of the total contributions received by the nonprofit scholarship-funding organization making the transfer. All transferred funds must be deposited by the receiving nonprofit scholarship-funding organization into its scholarship accounts. All transferred amounts received by any nonprofit scholarship-funding organization must be separately disclosed in the annual financial and compliance audit required in this section.

(m) ~~(l)~~ Must provide to the Auditor General and the Department of Education a report on the results of an annual financial ~~and compliance~~ audit of its accounts and records conducted by an independent certified public accountant ~~and~~ in accordance with auditing standards generally accepted in the United States, government auditing standards, and rules promulgated~~adopted~~ by the Auditor General. The audit report~~must be conducted in compliance with generally accepted auditing standards and~~ must include a report on financial statements presented in accordance with generally accepted accounting principles~~ set forth by the American Institute of Certified~~

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~~Public Accountants for not-for-profit organizations and a determination of compliance with the statutory eligibility and expenditure requirements set forth in this section~~. Audit reports~~Audits~~ must be provided to the Auditor General and the Department of Education within 180 days after completion of the eligible nonprofit scholarship-funding organization's fiscal year. The Auditor General shall review all audit reports submitted pursuant to this paragraph. The Auditor General shall request any significant items that were omitted in violation of a rule adopted by the Auditor General. The items must be provided within 45 days after the date of the request. If the scholarship-funding organization does not comply with the Auditor General's request, the Auditor General shall notify the Legislative Auditing Committee.

(n) ~~(m)~~ Must prepare and submit quarterly reports to the Department of Education pursuant to paragraph (9)(m). In addition, an eligible nonprofit scholarship-funding organization must submit in a timely manner any information requested by the Department of Education relating to the scholarship program.

(o) ~~(n)~~1.a. Must participate in the joint development of agreed-upon procedures to be performed by an independent certified public accountant as required under paragraph (8)(e) if the scholarship-funding organization provided more than $250,000 in scholarship funds to an eligible private school under this section during the 2009-2010 state fiscal year. The agreed-upon procedures must uniformly apply to all private schools and must determine, at a minimum, whether the private school has been verified as eligible by the Department of Education under paragraph (9)(c); has an adequate accounting

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system, system of financial controls, and process for deposit and classification of scholarship funds; and has properly expended scholarship funds for education-related expenses. During the development of the procedures, the participating scholarship-funding organizations shall specify guidelines governing the materiality of exceptions that may be found during the accountant's performance of the procedures. The procedures and guidelines shall be provided to private schools and the Commissioner of Education by March 15, 2011.

b. Must participate in a joint review of the agreed-upon procedures and guidelines developed under sub-subparagraph a., by February 2013 and biennially thereafter, if the scholarship-funding organization provided more than $250,000 in scholarship funds to an eligible private school under this section during the state fiscal year preceding the biennial review. If the procedures and guidelines are revised, the revisions must be provided to private schools and the Commissioner of Education by March 15, 2013, and biennially thereafter.

c. Must monitor the compliance of a private school with paragraph (8)(e) if the scholarship-funding organization provided the majority of the scholarship funding to the school. For each private school subject to paragraph (8)(e), the appropriate scholarship-funding organization shall notify the Commissioner of Education by October 30, 2011, and annually thereafter of:

(I) A private school's failure to submit a report required under paragraph (8)(e); or

(II) Any material exceptions set forth in the report required under paragraph (8)(e).

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2. Must seek input from the accrediting associations that are members of the Florida Association of Academic Nonpublic Schools when jointly developing the agreed-upon procedures and guidelines under sub-subparagraph 1.a. and conducting a review of those procedures and guidelines under sub-subparagraph 1.b.

(p) Must maintain the surety bond or letter of credit required by subsection (16). The amount of the surety bond or letter of credit may be adjusted quarterly to equal the actual amount of undisbursed funds based upon submission by the organization of a statement from a certified public accountant verifying the amount of undisbursed funds. The requirements of this paragraph are waived if the cost of acquiring a surety bond or letter of credit exceeds the average 10-year cost of acquiring a surety bond or letter of credit by 200 percent. The requirements of this paragraph are waived for a state university; or an independent college or university which is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(q) Must provide to the Auditor General any information or documentation requested in connection with an operational audit of a scholarship funding organization conducted pursuant to s. 11.45.

~~Any and all~~ Information and documentation provided to the Department of Education and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution under this section shall remain confidential at all times in

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accordance with s. 213.053.

(7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—

(e) The parent shall ensure that the student participating in the scholarship program takes the norm-referenced assessment offered by the private school. The parent may also choose to have the student participate in the statewide assessments pursuant to s. 1008.22. If the parent requests that the student participating in the scholarship program take statewide assessments pursuant to s. 1008.22 and the private school has not chosen to offer and administer the statewide assessments, the private school~~parent~~ is responsible for transporting the student in a manner as agreed upon by the parent, which may include but not be limited to transportation by the parent, to the assessment site designated by the school district, and for making arrangements for the student to take the assessments at an assessment site designated by the school district in accordance with the district's assessment schedule.

(g) The parent shall authorize the nonprofit scholarship-funding organization to access information needed for income eligibility determination and verification held by other state or federal agencies, including the Department of Revenue, the Department of Children and Families, the Department of Education, the Department of Economic Opportunity, and the Agency for Health Care Administration.

(8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An eligible private school may be sectarian or nonsectarian and must:

(c) Be academically accountable to the parent for meeting the educational needs of the student by:

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1. At a minimum, annually providing to the parent a written explanation of the student's progress.

2. Annually administering or making provision for students participating in the scholarship program in grades 3 through 10 to take one of the nationally norm-referenced tests identified by the Department of Education or the statewide assessments pursuant to s. 1008.22. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. A participating private school must report a student's scores to the parent. A participating private school must annually report by August 15 the scores of all participating students to the Learning System Institute~~independent research organization~~ described in paragraph (9)(j).

3. Providing~~Cooperating with~~ the scholarship student whose parent chooses to have the student participate in the statewide assessments pursuant to s. 1008.22, transportation in a manner as agreed upon by the parent, which may include but not limited to transportation by the parent, to the assessment site designated by the school district, and making arrangements for the student to take the assessments at an assessment site designated by the school district in accordance with the district's assessment schedule or, if a private school chooses to offer the statewide assessments, administering the assessments at the school.

a. A participating private school may choose to offer and administer the statewide assessments to all students who attend the private school in grades 3 through 10.

b. A participating private school must submit a request in

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writing to the Department of Education by March 1 of each year in order to administer the statewide assessments in the subsequent school year.

(e) Annually contract with an independent certified public accountant to perform the agreed-upon procedures developed under paragraph (6)(o) ~~(6)(n)~~ and produce a report of the results if the private school receives more than $250,000 in funds from scholarships awarded under this section in the 2010-2011 state fiscal year or a state fiscal year thereafter. A private school subject to this paragraph must submit the report by September 15, 2011, and annually thereafter to the scholarship-funding organization that awarded the majority of the school's scholarship funds. The agreed-upon procedures must be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

The inability of a private school to meet the requirements of this subsection shall constitute a basis for the ineligibility of the private school to participate in the scholarship program as determined by the Department of Education.

(9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of Education shall:

(d) Annually verify the eligibility of expenditures as provided in paragraph (6)(d) using the audit required by paragraph (6)(m) and s. 11.45(2)(k) ~~(6)(l)~~.

(j) Issue a project grant award to the Learning System Institute at the Florida State University~~Select an independent research organization, which may be a public or private entity or university~~, to which participating private schools must

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report the scores of participating students on the nationally norm-referenced tests or the statewide assessments administered by the private school in grades 3 through 10. The project term is 2 years, and the amount of the project is up to $500,000 per year. The project grant award must be reissued in 2 year intervals in accordance with this paragraph.

1. The Learning System Institute ~~independent research organization~~ must annually report to the Department of Education on the student performance ~~year-to-year learning gains~~ of participating students:

a. On a statewide basis. The report shall also include, to the extent possible, a comparison of scholarship~~these~~ students' performance~~learning gains~~ to the statewide student performance~~learning gains~~ of public school students with socioeconomic backgrounds similar to those of students participating in the scholarship program. To minimize costs and reduce time required for the Learning System Institute's~~independent research organization's~~ analysis and evaluation, the Department of Education shall coordinate with the Learning System Institute to provide data to the Learning System Institute in order to conduct analyses of matched students from public school assessment data and calculate control group student performance~~learning gains~~ using an agreed-upon methodology ~~outlined in the contract~~ with the Learning System Institute~~independent research organization~~; and

b. On an individual school basis. The annual report must include student performance for each participating private school in which at least 51 percent of the total enrolled students in the private school participated in the Florida Tax

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Credit Scholarship Program in the prior school year. The report shall be according~~According~~ to each participating private school, and for participating students, in which there are at least 30 participating students who have scores for tests administered~~ during or after the 2009-2010 school year for 2 consecutive years at that private school~~. If the Learning System Institute determines that the 30 participating student cell size may be reduced without disclosing personally identifiable information, as described in 34 C.F.R. 99.12, of a participating student, the Learning System Institute may reduce the participating student cell size, but the cell size must not be reduced to less than 10 participating students. The department shall provide each private school's prior school year's student enrollment information to the Learning System Institute no later than June 15 of each year, or as requested by the Learning System Institute.

2. The sharing and reporting of student performance~~learning gain~~ data under this paragraph must be in accordance with requirements of s. 1002.22, s. 1002.221, 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act, and the applicable rules and regulations issued pursuant thereto, and shall be for the sole purpose of creating the annual report required by subparagraph 1. All parties must preserve the confidentiality of such information as required by law. The annual report must not disaggregate data to a level that will identify individual participating schools, except as required under sub-subparagraph 1.b., or disclose the academic level of individual students.

3. The annual report required by subparagraph 1. shall be published by the Department of Education on its website.

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(o) Provide a process to match the direct certification list with the scholarship application data submitted by any nonprofit scholarship-funding organization eligible to receive the 3-percent administrative allowance under paragraph (6)(j) ~~(6)(i)~~.

(12) SCHOLARSHIP AMOUNT AND PAYMENT.—

(a)~~1.~~ Except as provided in subparagraph 2., the amount of a scholarship provided to any student for any single school year by an eligible nonprofit scholarship-funding organization from eligible contributions shall be for total costs authorized under paragraph (6)(d), not to exceed annual limits, which shall be determined as follows:

1.a. For a scholarship awarded to a student enrolled in an eligible private school~~:~~

~~(I) For the 2009-2010 state fiscal year, the limit shall be $3,950.~~

~~(II) For the 2010-2011 state fiscal year, the limit shall be 60 percent of the unweighted FTE funding amount for that year.~~

~~(III) For the 2011-2012 state fiscal year and thereafter~~, the limit shall be determined by multiplying the unweighted FTE funding amount in that state fiscal year by the percentage used to determine the limit in the prior state fiscal year. However, in each state fiscal year that the tax credit cap amount increases pursuant to paragraph (5)(a) ~~subparagraph (5)(a)2.~~, the prior year percentage shall be increased by 4 percentage points and the increased percentage shall be used to determine the limit for that state fiscal year. If the percentage so calculated reaches 80 percent in a state fiscal year, no further

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increase in the percentage is allowed and the limit shall be 80 percent of the unweighted FTE funding amount for that state fiscal year and thereafter. Beginning in the 2016-2017 state fiscal year, the amount of a scholarship awarded to a student enrolled in an eligible private school shall be equal to 82 percent of the unweighted FTE funding amount for that state fiscal year and thereafter.

b. For a scholarship awarded to a student enrolled in a Florida public school that is located outside the district in which the student resides or in a lab school as defined in s. 1002.32, the limit shall be $500.

2. The annual limit for a scholarship under sub-subparagraph 1.a. shall be reduced by:

a. Twenty-five percent if the student's household income level is equal to or greater than 200 percent, but less than 215 percent, of the federal poverty level.

b. Fifty percent if the student's household income level is equal to or greater than 215 percent, but equal to or less than 230 percent, of the federal poverty level.

(16) NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS; APPLICATION.—In order to participate in the scholarship program created under this section, a charitable organization that seeks to be a nonprofit scholarship-funding organization must submit an application for initial approval or renewal to the Office of Independent Education and Parental Choice no later than September 1 of each year before the school year for which the organization intends to offer scholarships.

(a) An application for initial approval must include:

1. A copy of the organization's incorporation documents and

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registration with the Division of Corporations of the Department of State.

2. A copy of the organization's Internal Revenue Service determination letter as a s. 501(c)(3) not-for-profit organization.

3. A description of the organization's financial plan that demonstrates sufficient funds to operate throughout the school year.

4. A description of the geographic region that the organization intends to serve and an analysis of the demand and unmet need for eligible students in that area.

5. The organization's organizational chart.

6. A description of the criteria and methodology that the organization will use to evaluate scholarship eligibility.

7. A description of the application process, including deadlines and any associated fees.

8. A description of the deadlines for attendance verification and scholarship payments.

9. A copy of the organization's policies on conflict of interest and whistleblowers.

10. A copy of a surety bond or letter of credit in an amount equal to 25 percent of the scholarship funds anticipated for each school year or $100,000, whichever is greater.

(b) In addition to the information required by subparagraphs (a)1.-9., an application for renewal must include:

1. A surety bond or letter of credit equal to the amount of undisbursed donations held by the organization based on the annual report submitted pursuant to paragraph (6)(m). The amount of the surety bond or letter of credit must be at least

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$100,000, but not more than $25 million.

2. The organization's completed Internal Revenue Service Form 990 submitted no later than November 30 of the year before the school year that the organization intends to offer the scholarships, notwithstanding the September 1 application deadline.

3. A copy of the statutorily required audit to the Department of Education and Auditor General.

4. An annual report that includes:

a. The number of students who completed applications, by county and by grade.

b. The number of students who were approved for scholarships, by county and by grade.

c. The number of students who received funding for scholarships within each funding category, by county and by grade.

d. The amount of funds received, the amount of funds distributed in scholarships, and an accounting of remaining funds and the obligation of those funds.

e. A detailed accounting of how the organization spent the administrative funds allowable under paragraph (6)(j).

(c) In consultation with the Department of Revenue and the Chief Financial Officer, the Office of Independent Education and Parental Choice shall review the application. The Department of Education shall notify the organization in writing of any deficiencies within 30 days after receipt of the application and allow the organization 30 days to correct any deficiencies.

(d) Within 30 days after receipt of the finalized application by the Office of Independent Education and Parental

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Choice, the Commissioner of Education shall recommend approval or disapproval of the application to the State Board of Education. The State Board of Education shall consider the application and recommendation at the next scheduled meeting, adhering to appropriate meeting notice requirements. If the State Board of Education disapproves the organization's application, it shall provide the organization with a written explanation of that determination. The State Board of Education's action is not subject to chapter 120.

(e) If the State Board of Education disapproves the renewal of a nonprofit scholarship-funding organization, the organization must notify the affected eligible students and parents of the decision within 15 days after disapproval. An eligible student affected by the disapproval of an organization's participation remains eligible under this section until the end of the school year in which the organization was disapproved. The student must apply and be accepted by another eligible nonprofit scholarship-funding organization for the upcoming school year. The student shall be given priority in accordance with paragraph (6)(f).

(f) All remaining funds held by a nonprofit scholarship-funding organization that is disapproved for participation must revert to the Department of Revenue for redistribution to other eligible nonprofit scholarship-funding organizations.

(g) A nonprofit scholarship-funding organization is a renewing organization if it maintains continuous approval and participation in the program. An organization that chooses not to participate for 1 year or more or is disapproved to participate for 1 year or more must submit an application for

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initial approval in order to participate in the program again.

(h) The State Board of Education shall adopt rules providing guidelines for receiving, reviewing, and approving applications for new and renewing nonprofit scholarship-funding organizations. The rules must include a process for compiling input and recommendations from the Chief Financial Officer, the Department of Revenue, and the Department of Education. The rules must also require that the nonprofit scholarship-funding organization make a brief presentation to assist the State Board of Education in its decision.

(i) A state university; or an independent college or university which is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, is exempt from the initial or renewal application process, but must file a registration notice with the Department of Education to be an eligible nonprofit scholarship-funding organization. The State Board of Education shall adopt rules that identify the procedure for filing the registration notice with the department. The rules must identify appropriate reporting requirements for fiscal, programmatic, and performance accountability purposes consistent with this section, but shall not exceed the requirements for eligible nonprofit scholarship-funding organizations for charitable organizations. An nonprofit scholarship-funding organization that becomes eligible pursuant to this paragraph may begin providing scholarships to participating students in the 2015-2016 school year.

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Section 2. A nonprofit scholarship-funding organization whose application for participation in the program established by s. 1002.395, Florida Statutes, was approved before July 1, 2014, must, by August 1, 2014, provide a copy of a surety bond or letter of credit meeting the requirements of s. 1002.395(16), Florida Statutes, to the Office of Independent Education and Parental Choice.

Section 3. Paragraph (k) is added to subsection (2) and paragraph (y) is added to subsection (3) of section 11.45, Florida Statutes, and subsection (8) of that section is amended, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(k) Annually conduct operational audits of the accounts and records of eligible non-profit scholarship-funding organizations receiving eligible contributions under s. 1002.395, including any contracts for services with related entities, to determine compliance with the provisions of that section. Such audits shall include, but not be limited to, a determination of the eligible non-profit scholarship funding organization's compliance with s. 1002.395(6)(j). The Auditor General shall provide its report on the results of the audits to the Governor, the President of the Senate, the Speaker of the House, the Chief Financial Officer, and the Legislative Auditing Committee, within 30 days of completion of the audit.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit

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the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(y) The accounts and records of a nonprofit scholarship-funding organization participating in a state sponsored scholarship program authorized by chapter 1002.

(8) RULES OF THE AUDITOR GENERAL.—The Auditor General, in consultation with the Board of Accountancy, shall adopt rules for the form and conduct of all financial audits performed by independent certified public accountants pursuant to ss. 215.981, 218.39, 1001.453, 1002.395, 1004.28, and 1004.70. The rules for audits of local governmental entities, charter schools, charter technical career centers, and district school boards must include, but are not limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act as stated in s. 218.501.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 2

and insert:

An act relating to education; amending s. 1002.395,

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F.S.; revising purpose; revising definitions; revising eligibility requirements for the Florida Tax Credit Scholarship Program; requiring the Department of Education and Department of Revenue to publish the tax credit cap on their websites when it is increased; requiring the Department of Revenue to provide a copy of a letter approving a taxpayer for a specified tax credit to the eligible nonprofit scholarship-funding organization; authorizing certain entities to convey, transfer, or assign certain tax credits; providing for the calculation of underpayment of estimated corporate income taxes and tax installation payments for taxes on insurance premiums and assessments and the determination of whether penalties or interest shall be imposed on the underpayment; revising the disqualifying offenses for nonprofit scholarship-funding organization owners and operators; revising priority for new applicants; allowing a student in foster care or out-of-home care to apply for a scholarship at any time; prohibiting use of eligible contributions from being used for lobbying or political activity or related expenses; requiring application fees to be expended for student scholarships in any year a nonprofit scholarship-funding organization uses eligible contributions for administrative expenses; requiring amounts carried forward to be specifically reserved for particular students and schools for audit purposes; revising audit and report requirements for nonprofit

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scholarship-funding organizations and Auditor General review of all reports; requiring nonprofit scholarship-funding organizations to maintain a surety bond or letter of credit and to adjust the bond or letter of credit quarterly based upon a statement from a certified public accountant; providing exceptions; requiring the nonprofit scholarship-funding organization to provide the Auditor General any information or documentation requested in connection with an operational audit; requiring a private school to provide agreed upon transportation and make arrangements for taking statewide assessments at the school district testing site and in accordance with the district's testing schedule if the student chooses to take the statewide assessment; requiring parental authorization for access to income eligibility information; specifying that the independent research organization is the Learning System Institute at the Florida State University; identifying grant terms and payments; revising statewide and individual school report requirements; revising limitations on annual scholarship amounts; providing initial and renewal application requirements and an approval process for a charitable organization that seeks to be a nonprofit scholarship-funding organization; requiring the State Board of Education to adopt rules; providing a registration notice requirement for public and private universities to be nonprofit scholarship-funding organizations; requiring the State Board of Education

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to adopt rules; allowing existing nonprofit scholarship-funding organizations to provide the required bond at a specified date; amending s. 11.45, F.S.; authorizing the Auditor General to conduct audits of the accounts and records of nonprofit scholarship-funding organizations; creating s. 1002.385,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 105 - 171

and insert:

(b) "Approved provider" means a provider approved by the Agency for Persons with Disabilities, including an educational consultant, a health care practitioner as defined in s. 456.001(4), or a provider approved by the Department of Education pursuant to s. 1002.66. An educational consultant is a provider who is approved by the agency, has a bachelor's degree

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from an accredited college or university, holds a Florida professional educator certificate pursuant to s. 1012.56 in exceptional student education, and has 3 years of supervised experience in working with individuals with disabilities. The educational consultant assists in the development of an individual learning services plan, monitors a student's progress, and reports to the agency.

(c) "Curriculum" means a complete course of study for a particular content area or grade level, including any required supplemental materials.

(d) "Disability" means, for a student in kindergarten to grade 12, autism, as defined in s. 393.063(3); cerebral palsy, as defined in s. 393.063(4); Down syndrome, as defined in s. 393.063(13); an intellectual disability, as defined in s. 393.063(21); Prader-Willi syndrome, as defined in s. 393.063(25); Spina bifida, as defined in s. 393.063(36); for a student in kindergarten, being a high-risk child, as defined in s. 393.063(20)(a); or Williams syndrome, which is a developmental disorder that is characterized by mild to moderate intellectual disability or learning problems, unique personality characteristics, distinctive facial features, and cardiovascular problems.

(e) "Eligible postsecondary educational institution" means a Florida College System institution, a state university, a school district technical center, a school district adult general education center, or an accredited nonpublic postsecondary educational institution, as defined in s. 1005.02, which is licensed to operate in the state pursuant to requirements specified in part III of chapter 1005.

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(f) "Eligible private school" means a private school, as defined in s. 1002.01, which is located in this state, which offers an education to students in any grade from kindergarten to grade 12, and which meets the requirements of:

1. Sections 1002.42 and 1002.421; and

2. A scholarship program under s. 1002.39 or s. 1002.395, as applicable, if the private school participates in a scholarship program under s. 1002.39 or s. 1002.395.

(g) "ILSP" means an individual learning services plan that is developed for a student who participates in the program. The ILSP must include funding categories that are specified in accordance with rules of the Agency for Persons with Disabilities.

(h) "Parent" means a resident of this state who is a parent, as defined in s. 1000.21.

(i) "Program" means the Florida Personal Learning Scholarship Accounts established in this section.

(3) PROGRAM ELIGIBILITY.—A parent of a student with a disability may request and receive from the state a Florida personal learning scholarship account for the purposes specified in subsection (5) if:

(a) The student:

1. Is a resident of this state;

2. Is eligible to enroll in kindergarten through grade 12 in a public school in this state;

3. Has a disability as defined in paragraph (2)(d);

4. Has an ILSP developed by the agency in consultation with the parent and written in accordance with rules of the Agency for Persons with Disabilities; and

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5. Complies with regular school attendance pursuant to s. 1003.01(13); and

(b) The parent has applied to the agency to participate in the program by February 1 before the school year in which the student will participate or an alternate date adopted by the agency in rule for any vacant, funded slots. The request must be communicated directly to the agency in a manner that creates a written or electronic record of the request and the date of receipt of the request. The agency must notify the school district and the Department of Education of the parent's intent upon receipt of the parent's request.

(4) PROGRAM PROHIBITIONS.—A student is not eligible for the program if:

(a) The student or student's parent has accepted any payment, refund, or rebate, in any manner, from a provider of any services received pursuant to subsection (5);

(b) The student's participation in the program has been denied or revoked by the Agency for

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 20 - 24

and insert:

requiring the Agency for Persons with Disabilities to deny, suspend, or revoke participation in the program or use of program funds under certain circumstances; providing additional factors under which the agency may deny,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 209 - 277

and insert:

(f) Contributions to the Stanley G. Tate Florida Prepaid College Program pursuant to s. 1009.98, for the benefit of the eligible student.

(g) Contracted services provided by a public school or school district, including classes for the services specified in the ILSP or additional services. A student who receives services

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under a contract under this paragraph may not be considered to be enrolled in a public school.

A specialized service provider, eligible private school, eligible postsecondary educational institution, private tutoring program provider, online or virtual program provider, public school, school district, or other entity receiving payments pursuant to this subsection may not share, refund, or rebate any moneys from a Florida personal learning scholarship account with the parent or participating student in any manner.

(6) TERM OF THE PROGRAM.—For purposes of continuity of educational choice, the program payments made under this section shall remain in force until a student participating in the program participates in any of the prohibited activities specified in subsection (4), has funds revoked by the agency pursuant to subsection (10), graduates from high school, or reaches 22 years of age, whichever occurs first.

(7) SCHOOL DISTRICT OBLIGATIONS.—The school district retains all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

(8) DEPARTMENT OF EDUCATION OBLIGATIONS.—The department shall:

(a) Maintain a list of eligible private schools as defined in paragraph (2)(f) and private tutoring programs pursuant to s. 1002.43.

(b) Compare the list of students participating in the program with the public school enrollment lists before each program payment to avoid duplicate payments.

The department retains all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

(9) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—The Commissioner of Education retains all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

(10) AUTHORITY AND OBLIGATIONS OF THE AGENCY FOR PERSONS WITH DISABILITIES; ENFORCEMENT.—

(a) The agency:

1. Shall deny, suspend, or revoke a student's participation in the program if the health, safety, or welfare of the student is threatened or fraud is suspected.

2. Shall deny, suspend, or revoke an authorized use of program funds if the health, safety, or welfare of the student is threatened or fraud is suspected.

3. May deny, suspend, or revoke an authorized use of program funds for material failure to comply with this section and applicable agency rules if the noncompliance is correctable within a reasonable period of time. Otherwise, the agency shall deny, suspend, or revoke an authorized use for failure to materially comply with the law and rules adopted under this section.

4. Shall require compliance by the appropriate party by a date certain for all nonmaterial failures to comply with this section and applicable agency rules. The agency may deny, suspend, or revoke program participation under this section thereafter.

(b) In determining whether to deny, suspend, or revoke an

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approved provider in accordance with this subsection, the agency may

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 20 - 24

and insert:

requiring the Agency for Persons with Disabilities to deny, suspend, or revoke participation in the program or use of program funds under certain circumstances; providing additional factors under which the agency may deny,

596022

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment

Delete lines 324 - 338
and insert:
(f) Request participation in the program pursuant to paragraph (3)(b).
(g) Affirm that the student remains in good standing with the provider or school if those options are selected by the parent.
(h) Apply for admission of his or her child if the private

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school option is selected by the parent.

(i) Annually renew participation in the program.

(j) Be responsible for the payment of all eligible expenses in excess of the amount of the personal learning scholarship account.

(k) Affirm that the parent will not transfer any college savings funds to another beneficiary.

(l) Affirm that the parent will not take possession of any funding provided by the state for the Florida Personal Learning Scholarship Accounts.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment

Delete lines 377 - 504
and insert:
2. Receive applications and determine student eligibility in accordance with the requirements of this section. The agency shall notify the Department of Education of the applicants for the program by February 15 before the school year in which the student intends to participate and indicate how the student will comply with regular school attendance pursuant to ss.

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1003.01(13) and 1003.23.

3. Notify parents of their receipt of a scholarship on a first-come, first-served basis based upon the funds provided for this program in the General Appropriations Act.

4. Establish a date by which a parent must confirm initial or continuing participation in the program and confirm the establishment or continuance of a personal learning scholarship account.

5. Establish a date and process by which students on the wait list or late-filing applicants may be allowed to participate in the program during the school year, within the amount of funds provided for this program in the General Appropriations Act.

6. Develop an ILSP, in consultation with the parent and the educational consultant, which documents the following:

a. That the student has an eligible disability as defined in paragraph (2)(d).

b. Learning goals and objectives for the student which are linked directly to how program funds will be spent for authorized services.

c. How attendance requirements in s. 1003.21 will be met.

d. How progress toward meeting the individual learning goals and objectives will be assessed and documented for purposes of continued participation in the program.

7. Assign a funding category for each student that documents the nature and intensity of services that the student will need to meet the learning outcomes specified in his or her ILSP. The funding category determines the amount of the award for the student.

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8. Receive an administrative fee of up to 10 percent from the appropriation to operate the Florida Personal Learning Scholarship Accounts.

9. Establish and maintain a separate account for each eligible student.

10. Establish and maintain a list of approved providers pursuant to paragraph (2)(b).

11. Verify eligible expenditures prior to the distribution of funds for any expenditures made pursuant to paragraphs (5)(a) and (b). The review of expenditures for services in paragraphs (5)(c) through (h) may be completed after the payment has been made.

12. Develop a system for payment of benefits by electronic funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of electronic payment that the agency deems to be commercially viable or cost-effective. Commodities or services related to the development of such a system shall be procured by competitive solicitation unless they are purchased from a state term contract pursuant to s. 287.056.

(b) The agency may contract for services.

(14) FUNDING AND PAYMENT.—

(a) Funding for the Florida Personal Learning Scholarship Accounts shall be provided in the General Appropriations Act, which shall specify the annual amount per funding category for public school students, private school students, home education students, students receiving a scholarship pursuant to s. 1002.39 or s. 1002.395, and students participating in a private tutoring program.

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(b) Upon an eligible student's graduation from an eligible postsecondary educational institution or after any period of 4 consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary educational institution, the student's personal learning scholarship account shall be closed, and any remaining funds shall revert to the state.

(c) Moneys received pursuant to this section do not constitute taxable income to the eligible student or the parent of an eligible student.

(15) OBLIGATIONS OF THE AUDITOR GENERAL.—The Auditor General shall conduct an annual financial and operational audit of accounts and records of the Florida Personal Learning Scholarship Accounts. As a part of this audit, the Auditor General shall verify, at a minimum, the total amount of students served and eligibility of reimbursement made by the agency and transmit that information to the agency.

(16) LIABILITY.—The state is not liable for the award or any use of awarded funds under this section.

(17) SCOPE OF AUTHORITY.—This section does not expand the regulatory authority of this state, its officers, or any school district to impose additional regulation on participating private schools, nonpublic postsecondary educational institutions, and private providers beyond those reasonably necessary to enforce requirements expressly set forth in this section.

(18) RULES.—The Agency for Persons with Disabilities shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

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(19) IMPLEMENTATION SCHEDULE FOR THE 2014-2015 SCHOOL YEAR.—

(a) The Agency for Persons with Disabilities shall, in consultation with an advisory work group, develop an ILSP and an ILSP process, funding category requirements, a system for payment of claims and providers, and a system to document and assess progress toward meeting the individual learning goals and objectives in the ILSP. The advisory work group shall make specific recommendations to the agency by October 1, 2014. The agency shall adopt rules to implement the recommendations of the advisory group by December 31, 2014. The Commissioner of Education, the executive director of the agency, the Chancellor of the State University System, and the director of the Division of Vocational Rehabilitation shall appoint staff to work on the advisory group with stakeholders.

(b) Notwithstanding the provisions of this section related to notification and eligibility timelines, the agency may enroll parents in a statewide pilot program on a rolling schedule on a first-come, first-served basis, no later than February 1, 2015, within the amount of funds provided in the General Appropriations Act.

(c) There is hereby appropriated for the 2014-2015 fiscal year to the Agency for Persons with Disabilities a sum of $18.4 million from the Operations and Maintenance Trust Fund for the implementation of the Personal Learning Scholarship Accounts Program. From these funds, $1.5 million shall be allocated to the Agency for Persons with Disabilities for startup costs for planning and implementation of the pilot program. For the pilot program in the 2014-2015 fiscal year, the agency shall provide

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awards for eligible students which range from $5,000 to $19,000 per recipient and shall be based on funding categories established by the agency. Public school students and students who receive a scholarship pursuant to ss. 1002.39 and 1002.395 shall receive 50 percent of the designated amount for the student's funding category.

175992

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 505 - 535
and insert:
Section 1. Present subsection (10) of section 1003.4282, Florida Statutes, is renumbered as subsection (11), and a new subsection (10) is added to that section, to read:
1003.4282 Requirements for a standard high school diploma.—
(10) STUDENTS WITH DISABILITIES.—Beginning with students entering grade 9 in the 2014-2015 school year, this subsection

applies to a student with a disability.

(a) A parent of the student with a disability shall, in collaboration with the individual education plan (IEP) team during the transition planning process pursuant to s. 1003.5716, declare an intent for the student to graduate from high school with either a standard high school diploma or a certificate of completion. A student with a disability who does not satisfy the standard high school diploma requirements pursuant to this section shall be awarded a certificate of completion.

(b) The following options, in addition to the other options specified in this section, may be used to satisfy the standard high school diploma requirements, as specified in the student's individual education plan:

1. For a student with a disability for whom the IEP team has determined that the Florida Alternate Assessment is the most appropriate measure of the student's skills:

a. A combination of course substitutions, assessments, industry certifications, and other acceleration options appropriate to the student's unique skills and abilities that meet the criteria established by State Board of Education rule.

b. A portfolio of quantifiable evidence that documents a student's mastery of academic standards through rigorous metrics established by State Board of Education rule. A portfolio may include, but is not limited to, documentation of work experience, internships, community service, and postsecondary credit.

2. For a student with a disability for whom the IEP team has determined that mastery of academic and employment competencies is the most appropriate way for a student to

demonstrate his or her skills:

a. Documented completion of the number of course credits prescribed by the district school board in the district student progression plan pursuant to s. 1008.25.

b. Documented achievement of all annual goals and short-term objectives for academic and employment competencies and industry certifications specified in the student's transition plan. The documentation must be verified by the IEP team.

c. Documented successful employment for the number of hours per week specified in the student's transition plan, for the equivalent of 1 semester, and payment of a minimum wage in compliance with the requirements of the federal Fair Labor Standards Act.

d. Documented mastery of the academic and employment competencies and industry certifications specified in the student's transition plan. The documentation must be verified by the IEP team, the employer, and the teacher. The transition plan must be developed and signed by the student, parent, teacher, and employer before placement in employment and must identify the following:

(I) The expected academic and employment competencies and industry certifications;

(II) The criteria for determining and certifying mastery of the competencies;

(III) The work schedule and the minimum number of hours to be worked per week; and

(IV) A description of the supervision to be provided by the school district.

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The State Board of Education shall adopt rules under ss. 120.536(1) and 120.54 to implement this subparagraph, including rules that establish the minimum requirements for students described in this subparagraph to earn a standard high school diploma.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 47

and insert:

disabilities; requiring the State Board of Education to adopt rules; authorizing a student with a disability to defer the receipt of a standard high school diploma if certain conditions are met; authorizing certain students with

532862

576-03620A-14

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to education; creating s. 1002.385, F.S.; establishing the Florida Personal Learning Scholarship Accounts; defining terms; specifying criteria for students who are eligible to participate in the program; identifying certain students who are not eligible to participate in the program; authorizing the use of awarded funds for specific purposes; prohibiting specific providers, schools, institutions, school districts, and other entities from sharing, refunding, or rebating program funds; specifying the terms of the program; providing that the school district retains all duties, authority, and responsibilities specified in the Florida K-20 Education Code; specifying the duties of the Department of Education relating to the program; providing that the Commissioner of Education retains all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code; requiring the executive director of the Agency for Persons with Disabilities to deny, suspend, or revoke participation in the program or use of program funds under certain circumstances; providing additional factors under which the executive director may deny, suspend, or revoke a participation in the program or program funds; requiring a parent to sign an agreement with the Agency for Persons with Disabilities to

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enroll his or her child in the program which specifies the responsibilities of a parent or student for using funds in a personal learning scholarship account and for submitting a compliance statement to the agency; providing that a parent who fails to comply with the responsibilities of the agreement forfeits the personal learning scholarship account; providing eligibility requirements and obligations for private schools under the program; specifying agency obligations under the program; authorizing the agency to contract for services; providing for funding and payment; providing the Auditor General's obligations under the program; providing that the state is not liable for the use of awarded funds; providing for the scope of authority; requiring the agency to adopt rules; providing for implementation of the program in a specified school year; providing an appropriation; amending s. 1003.4282, F.S.; providing standard high school diploma requirements for certain students with disabilities; authorizing certain students with disabilities to continue to receive certain instructions and services; requiring an independent review and a parent's approval to waive statewide, standardized assessment requirements by the individual education plan (IEP) team; repealing s. 1003.438, F.S., relating to special high school graduation requirements for certain exceptional students; creating s. 1003.5716, F.S.; providing that certain students with disabilities have a right to free,

appropriate public education; requiring an IEP team to begin the process of, and to develop an IEP for, identifying transition services needs for a student with a disability before the student attains a specified age; providing requirements for the process; requiring certain statements to be included and annually updated in the IEP; providing that changes in the goals specified in an IEP are subject to independent review and parental approval; requiring the school district to reconvene the IEP team to identify alternative strategies to meet transition objectives if a participating agency fails to provide transition services specified in the IEP; providing that the agency's failure does not relieve the agency of the responsibility to provide or pay for the transition services that the agency otherwise would have provided; amending s. 1003.572, F.S.; prohibiting a school district from imposing additional requirements on private instructional personnel or charging fees; creating s. 1008.2121, F.S.; requiring the Commissioner of Education to permanently exempt certain students with disabilities from taking statewide, standardized assessments; requiring the State Board of Education to adopt rules; amending s. 1008.25, F.S.; requiring written notification relating to portfolios to a parent of a student with a substantial reading deficiency; requiring a student promoted to a certain grade with a good cause exemption to receive intensive reading instruction and

intervention; requiring a school district to assist schools and teachers with the implementation of reading strategies; revising good cause exemptions; amending ss. 120.81, 409.1451, and 1007.263, F.S.; conforming cross-references; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1002.385, Florida Statutes, is created to read:

1002.385 Florida Personal Learning Scholarship Accounts.—

(1) ESTABLISHMENT OF PROGRAM.—The Florida Personal Learning Scholarship Accounts is established to provide the option for a parent to better meet the individual educational needs of his or her eligible child.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Agency" means the Agency for Persons with Disabilities.

(b) "Approved provider" means a provider approved by the Agency for Persons with Disabilities, a health care practitioner as defined in s. 456.001(4), or a provider approved by the Department of Education pursuant to s. 1002.66.

(c) "Curriculum" means a complete course of study for a particular content area or grade level, including any required supplemental materials.

(d) "Disability" means, for a student in kindergarten to grade 12, autism, as defined in s. 393.063(3); cerebral palsy, as defined in s. 393.063(4); Down syndrome, as defined in s.

393.063(13); an intellectual disability, as defined in s. 393.063(21); Prader-Willi syndrome, as defined in s. 393.063(25); Spina bifida, as defined in s. 393.063(36); for a student in kindergarten, being a high-risk child, as defined in s. 393.063(20)(a); or Williams syndrome.

(e) "Eligible postsecondary educational institution" means a Florida College System institution, a state university, a school district technical center, a school district adult general education center, or an accredited nonpublic postsecondary educational institution, as defined in s. 1005.02, which is licensed to operate in the state pursuant to requirements specified in part III of chapter 1005.

(f) "Eligible private school" means a private school, as defined in s. 1002.01, which is located in this state, which offers an education to students in any grade from kindergarten to grade 12, and which meets the requirements of:

1. Sections 1002.42 and 1002.421; and

2. A scholarship program under s. 1002.39 or s. 1002.395, as applicable, if the private school participates in a scholarship program under s. 1002.39 or s. 1002.395.

(g) "ILSP" means an individual learning services plan that is developed for a student who participates in the program.

(h) "Parent" means a resident of this state who is a parent, as defined in s. 1000.21.

(i) "Program" means the Florida Personal Learning Scholarship Accounts established in this section.

(3) PROGRAM ELIGIBILITY.—A parent of a student with a disability may request and receive from the state a Florida personal learning scholarship account for the purposes specified

in subsection (5) if:

(a) The student:

1. Is a resident of this state;

2. Is eligible to enroll in kindergarten through grade 12 in a public school in this state;

3. Has a disability as defined in paragraph (2)(d) and meets the agency's eligibility criteria;

4. Has an ILSP developed by the agency in consultation with the parent and written in accordance with rules of the Agency for Persons with Disabilities; and

5. Complies with regular school attendance pursuant to s. 1003.01(13); and

(b) The parent has applied to the agency to participate in the program by February 1 prior to the school year in which the student will participate or an alternate date adopted by the agency in rule for any vacant, funded slots. The request must be communicated directly to the agency in a manner that creates a written or electronic record of the request and the date of receipt of the request. The agency must notify the school district and the Department of Education of the parent's intent upon receipt of the parent's request.

(4) PROGRAM PROHIBITIONS.—A student is not eligible for the program if:

(a) The student or student's parent has accepted any payment, refund, or rebate, in any manner, from a provider of any services received pursuant to subsection (5);

(b) The student's participation in the program has been denied or revoked by the executive director of the Agency for Persons with Disabilities pursuant to subsection (10); or

(c) The student's parent has forfeited participation in the program for failure to comply with requirements pursuant to subsection (11).

(5) AUTHORIZED USES OF PROGRAM FUNDS.—Program funds may be spent for the following purposes, according to the goals and objectives identified in the student's ILSP:

(a) Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content.

(b) Curriculum as defined in paragraph (2)(c).

(c) Specialized services by approved providers that are selected by the parent and specified in the student's ILSP. These specialized services may include, but are not limited to:

1. Applied behavior analysis services as provided in ss. 627.6686 and 641.31098.

2. Services provided by speech-language pathologists as defined in s. 468.1125.

3. Occupational therapy services as defined in s. 468.203.

4. Services provided by physical therapists as defined in s. 486.021.

5. Services provided by listening and spoken language specialists and an appropriate acoustical environment for a child who is deaf or hard of hearing and who has received an implant or assistive hearing device.

(d) Enrollment in, or tuition or fees associated with enrollment in, an eligible private school, an eligible postsecondary educational institution, a private tutoring program authorized under s. 1002.43, a virtual program offered by a department-approved private online provider that meets the

provider qualifications specified in s. 1002.45(2)(a), or an approved online course offered pursuant to s. 1003.499 or s. 1004.0961.

(e) Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement examinations, industry certification examinations, assessments related to postsecondary education, or other assessments specified in the student's ILSP.

(f) Contributions to a Coverdell education savings established pursuant to 26 U.S.C. s. 530 of the Internal Revenue Code for the benefit of the eligible student.

(g) Contributions to the Stanley G. Tate Florida Prepaid College Program pursuant to s. 1009.98, for the benefit of the eligible student.

(h) Contracted services provided by a public school or school district, including classes for the services specified in the ILSP or additional services. A student who receives services under a contract under this paragraph shall not be considered to be enrolled in a public school for eligibility purposes as specified in subsection (3).

A specialized service provider, eligible private school, eligible postsecondary educational institution, private tutoring program provider, online or virtual program provider, public school, school district, or other entity receiving payments pursuant to this subsection may not share, refund, or rebate any moneys from a Florida personal learning scholarship account with the parent or participating student in any manner.

(6) TERM OF THE PROGRAM.—For purposes of continuity of educational choice, the program payments made under this section

shall remain in force until a student participating in the program participates in any of the prohibited activities specified in subsection (4), has funds revoked by the agency pursuant to subsection (10), graduates from high school, or reaches 22 years of age, whichever occurs first.

(7) SCHOOL DISTRICT OBLIGATIONS.—The school district retains all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

(8) DEPARTMENT OF EDUCATION OBLIGATIONS.—The department shall:

(a) Maintain a list of eligible private schools as defined in paragraph (2)(f) and private tutoring programs pursuant to s. 1002.43.

(b) Compare the list of students participating in the program with the public school enrollment lists before each program payment to avoid duplicate payments.

The department retains all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

(9) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—The Commissioner of Education retains all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

(10) AUTHORITY AND OBLIGATIONS OF THE EXECUTIVE DIRECTOR OF THE AGENCY FOR PERSONS WITH DISABILITIES.—

(a) The executive director:

1. Shall deny, suspend, or revoke a student's participation in the program if the health, safety, or welfare of the student

is threatened or fraud is suspected.

2. Shall deny, suspend, or revoke an authorized use of program funds if the health, safety, or welfare of the student is threatened or fraud is suspected.

3. May deny, suspend, or revoke an authorized use of program funds for material failure to comply with this section and applicable agency rules if the noncompliance is correctable within a reasonable period of time. Otherwise, the executive director shall deny, suspend, or revoke an authorized use for failure to materially comply with the law and rules adopted under this section.

4. Shall require compliance by the appropriate party by a date certain for all nonmaterial failures to comply with this section and applicable agency rules. The executive director may deny, suspend, or revoke program participation under this section thereafter.

(b) In determining whether to deny, suspend, or revoke in accordance with this subsection, the executive director may consider factors that include, but are not limited to, acts or omissions by a participating entity which led to a previous denial or revocation of participation in an education scholarship program under this chapter; failure to reimburse the agency for program funds improperly received or retained by the entity; imposition of a prior criminal sanction related to the entity or its officers or employees; imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an entity's management or operation; or other types of criminal proceedings in which the entity or its officers or

employees were found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

(11) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—A parent who applies for program participation under this section is exercising his or her parental option to determine the appropriate placement or services that best meet the needs of his or her student. To enroll an eligible student in the program, the parent must sign an agreement with the agency and annually submit a notarized, sworn compliance statement to the agency to:

(a) Affirm that the student is enrolled in a school or program that meets minimum student attendance requirements as provided in s. 1003.21.

(b) Comply with the ILSP and use the program funds only for authorized purposes to meet the student's goals and objectives in the ILSP as described in subsection (2).

(c) Provide for an appropriate assessment that documents the student's demonstration of educational progress at a level commensurate with her or his ability, in accordance with the requirements for the academic program selected by the parent who enrolls the student in a private school pursuant to paragraph (2)(f), a home education program pursuant to s. 1002.41, or a scholarship program pursuant to s. 1002.39 or s. 1002.395.

(d) Affirm that the student takes all appropriate assessments as specified in the student's ILSP. The parent is responsible for transporting the student to the assessment site designated by the school district if the parent selects a statewide, standardized assessment pursuant to s. 1008.22.

(e) Notify the school district that the student is participating in the program if the parent chooses to enroll the student in an eligible private school pursuant to paragraph (2)(f), a home education program pursuant to s. 1002.41, a scholarship program pursuant to this chapter, or a private tutoring program authorized under s. 1002.43.

(f) Request participation in the program at least 60 days before the date of the first program payment.

(g) Affirm that the student remains in good standing with the provider or school if those options are selected by the parent.

(h) Apply for admission of his or her child if the private school option is selected by the parent.

(i) Annually renew participation in the program.

(j) Be responsible for the payment of all eligible expenses in excess of the amount of the personal learning scholarship account.

(k) Affirm that the parent will not transfer any college savings funds to another beneficiary.

(l) Affirm that the parent will not take possession of any funding contributed by the state.

(m) Maintain a portfolio of records and materials which must be preserved by the parent for 2 years and be made available for inspection by the district school superintendent or the superintendent's designee upon 15 days' written notice. This paragraph does not require the superintendent to inspect the portfolio. The portfolio of records and materials consists of:

1. A log of educational instruction and services which is

made contemporaneously with delivery of the instruction and services and which designates by title any reading materials used; and

2. Samples of any writings, worksheets, workbooks, or creative materials used or developed by the student.

A parent who fails to comply with this subsection forfeits the personal learning scholarship account.

(12) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An eligible private school as defined in paragraph (2)(f) must:

(a) Comply with all requirements for private schools in ss. 1002.42 and 1002.421. A private school participating in a scholarship program under s. 1002.39 or s. 1002.395 must also comply with the requirements of that scholarship program.

(b) Provide to the agency, upon request, all documentation required for the student's participation, including the private school's and student's fee schedules.

(c) Be academically accountable to the parent for meeting the educational needs of the student.

(d) Employ or contract with teachers who have regular and direct contact with each student receiving a scholarship under this section at the school's physical location.

The inability of a private school to meet the requirements of this subsection shall constitute a basis for the ineligibility of the private school to participate in the scholarship program as determined by the Department of Education.

(13) AGENCY FOR PERSONS WITH DISABILITIES OBLIGATIONS.—

(a) The agency shall:

1. Monitor and provide oversight for the program.

2. Receive applications and determine student eligibility in accordance with the requirements of this section. The agency must notify the Department of Education of the applicants for the program by February 1 prior to the school year in which the student intends to participate and indicate how the student will comply with regular school attendance pursuant to ss. 1003.01(13) and 1003.23.

3. Notify parents of their receipt of a scholarship on a first-come, first-served basis based upon the funds provided for this program in the General Appropriations Act.

4. Establish a date by which a parent must confirm initial or continuing participation in the program and confirm the establishment or continuance of a personal learning scholarship account.

5. Establish a date and process by which students on the wait list or late-filing applicants may be allowed to participate in the program during the school year, within the amount of funds provided for this program in the General Appropriations Act.

6. Develop an ILSP, in consultation with the parent, which documents the following:

a. That the student has an eligible disability.

b. Learning goals and objectives for the student which are linked directly to how program funds will be spent for authorized services.

c. How attendance requirements in s. 1003.21 will be met.

d. How progress towards meeting the individual learning goals and objectives will be assessed and documented for

purposes of continued participation in the program.

7. Assign a level of services category for each student that documents the nature and intensity of services that the student will need to meet the learning outcomes specified in his or her ILSP. The level of services determines the amount of the award for the student.

8. Receive an administrative fee of up to 10 percent from the appropriation to operate the Florida Personal Learning Scholarship Accounts.

9. Establish and maintain a separate account for each eligible student.

10. Establish and maintain a list of approved providers pursuant to paragraph (2)(b).

11. Verify eligible expenditures prior to the distribution of funds for any expenditures made pursuant to paragraphs (5)(a) and (b). The review of expenditures for services in paragraphs (5)(c) through (h) may be completed after the payment has been made.

12. Develop a system for payment of benefits by electronic funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of electronic payment that the agency deems to be commercially viable or cost-effective. Commodities or services related to the development of such a system shall be procured by competitive solicitation unless they are purchased from a state term contract pursuant to s. 287.056.

(b) The agency may contract for services.

(14) FUNDING AND PAYMENT.—

(a) Funding for the Florida Personal Learning Scholarship

Accounts shall be provided in the General Appropriations Act which shall specify the annual amount per service level for public school students, private school students, home education students, students receiving a scholarship pursuant to s. 1002.39 or s. 1002.395, and students participating in a private tutoring program.

(b) Upon an eligible student's graduation from an eligible postsecondary educational institution or after any period of 4 consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary educational institution, the student's personal learning scholarship account shall be closed, and any remaining funds shall revert to the state.

(c) Moneys received pursuant to this section do not constitute taxable income to the parent of an eligible student.

(15) OBLIGATIONS OF THE AUDITOR GENERAL.—The Auditor General shall conduct an annual financial and operational audit of accounts and records of the Florida Personal Learning Scholarship Accounts. As a part of this audit, the Auditor General shall verify, at a minimum, the total amount of students served and eligibility of reimbursement made by the agency and transmit that information to the agency.

(16) LIABILITY.—The state is not liable for the award or any use of awarded funds under this section.

(17) SCOPE OF AUTHORITY.—This section does not expand the regulatory authority of this state, its officers, or any school district to impose additional regulation on participating private schools, nonpublic postsecondary educational institutions, and private providers beyond those reasonably

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necessary to enforce requirements expressly set forth in this section.

(18) RULES.—The Agency for Persons with Disabilities shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

(19) IMPLEMENTATION SCHEDULE FOR THE 2014-2015 SCHOOL YEAR.—

(a) The Agency for Persons with Disabilities shall, in consultation with an advisory work group, develop an ILSP, levels of services requirements, a system for payment of claims and providers, and a system to document and assess progress toward meeting the individual learning goals and objectives in the ILSP. The advisory work group shall make specific recommendations by October 1, 2014, to the agency. The agency shall adopt rules to implement the recommendations of the advisory group by December 31, 2014. The Commissioner of Education, the executive director of the agency, the Chancellor of the State University System, and the director of the Division of Vocational Rehabilitation shall appoint staff to work on the advisory group with representatives from the Center for Autism and Related Disabilities (CARD) and the Florida Diagnostic and Learning Resources System (FDLRS).

(b) Notwithstanding the provisions of this section related to notification and eligibility timelines, the agency may enroll parents in a statewide pilot program on a rolling schedule on a first-come, first-served basis, no later than January 31, 2015, within the amount of funds provided in the General Appropriations Act.

(c) There is hereby appropriated for the 2014-2015 fiscal

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year to the Agency for Persons with Disabilities a sum of $18,400,000 from the Operations and Maintenance Trust Fund for the implementation of the Personal Learning Scholarship Accounts Program. From these funds, $1,500,000 shall be allocated to the Agency for Persons with Disabilities for startup costs for planning and implementation of the pilot program. For the pilot program in the 2014-2015 fiscal year, the agency shall provide awards for eligible students which range from $5,000 to $19,000 per recipient and shall be based on service levels established by the agency. Public school students and students who receive a scholarship pursuant to ss. 1002.39 and 1002.395 shall receive 50 percent of the designated amount for the student's service level.

Section 2. Present subsection (10) of section 1003.4282, Florida Statutes, is renumbered as subsection (11), and a new subsection (10) is added to that section, to read:

1003.4282 Requirements for a standard high school diploma.—

(10) STUDENTS WITH DISABILITIES.—Beginning with students entering grade 9 in the 2014-2015 school year, this subsection applies to a student with a disability for whom the IEP team has determined that the Florida Alternate Assessment is the most appropriate measure of the student's skills.

(a) A parent of the student with a disability shall, in collaboration with the individual education plan team pursuant to s. 1003.5716, declare an intent for the student to graduate from high school with either a standard high school diploma or a certificate of completion. A student with a disability who does not satisfy the standard high school diploma requirements pursuant to this section shall be awarded a certificate of

completion.

(b) The following options, in addition to the other options specified in this section, may be used to satisfy the standard high school diploma requirements, as specified in the student's individual education plan:

1. A combination of course substitutions, assessments, industry certifications, and other acceleration options appropriate to the student's unique skills and abilities that meet the criteria established by State Board of Education rule.

2. A portfolio of quantifiable evidence that documents a student's mastery of academic standards through rigorous metrics established by State Board of Education rule. A portfolio may include, but is not limited to, documentation of work experience, internships, community service, and postsecondary credit.

(c) A student with a disability who meets the standard high school diploma requirements in this section may defer the receipt of a standard high school diploma if the student:

1. Has an individual education plan that prescribes special education, transition planning, transition services, or related services through age 21; and

2. Is enrolled in accelerated college credit instruction pursuant to s. 1007.27, industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or preapprenticeship program.

(d) A student with a disability who receives a certificate of completion and has an individual education plan that prescribes special education, transition planning, transition

services, or related services through 21 years of age may continue to receive the specified instruction and services.

(e) Any waiver of the statewide, standardized assessment requirements by the individual education plan team, pursuant to s. 1008.22(3)(c), must be approved by the parent and is subject to verification for appropriateness by an independent reviewer selected by the parent as provided for in s. 1003.572.

Section 3. Effective July 1, 2015, section 1003.438, Florida Statutes, is repealed.

Section 4. Section 1003.5716, Florida Statutes, is created to read:

1003.5716 Transition to postsecondary education and career opportunities.—All students with disabilities who are 3 years of age to 21 years of age have the right to a free, appropriate public education. As used in this section, the term "IEP" means individual education plan.

(1) To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, an IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability attains the age of 14 years in order for his or her postsecondary goals and career goals to be identified and in place when he or she attains the age of 16 years. This process must include, but is not limited to:

(a) Consideration of the student's need for instruction in the area of self-determination and self-advocacy to assist the student's active and effective participation in an IEP meeting; and

(b) Preparation for the student to graduate from high school with a standard high school diploma pursuant to s. 1003.4282 with a Scholar designation unless the parent chooses a Merit designation.

(2) Beginning not later than the first IEP to be in effect when the student turns 16, or younger, if determined appropriate by the parent and the IEP team, the IEP must include the following statements that must be updated annually:

(a) A statement of intent to pursue a standard high school diploma and a Scholar or Merit designation, pursuant to s. 1003.4285, as determined by the parent.

(b) A statement of intent to receive a standard high school diploma before the student reaches the age of 22 and a description of how the student will fully meet the requirements in s. 1003.428 or s. 1003.4282, as applicable, including, but not limited to, a portfolio pursuant to s. 1003.4282(10)(b) that meets the criteria specified in State Board of Education rule. The IEP must also specify the outcomes and additional benefits expected by the parent and the IEP team at the time of the student's graduation.

(c) A statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services, including courses of study needed to assist the student in reaching those goals.

(3) Any change in the IEP for the goals specified in subsection (2) must be approved by the parent and is subject to verification for appropriateness by an independent reviewer

selected by the parent as provided in s. 1003.572.

(4) If a participating agency responsible for transition services, other than the school district, fails to provide the transition services described in the IEP, the school district shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student that are specified in the IEP. However, this does not relieve any participating agency of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Section 5. Subsection (3) of section 1003.572, Florida Statutes, is amended to read:

1003.572 Collaboration of public and private instructional personnel.—

(3) Private instructional personnel who are hired or contracted by parents to collaborate with public instructional personnel must be permitted to observe the student in the educational setting, collaborate with instructional personnel in the educational setting, and provide services in the educational setting according to the following requirements:

(a) The student's public instructional personnel and principal consent to the time and place.

(b) The private instructional personnel satisfy the requirements of s. 1012.32 or s. 1012.321.

For the purpose of implementing this subsection, a school district may not impose any requirements beyond those requirements specified in this subsection or charge any fees.

Section 6. Section 1008.2121, Florida Statutes, is created to read:

1008.2121 Students with severe cognitive or physical disabilities; permanent exemption.—Based on information that a reasonably prudent person would rely upon, including, but not limited to, facts contained within an individual education plan under s. 1008.212, documentation from an appropriate health care provider, or certification from the district school board superintendent, the Commissioner of Education shall perfunctorily grant a permanent exemption to a student who suffers from such a severe cognitive disability or physical disability that the student permanently lacks the capacity to take statewide, standardized assessments. The State Board of Education shall adopt rules to administer this section, including, but not limited to, expediting the exemption process to demonstrate the utmost compassion and consideration for meeting the parent's and student's needs.

Section 7. Paragraph (c) of subsection (5) and paragraph (b) of subsection (6) of section 1008.25, Florida Statutes, are amended to read:

1008.25 Public school student progression; remedial instruction; reporting requirements.—

(5) READING DEFICIENCY AND PARENTAL NOTIFICATION.—

(c) The parent of any student who exhibits a substantial deficiency in reading, as described in paragraph (a), must be notified in writing of the following:

1. That his or her child has been identified as having a substantial deficiency in reading.

2. A description of the current services that are provided

to the child.

3. A description of the proposed supplemental instructional services and supports that will be provided to the child that are designed to remediate the identified area of reading deficiency.

4. That if the child's reading deficiency is not remediated by the end of grade 3, the child must be retained unless he or she is exempt from mandatory retention for good cause.

5. Strategies for parents to use in helping their child succeed in reading proficiency.

6. That the Florida Comprehensive Assessment Test (FCAT) is not the sole determiner of promotion and that additional evaluations, portfolio reviews, and assessments are available to the child to assist parents and the school district in knowing when a child is reading at or above grade level and ready for grade promotion.

7. The district's specific criteria and policies for a portfolio as provided in subparagraph (6)(b)4. and the evidence required for a student to demonstrate mastery of Florida's academic standards for English Language Arts. A parent of a student in grade 3 who is identified anytime during the year as being at risk of retention may request that the school immediately begin collecting evidence for a portfolio.

8.~~7.~~ The district's specific criteria and policies for midyear promotion. Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level.

(6) ELIMINATION OF SOCIAL PROMOTION.—

(b) The district school board may only exempt students from

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mandatory retention, as provided in paragraph (5)(b), for good cause. A student who is promoted to grade 4 with a good cause exemption shall be provided intensive reading instruction and intervention that include specialized diagnostic information and specific reading strategies to meet the needs of each student so promoted. The school district shall assist schools and teachers with the implementation of reading strategies for students promoted with a good cause exemption which research has shown to be successful in improving reading among students that have reading difficulties. Good cause exemptions shall be limited to the following:

1. Limited English proficient students who have had less than 2 years of instruction in an English for Speakers of Other Languages program.

2. Students with disabilities whose individual education plan indicates that participation in the statewide assessment program is not appropriate, consistent with the requirements of State Board of Education rule.

3. Students who demonstrate an acceptable level of performance on an alternative standardized reading or English Language Arts assessment approved by the State Board of Education.

4. A student who demonstrates through a student portfolio that he or she is performing at least at Level 2 on FCAT Reading or the common core English Language Arts assessment, as applicable under s. 1008.22.

5. Students with disabilities who participate in FCAT Reading or the common core English Language Arts assessment, as applicable under s. 1008.22, and who have an individual

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education plan or a Section 504 plan that reflects that the student has received intensive remediation in reading and English Language Arts for more than 2 years but still demonstrates a deficiency and was previously retained in kindergarten, grade 1, grade 2, or grade 3.

6. Students who have received intensive reading intervention for 2 or more years but still demonstrate a deficiency in reading and who were previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of 2 years. A student may not be retained more than once in grade 3.

7.~~6.~~ Students who have received intensive remediation in reading and English Language Arts, as applicable under s. 1008.22, for 2 or more years but still demonstrate a deficiency and who were previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of 2 years. Intensive instruction for students so promoted must include an altered instructional day that includes specialized diagnostic information and specific reading strategies for each student. The district school board shall assist schools and teachers to implement reading strategies that research has shown to be successful in improving reading among low-performing readers.

Section 8. Effective July 1, 2015, paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of

Education pursuant to s. 1003.428, s. 1003.429, ~~s. 1003.438,~~ s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 9. Effective July 1, 2015, paragraph (a) of subsection (2) of section 409.1451, Florida Statutes, is amended to read:

409.1451 The Road-to-Independence Program.—

(2) POSTSECONDARY EDUCATION SERVICES AND SUPPORT.—

(a) A young adult is eligible for services and support under this subsection if he or she:

1. Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 16 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption;

2. Spent at least 6 months in licensed care before reaching his or her 18th birthday;

3. Earned a standard high school diploma or its equivalent pursuant to s. 1003.428, s. 1003.4281, s. 1003.429, or s. 1003.435~~, or s. 1003.438~~;

4. Has been admitted for enrollment as a full-time student or its equivalent in an eligible postsecondary educational institution as provided in s. 1009.533. For purposes of this section, the term "full-time" means 9 credit hours or the vocational school equivalent. A student may enroll part-time if he or she has a recognized disability or is faced with another challenge or circumstance that would prevent full-time attendance. A student needing to enroll part-time for any reason

other than having a recognized disability must get approval from his or her academic advisor;

5. Has reached 18 years of age but is not yet 23 years of age;

6. Has applied, with assistance from the young adult's caregiver and the community-based lead agency, for any other grants and scholarships for which he or she may qualify;

7. Submitted a Free Application for Federal Student Aid which is complete and error free; and

8. Signed an agreement to allow the department and the community-based care lead agency access to school records.

Section 10. Effective July 1, 2015, subsection (4) of section 1007.263, Florida Statutes, is amended to read:

1007.263 Florida College System institutions; admissions of students.—Each Florida College System institution board of trustees is authorized to adopt rules governing admissions of students subject to this section and rules of the State Board of Education. These rules shall include the following:

(4) A student who has been awarded ~~a special diploma as defined in s. 1003.438 or~~ a certificate of completion as defined in s. 1003.428(7)(b) is eligible to enroll in certificate career education programs.

Each board of trustees shall establish policies that notify students about developmental education options for improving their communication or computation skills that are essential to performing college-level work, including tutoring, extended time in gateway courses, free online courses, adult basic education, adult secondary education, or private provider instruction.

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Section 11. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1512
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Stargel and others
SUBJECT:	Students with Disabilities
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Fav/CS**
3.	Elwell	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1512 creates a new scholarship program called "Personal Learning Scholarship Accounts" for kindergarten through grade 12 students with a disability, repeals the Special Diploma, and creates new pathways for students with disabilities who meet the requirements to earn a standard diploma.

The new scholarship program created by the bill:

- Specifies parent and student eligibility requirements, prohibitions, responsibilities and obligations;
- Delineates allowable expenditures related to elementary, secondary and postsecondary education expenses; and
- Provides funding, payment, and accountability responsibilities.

In addition to repealing the Special Diploma and Special Certificate of Completion as options for public school students effective July 1, 2015, the bill:

- Requires postsecondary goals and career transition planning processes begin before a student with a disability turns age 14.
- Provides students with disabilities with additional opportunities to satisfy the requirements for a standard high school diploma.

Additionally, the bill allows a student with a disability to defer receipt of the standard high school diploma if the individual education plan (IEP) prescribes special education or services through age 21 and the student meets high school graduation and other requirements.

Under the bill, the Commissioner of Education must grant a permanent exemption to a student who suffers from such a severe cognitive disability or physical disability that the student permanently lacks the capacity to take statewide, standardized assessments. The State Board of Education must adopt rules that include expediting the exemption process.

The bill prohibits a school district from imposing any additional requirements and from charging fees associated with private instructional personnel who are employed by the parent or under contract to observe a student in a public school setting or provide services in the educational setting.

The bill provides that parents of a student with a substantial reading deficiency must be provided with specific information related to the criteria, policies, and evidence used to review a portfolio. The bill also creates a new, good cause exemption from retaining a 3rd grade student and prohibits a student from being retained more than once in the 3rd grade.

This bill and Senate Bill 2500, First Engrossed, the General Appropriations Bill for Fiscal Year 2014-2015, appropriate $18.4 million to the Agency for Persons with Disabilities for implementation of this program. $1.5 million of this amount is provided as startup funding for planning and implementation of the statewide pilot program which will begin enrolling parents and students on a first-come, first-served basis, no later than February 1, 2015.

The bill also amends the Florida Tax Credit Scholarship Program to confirm the autonomy of a private school over its standards and curriculum; revise student eligibility, performance and funding requirements; and strengthen eligible nonprofit scholarship-funding organization accountability and transparency.

The bill takes effect upon becoming a law, unless otherwise provided.

II. Present Situation:

Individuals with Disabilities Education Act (IDEA)[1]

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school.[2] As the state educational agency, the Florida Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.[3]

[1] 20 U.S.C. §.1400 et. seq., as amended by P.L. 108-446; 34 C.F.R. § 300.17.
[2] 20 U.S.C. § 1412(a)(1).
[3] 20 U.S.C. § 1412(a)(11). 34 C.F.R. § 300.149.

For each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.[4] In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.[5]

States receiving Individuals with Disabilities Education (IDEA) funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.[6]

Transition to Postsecondary Education and the Workforce

Citing research that students with disabilities are less likely than their peers to successfully transition from high school to postsecondary education or the workforce, the U.S. General Accounting Office (GAO) notes that those students face several longstanding challenges accessing services that may assist them, including services such as tutoring, vocational training, and assistive technology.[7] Eligible students with disabilities are entitled to transition planning services during high school, but after leaving high school, to receive services that facilitate their transition they must apply as adults and establish eligibility for programs administered by multiple federal agencies.[8] Students with disabilities may face delays in service and end up on waitlists if these programs are full.[9]

The IDEA requires that beginning not later than the first IEP to be in effect when the student turns 16, school officials must include in the IEP measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills.[10] The IEP

[4] Rule 6A-6.03028(3), F.A.C.
[5] 20 U.S.C. s. 1414(d)(3)(A) and (B).
[6] 20 U.S.C. § 1415.
[7] *Students with Disabilities, Better Coordination Could Lessen Challenges in the Transition from High School*, U.S. Government Accounting Office (GAO), GAO-12-594, July 12, 2012. *See* http://gao.gov/products/GAO-12-594 (last visited February 22, 2014). Florida participated in the GAO review of federal programs.
[8] *Id.* Students remain eligible for transition planning and services, as well as other IDEA services, until they graduate from high school with a regular high school diploma or exceed the earlier of age 21 or the eligibility age for a free appropriate public education under state law. 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i) and (ii), and Rule 6A-6.03028(1)(a), F.A.C. While federal law authorizes students to receive a free appropriate public education up until age 22, eligibility for students aged 18-21 is determined by states. 20 U.S.C. § 1412(a)(1) and 34 C.F.R. § 300.102. In addition to IDEA, there are a range of services to support students with disabilities in their transition out of high school. The programs vary in the target population served, services provided, grant funding amounts, and other characteristics. In addition, they are administered through various federal agencies, each with its own eligibility requirements and application processes. GAO-12-594, July 12, 2012. Federally funded programs that provide transition services, as defined in the GAO report, are often delivered through state and local entities that have flexibility on how to administer services. *Id.*
[9] *Students with Disabilities, Better Coordination Could Lessen Challenges in the Transition from High School*, U.S. Government Accounting Office (GAO), GAO-12-594, July 12, 2012.
[10] 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

also must specify the transition services[11] needed to assist the student in reaching those goals.[12] School officials are required to invite the student to a meeting where the transition services detailed in the IEP are discussed.[13] When appropriate, they also must invite a representative of any participating outside agency that is likely to be responsible for providing or paying for services, with the prior consent of the parent or student who has reached the age of majority.[14]

During a Florida student's eighth grade year or during the school year of the student's 14th birthday, whichever occurs first, the IEP for a student with a disability must contain a statement of whether he or she is pursuing a course of study leading to a standard high school diploma or a special diploma.[15] Current law provides that nothing limits or restricts the right of an exceptional student solely to a special diploma or special certificate of completion.[16] A student must, upon proper request, be afforded the opportunity to fully meet all requirements and procedures in law[17] and qualify for a standard diploma upon graduation.[18]

Florida High School Diploma

Currently Florida public high school students have four options for obtaining a standard high school diploma -- a traditional 4-year, 24-credit option;[19] an 18-credit graduation option;[20] or completion of an International Baccalaureate (IB) or Advanced International Certificate of Education (AICE) curriculum.[21] In addition, current law requires each school district to adopt an early graduation policy allowing a high school student who completes 24 credits in less than eight semesters and meets the GPA and assessment requirements to graduate early.[22] A student who fails to meet the required credits or achieve a 2.0 GPA must be awarded a certificate of completion.[23] The state is not obligated to provide special education and related services to a

[11] Under IDEA, transition services are defined as a coordinated set of activities that (1) is designed to be within a results-oriented process focused on improving the academic and functional achievement of a child with a disability to facilitate the child's movement from school to post-school activities; (2) is based on the individual child's needs, strengths, preferences, and interests; and (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 U.S.C. § 1401(34). Transition services are also defined in Rule 6A-6.03411(1)(nn), F.A.C.
[12] 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).
[13] 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321, and Rule 6A-6.03028(3)(c)7., F.A.C.
[14] 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321(b)(3), and Rule 6A-6.03028(3)(c)8., F.A.C. At the discretion of the parent or the agency, the IEP team may include other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321(a)(6) and (c), and Rule 6A-6-6.03028(3)(c)6., F.A.C.
[15] Rule 6A-1.09961(2)(b), F.A.C., and Rule 6A-6.03028(3)(h)8., F.A.C.
[16] Section 1003.438, F.S.
[17] Sections 1003.428 or 1003.4282, F.S., as applicable.
[18] Section 1003.438, F.S.
[19] Section 1003.428, F.S., established high school graduation requirements beginning with students entering grade 9 in the 2007-2008 school year. Section 1003. 4282, F.S., established high school graduation requirements for students entering grade 9 in the 2013-2014 school year and thereafter.
[20] Section 1002.3105(5), F.S. Effective July 1, 2013, students may earn a standard high school diploma in 18 credits by achieving a 2.0 GPA; earning credit in the same 15 English Language Arts, mathematics, science, social studies, and fine and performing arts courses required under the traditional 24-credit option; and earning 3 elective credits, instead of the 6 electives required by the 24-credit option.
[21] Sections 1003.428 and 1003.4282, F.S.
[22] Section 1003.4281, F.S.,
[23] Section 1003.4282(7), F.S.

student with a disability who has graduated from high school with a standard diploma.[24] This provision does not apply to a student who has graduated from high school, but has not been awarded a regular high school diploma.[25] A standard diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate of completion or a general educational development credential (GED).[26]

Florida Special Diploma

A student with a disability[27] must be awarded a special diploma upon meeting a combination of state and district school board requirements that are included in the district-adopted student progression plan.[28] School boards may award special diplomas based on two options.[29] For students entering ninth grade in or after 1999-2000, special diploma requirements for the first option must include:[30]

- Demonstration of proficiency at the independent, supported, or participatory level of each Florida academic standard for a special diploma, as determined through the IEP process;[31] or
- Mastery of Florida's academic standards through successful completion of courses that meet graduation requirements for a standard diploma;[32] and
- Completion of the minimum number of course credits for a special diploma as prescribed by the school board.[33]

The second option requires district school boards to include procedures for determining and certifying mastery of demonstrated employment and community competencies to ensure that the student:[34]

- Has achieved all the annual goals and short-term objectives which were specified on the IEP related to the employment and community competencies;
- Is employed in a community-based job, for the number of hours per week specified in the student's training plan, for the equivalent of one semester, and paid a minimum wage in compliance with the requirements of the Fair Labor Standards Act; and
- Has mastered the employment and community competencies specified in a training plan. The training plan must be developed and signed by the student, parent, teacher, and employer prior to placement in employment.

[24] 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i), and Rule 6A-6.03028(1)(a), F.A.C.
[25] 34 C.F.R. § 300.102(a)(3)(ii).
[26] 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i), and Rule 6A-6.03028(1)(a), F.A.C.
[27] Section 1003.438, F.S., applies to a student who has been identified, in accordance with State Board of Education rules, as a student with a disability who has an intellectual disability; an autism spectrum disorder; a language impairment; an orthopedic impairment; and other health impairment; a traumatic brain injury; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; or a student who is deaf or hard of hearing or dual sensory impaired.
[28] Section 1003.438, F.S., Rule 6A-1.09401(1) and (3), F.A.C., and Rule 6A-1.09961(2)(c), F.A.C.
[29] Rule 6A-1.09961(1), F.A.C.
[30] Rule 6A-1.09961(1), F.A.C.
[31] Rule 6A-1.09961(12)(a), F.A.C.
[32] Rule 6A-1.09961(13), F.A.C.
[33] Rule 6A-1.09961(12)(b), F.A.C.
[34] Rule 6A-1.09961(14), F.A.C. The DOE notes that students seeking this option may also earn course credits, which are determined by the school board. The DOE also notes that in 2012, eight districts reported that they did not offer this option. DOE correspondence, February 24, 2014. On file with the Senate Education committee.

Each school board must develop procedures for ensuring that students may select and move between the special diploma options, if both options are provided by the school district, and between courses of study leading to standard or special diplomas, as appropriate.[35] A student who meets all special requirements of the district school board, but fails to meet the appropriate special state minimum requirements must be awarded a special certificate of completion.[36]

Extraordinary Exemption

Current law provides a process for granting an extraordinary exemption from administration of a statewide, standardized assessment for a student with a disability who is prevented by a circumstance or condition from physically demonstrating the mastery of acquired skills that are measured by a statewide standardized assessment.[37] The IEP team may request an exemption from testing during a particular testing window.[38] The request must be made to the district superintendent who must make a recommendation to the Commissioner of Education. A parent is permitted to appeal the Commissioner's decision.[39]

Florida Tax Credit Scholarship Program

The Florida Tax Credit Scholarship Program (FTC) provides scholarships for eligible low-income students to attend private schools.[40] The program is funded by taxpayers that choose to make private, voluntary contributions to an eligible nonprofit scholarship-funding organization (SFO) to help parents with limited resources educate their children.[41] The three components of the FTC program that are addressed in this bill are private school autonomy; student eligibility, performance, and funding; and SFO accountability and transparency.

Private School Autonomy

Although all private schools must annually provide basic information regarding the school to the Department of Education, it is the intent of the Legislature not to regulate, control, approve, or accredit private schools.[42] Additionally, including private schools within options to Florida public school students does not expand the regulatory authority of the state to impose any additional regulation of private schools beyond those reasonably necessary to enforce state scholarship program requirements.[43]

[35] Rule 6A-1.09961(2)(a), F.A.C.
[36] Section 1003.438, F.S.
[37] Section 1008.212, F.S.
[38] *Id.*
[39] *Id.*
[40] Section 1002.395, F.S.
[41] Section 1002.395(1)(b), F.S.
[42] Section 1002.42(2)(h), F.S. The types of information provided by private schools to DOE includes information such as: name, address, and telephone number of the institution; names of the administrative officers; enrollment by grade; number of graduates; the number of instructional and administrative personnel. *See*, s. 1002.42(2), F.S.
[43] Section 1002.421(6), F.S.

Student Eligibility, Performance, and Funding

A student is eligible[44] for a FTC scholarship if he or she:

- Qualifies for free or reduced-price school lunches under the National School Lunch Act[45] or is on the direct certification list[46] and:
  - Was counted as a full-time student during the previous state fiscal year for purposes of state per-student funding;
  - Received a scholarship from an eligible nonprofit scholarship-funding organization (SFO) or the State of Florida during the previous school year; or
  - Is eligible to enter kindergarten through fifth grade.[47]
- Is placed, or during the previous state fiscal year was placed, in foster care;[48] or
- Is a sibling of a scholarship student who continues to participate in the program and resides in the same household as the student.[49]

The maximum scholarship award to each participating student is set at a percentage of the unweighted Florida Education Finance Program (FEFP) full-time equivalent (FTE) per student funding as provided in the General Appropriations Act.[50] The scholarship amount increases by four percentage points each fiscal year the tax credit amounts meet or exceed 90 percent of the tax credit cap; however, the percentage will stop increasing upon reaching 80 percent of the unweighted FTE funding.[51]

An eligible student's scholarship is also dependent upon the student's household income level, as follows:[52]

- A full scholarship award is available for a student with a household income level below 200 percent of the federal poverty level.[53]
- A 75 percent scholarship award is available for a student with a household income level that is equal to, or greater than 200 percent, but less than 215 percent of the federal poverty level.[54]

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[44] Likewise, a student is ineligible if the student meets certain requirements, such as participating in another state sponsored scholarship program, or being home-schooled. *See*, s. 1002.395(4), F.S.

[45] The National School Lunch Program is a federally funded program administered by the United States Department of Agriculture that assists schools and other agencies in providing nutritious meals to children at reasonable prices. 42 U.S.C. 1758(b). In Florida, the Florida Department of Agriculture and Consumer Services, Division of Food, Nutrition, and Wellness administers the program. *See*, chapter 595, F.S.

[46] "Direct certification list" means the certified list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations provided to DOE by the Department of Children and Family Services. Section 1002.395(2)(c), F.S.

[47] Section 1002.395(3)(b), F.S.

[48] Section 1002.395(3)(b)1. – 2., F.S. Foster care is a placement with a foster family or in a group home. Section 39.01(31), F.S. In comparison (i.e., see the effect of proposed changes), out-of-home care refers to placement outside of the home of the parent(s). Section 39.01(48), F.S. Students placed in out-of-home care that is not foster care are not currently eligible for an FTC scholarship. *See*, s. 1002.395(3)(b), F.S.

[49] Section 1002.395(3)(b)3., F.S. The sibling is eligible as a first-time scholarship recipient. *Id.*

[50] Section 1002.395(12)(a)1., F.S.

[51] *Id*.

[52] Section 1002.395(12)(a)2., F.S. Household income is not defined in s. 1002.395, F.S.

[53] *Id*.

[54] *Id*.

- A 50 percent scholarship award is available for a student with a household income level equal to, or greater than 215 percent, but equal to or less than 230 percent of the federal poverty level.[55]
- A student will lose his or her scholarship if the student's household income level exceeds 230 percent of the federal poverty guidelines.[56]

Participating students are obligated to take one of the DOE approved norm-referenced assessments offered by the student's private school, or the parent may choose for the student to take the statewide assessments under s. 1008.22, F.S.[57] If the parent chooses the statewide assessments, and the private school is not approved to administer the statewide assessment, the parent is responsible for transporting the student to the assessment site designated by the school district.[58]

The DOE is required to select an independent nonprofit organization, which may be a public or private entity or university, to report the year-to-year learning gains of participating students on a statewide and school-level basis.[59] For the school level, there must be at least 30 participating students who have scores for tests administered for 2 consecutive years at the private school.[60] The sharing and reporting of the data must be in accordance with the Family Educational Rights and Privacy Act (FERPA).[61]

Scholarship Funding Organization Accountability and Transparency

An eligible SFO is a charitable organization that is: exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code; a Florida entity formed under Chapter 607, F.S., Chapter 608, F.S., or Chapter 617, F.S., and whose principal office is located in Florida; and complies with applicable laws.[62]

An SFO administers the receipt of contributions and distribution of FTC scholarship awards.[63] Although no application process for an SFO exists in statute, DOE has promulgated an annual application process via rule.[64]

Unlike a participating private school, an SFO is not required to maintain a surety bond or letter of credit.[65]

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[55] *Id*.
[56] Section 1002.395(3)(b)2., F.S.
[57] Section 1002.395(7)(e), F.S. The DOE list of 22 currently approved norm-referenced assessments may be viewed at http://www.floridaschoolchoice.org/information/CTC/norm_referenced_assessment.asp (last visited April 24, 2014).
[58] *Id*.
[59] Section 1002.395(9)(j), F.S. The current independent research organization under contract with DOE is the University of Florida (David Figlio). Email from the Florida Department of Education (April 4, 2014) (On file with the Senate Committee on Education).
[60] *Id*.
[61] *Id*. FERPA is codified by federal law in 20 U.S.C. 1232g.
[62] Section 1002.395(2)(f), F.S. Chapter 607, F.S., concerns corporations. Chapter 608, F.S., concerns limited liability companies. Chapter 617, F.S., concerns corporations not for profit.
[63] Section 1002.395(6), F.S.
[64] Rule 6A-6.0960(1), F.A.C.
[65] Section 1002.421(2)(f)1., F.S., requires a participating private school to be in operation for at least 3 years or to obtain a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter.

Owners and operators of an SFO must pass a level 2 background check upon beginning employment there and every 5 years thereafter.[66]

If an SFO has been in operation for three years and does not have any negative financial audit findings, the SFO may use up to three percent of the contributions received for reasonable and necessary administrative expenses.[67] No more than one-third of the funds available for administrative expenses may be used for expenses related to the recruitment of contributions.[68]

An SFO must provide to the Auditor General and DOE an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant and in accordance with rules adopted by the Auditor General.[69] An SFO must submit to DOE quarterly reports regarding the number of students participating and the schools at which they are enrolled.[70] An SFO must expend at least 75 percent of donations remaining after administrative costs as scholarship payments each year.[71] Any amounts carried forward to the next year must be spent in that year.[72]

A taxpayer may transfer an approved tax credit to another entity if all of the taxpayer's assets are transferred in the same transaction.[73]

III. Effect of Proposed Changes:

Personal Learning Scholarship Accounts

The bill creates a Personal Learning Scholarship Accounts program for kindergarten through grade 12 students who have a disability. The bill authorizes creation of personalized accounts for individual students, specifies parent and student obligations, delineates allowable expenditures related to elementary, secondary and postsecondary education, and provides funding and payment responsibilities. [74]

Student Eligibility

A parent may establish and maintain a personal account if his or her child:

- Is a resident of this state;
- Is eligible to enroll in kindergarten through grade 12 in a Florida public school;
- Has a disability as defined in the bill;

[66] Section 1002.395(6)(b), F.S.
[67] Section 1002.395(6)(i), F.S.
[68] *Id*.
[69] Section 1002.395(6)(l), F.S. However, note that the Auditor General does not have specific statutory authority to audit an SFO. *See*, s. 11.45(2), F.S.
[70] Section 1002.395(6)(m), F.S.
[71] Section 1002.395(6)(i)2., F.S.
[72] *Id*.
[73] Section 1002.395(5)(d), F.S.
[74] Disability means autism, as defined in s. 393.063(3), F.S.; cerebral palsy, as defined in s. 393.063(4), F.S.; Down syndrome, as defined in s. 393.063(13), F.S.; an intellectual disability, as defined in s. 393.063(21), F.S.; Prader-Willi syndrome, as defined in s. 393.063(25), F.S.; or Spina bifida, as defined in s. 393.063(36), F.S.; Williams syndrome; and, for a student in kindergarten, being a high-risk child, as defined in s. 393.063(20)(a), F.S.

- Is meeting "regular school attendance" requirements;
- Is the subject of an Individual Learning Services Plan (ILSP);[75] and
- Is a public school student, private school student, home education program student, a student receiving a McKay or FTC scholarship, or a student participating in a private tutoring program?

Students are not eligible if:

- The student or student's parent has accepted any payment, refund, or rebate from a provider of any services received while participating in the program;
- The student's participation in the program has been denied or revoked by the Agency for Persons with Disabilities (APD); or
- The student's parent has forfeited participation in the program for failure to comply with the program's requirements.

Parent and Student Obligations

A parent who applies for program participation is exercising his or her parental option to determine the appropriate placement or services that best meet the needs of his or her child. Parents are responsible for the following:

- Signing an agreement with the APD and annually submitting a notarized, sworn compliance statement to the department to:
  - Affirm that the student meets minimum student attendance requirements;[76]
  - Use funds only for authorized purposes to meet the student's goals and objectives in the ILSP;
  - Affirm that the student takes all appropriate assessments, in accordance with the academic program selected by the parent who enrolls the student in a private school, a home education program, or a scholarship program pursuant to ss. 1002.39 or 1002.395, F.S.;
- Requesting participation in the program by February 1st prior to the school year in which the student will participate;
- Affirming that the student remains in good standing with the provider or school if those options are selected by the parent;
- Affirming that the parent will not transfer any college savings funds to another beneficiary and will not take possession of any funding provided for Personal Learning Scholarship Accounts;

[75] The ILSP is developed by APD, in consultation with the parent, for each student and documents the following: the student has an eligible disability; learning goals and objectives for the student that are linked directly to how program funds will be spent; how attendance requirements will be met (public school, private school, home education program, or a private tutoring program); how progress towards meeting the individual learning goals and objectives specified in the plan will be assessed and documented for purposes of continued participation in the program; and funding categories specified in accordance with APD rule..

[76] Pursuant to s. 1003.01, F.S., "regular school attendance" means the actual attendance of a student during the school day as defined by law and rules of the State Board of Education. Regular attendance within the intent of s. 1003.21, F.S., may be achieved by attendance in: a public school supported by public funds; a parochial, religious, or denominational school; a private school supported in whole or in part by tuition charges or by endowments or gifts; a home education program that meets the requirements of chapter 1002, F.S.; or a private tutoring program that meets the requirements of chapter 1002, F.S. *See also* ss. 1003.21 and 1003.24, F.S.

- Applying for admission of his or her child to a private school if this option is selected by the parent;
- Annually renewing participation in the program;
- Be responsible for payment of eligible expenses in excess of the amount of the personal account; and
- Maintaining a portfolio of records for two years to document student learning and requiring it to be available for inspection upon 15 days written notice from the district school superintendent.

A parent who fails to comply with these requirements forfeits the personal account.

Allowable Expenditures

Funds from the personalized account may be used for the following, as specified in the student's ILSP:

- Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content;
- Curriculum;
- Specialized services selected by the parent and specified in the student's ILSP, including, but not limited to applied behavior analysis services[77] and services provided by speech-language pathologists,[78] occupational therapists,[79] physical therapists,[80] and listening and spoken language specialists;[81]
- Enrollment in, or tuition or fees associated with enrollment in, an eligible private school, an eligible postsecondary educational institution, a private tutoring program,[82] a virtual program offered by a DOE-approved private online provider,[83] or an approved online course;[84]
- Fees for assessments specified in the student's ILSP;
- Contributions to the Stanley G. Tate Prepaid College Program for the benefit of the eligible student;[85] and
- Contracted services provided by a public school or school district, including classes and extracurricular programs for the services specified in the ILSP or additional services.

[77] *See* ss. 627.6686 and 641.31098, F.S.
[78] *See* s. 468.1125, F.S.
[79] *See* s. 468.203, F.S.
[80] *See* s. 486.021, F.S.
[81] Providers must be approved by the DOE or the Agency for Persons with Disabilities (APD). The DOE maintains a list of approved providers. Providers may request approval from the department. If a provider is not on the current DOE-approved list, parents may request approval of a specified provider who must meet criteria (e.g., licensure or certification in an applicable field of study and delivery of services according to professionally accepted standards). Rule 6A-6.03033, F.A.C. See also http://www.floridaearlylearning.com/providers/provider_menu/specialized_instructional_services_providers.aspx (last visited March 19, 2014). All APD iBudget Waiver providers must be enrolled by the Agency for Healthcare Administration as a Medicaid provider and also sign a contract with APD to render waiver services. E-mail, APD, March 13, 2014. On file with the Senate Committee on Education. Service descriptions and a list eligible providers are available at http://www.flddresources.org/html/service_descriptions.htm (last visited March 19, 2014).
[82] *See* s. 1002.43, F.S.
[83] *See* s. 1002.45(2)(a), F.S.
[84] *See* ss. 1003.499 or 1004.0961, F.S.
[85] Section 1009.98, F.S.

A student who receives services under a contract is not considered to be enrolled in a public school for eligibility purposes.

A specialized service provider, eligible private school, eligible postsecondary educational institution, private tutoring program provider, online or virtual program provider, public school, school district, or other entity receiving payments may not share, refund, or rebate any moneys from the personalized account to the parent or participating student.

Term of the Program

Under the bill, the payments made remain in force until a student fails to comply with the program requirements, has funds revoked by the APD, graduates from high school, or reaches 22 years of age, whichever occurs first.

APD

The bill requires the APD to deny, suspend, or revoke a student's participation in the program or the use of program funds, if the student's health, safety, or welfare is in jeopardy or fraud is suspected. The APD may also deny, suspend, or revoke the use of program funds for material noncompliance with law and rules.

The bill authorizes the APD to perform direct program oversight and contract for some services. Under the bill, the APD may receive an administrative fee of up to ten percent from the appropriation for the program. The agency responsibilities include:

- Receiving applications and determines student eligibility;
- Developing individual learning services plans in consultation with the parent;
- Assigning a funding category for each student that documents the nature and intensity of services needed to meet the learning outcomes specified in the plan;[86]
- Establishing and maintaining a separate Personal Learning Account for each eligible student;
- Verifying qualifying expenditures;
- Establishing a list of eligible providers;
- Requiring working with an Advisory Work Group to develop a newly created Individual Learning Services Plan, funding category requirements, a system for payment of claims and providers, and a system to document and assess progress toward meeting the individual learning goals and objectives in the services plan; and
- Requiring rules to implement the program and enroll the first students in a statewide pilot program on a first-come, first-served basis no later than February 1, 2015.

Department of Education

The DOE's responsibilities are to maintain a list of eligible private schools and compare the list of students participating in the program with the public school enrollment lists before each program payment to avoid duplicate payments.

[86] The funding category will be used to determine the amount of the award for the student.

Florida K-20 Education Code

The Commissioner of Education, the Department of Education, and the school districts retain all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

Auditor General

The Auditor General must conduct an annual financial and operational audit related to the program. As a part of this audit, the Auditor General must verify, at a minimum, the total amount of students served and eligibility of reimbursement made by the APD and transmit that information to the APD.

Transition Planning

Under the bill, the postsecondary goals and career transition planning process begins before a student with a disability turns 14 so that a plan is in place by the time he or she turns 16. The IEP must include specific components, including a statement of measurable, long term postsecondary and career education goals, a statement of intent to pursue a standard high school diploma, as determined by the parent, and a description of how the student will fully meet the standard high school diploma requirements. Any change in goals must be approved by the parent and is subject to an independent review.

High School Graduation[87]

The bill repeals the special diploma and the special certificate of completion as graduation options for students with disabilities, effective July 1, 2015.[88]

The bill provides additional opportunities for a student with a disability to satisfy the requirements for a standard high school diploma. These provisions apply to students entering grade 9 in the 2014-2015 school year and thereafter.

[87] The importance of making informed decisions about diploma options for students with disabilities has been underscored in recent reports by the National Center for Learning Disabilities, *A Critical Look at the Graduation Rate of Students with Disabilities*, 2013, and the National Center on Educational Outcomes, *Diploma Options, Graduation Requirements, and Exit Exams for Youth with Disabilities*, 2012. *See* http://www.ncld.org/?__utma=56814325.123698153.1394924720.1394924720.1394924720.1&__utmb=56814325.1.10.1394924720&__utmc=56814325&__utmx=-&__utmz=56814325.1394924720.1.1.utmcsr=bing|utmccn=(organic)|utmcmd=organic|utmctr=National%20Center%20for%20Learning%20Disabilities%2C%20A%20Critical%20Look%20at%20the%20Graduation%20Rate%20of%20Students%20with%20Disabilities%2C%202013%2C%20See&__utmv=-&__utmk=227182617http://ici.umn.edu/index.php?products/view/460 (last visited March 15, 2014).

[88] The 2013 K-20 Students with Disabilities Education Pathway Task Force recommended the repeal of Florida's special diploma. The task force was created pursuant to Special Appropriation 129 in the General Appropriations Act, chapter 2013-40, L.O.F.

The bill provides a student who has a disability and for whom the Florida Alternate Assessment (FAA) is the most appropriate measure of the student's skills with the opportunity to satisfy the requirements for a standard high school diploma through the following:[89]

- A combination of appropriate course substitutions, assessments, industry certifications, and other options that meet the criteria specified in State Board of Education rule.
- A portfolio of quantifiable evidence documenting a student's mastery of academic standards using rigorous metrics that are specified in State Board of Education rule.[90]

For a student with a disability for whom the IEP team determines that mastery of academic and employment competencies is the most appropriate way for a student to demonstrate his or her skill, the requirements may be met through the following:

- Completion of the number of course credits specified by the district school board;
- Achievement of annual goals and short-term objectives for academic and employment competencies and industry certifications that is verified by the IEP team;
- Successful employment for the number of hours each week for the equivalent of 1 semester and payment of the minimum wage; and
- Mastery of academic and employment competencies and industry certifications that is verified by the IEP team, the employer, and the teacher.

The bill also provides for:

- All requirements to be specified in the student's transition plan.
- The State Board of Education to establish the minimum requirements for the diploma.
- The transition plan to be developed and signed by the student, parent, teacher, and employer and include academic and employment expectations and industry certifications, work schedule, and required supervision, prior to employment.

The bill allows a student to defer receipt of the standard high school diploma if the IEP prescribes special education or services through age 21, the student meets the high school graduation requirements, and is enrolled in accelerated college credit instruction, industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or pre-apprenticeship program. Additionally, the bill allows a student who receives a certificate of completion and has an IEP that prescribes special education, transition planning, transition services, or related services through 21 years of age to continue to receive the specified instruction and services.

Statewide, Standardized Assessments

A student who has a disability and for whom the IEP team determines that the statewide, standardized assessments cannot accurately measure the student's abilities, taking into consideration all allowable accommodations, must have assessment results waived for the

[89] According to the DOE, the percent of students assessed on the FAA, as compared to students assessed on other statewide, standardized assessments (i.e., FCAT, FCAT 2.0, and end-of-course assessments) was 1.2 percent for 2009-2010, 2010-2011, and 2011-2012. DOE e-mail, April 3, 2014. On file with the Senate Education Committee.

[90] A portfolio may consist of documented work experience, internships, and community service.

purpose of receiving a course grade and a standard high school diploma.[91] The waiver must be designated on the student's transcript.

Based on information that a reasonably prudent person would rely upon, the Commissioner of Education must grant a permanent exemption to a student who suffers from such a severe cognitive disability or physical disability that the student permanently lacks the capacity to take statewide, standardized assessments. The State Board of Education must adopt rules that include expediting the exemption process.

Other

Current law authorizes private instructional personnel who are employed by the parent or under contract to observe a student in a public school setting or provide services in the educational setting at a time agreed upon by the private instructional personnel and the school.[92] The bill prohibits a school district from imposing any additional requirements and from charging fees in such circumstances.

Any third-grade student scoring Level 1 on a statewide, standardized assessment for grade 3 students must be retained in third grade.[93] Some students may qualify for a good cause exemption and be promoted to fourth grade.[94] Through a student portfolio, a student may be promoted to fourth grade if he or she demonstrates at least a Level 2 performance on the statewide standardized assessment.[95]

The bill provides that parents of a student with a substantial reading deficiency must be provided with specific information related to the criteria, policies and evidence used to review a portfolio. The bill allows the parent of a third grade student who is at risk of retention to request that the school immediately start compiling a portfolio. The bill also requires that a student who was granted a good cause exemption be provided with intensive reading instruction and intervention. The bill creates a new good cause exemption from retention of a 3rd grade student who was previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of two years and received intensive reading intervention for two or more years, but still demonstrates a deficiency in reading. Additionally, the bill prohibits a student from being retained in 3rd grade more than once.

Florida Tax Credit Scholarship Program

The bill addresses the following components of the Florida Tax Credit Scholarship Program (FTC): confirming private school autonomy; revising student eligibility, performance

[91] Section 1008.22(3)(c)2., F.S. This applies to any student who is documented as having an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; an emotional or behavioral disability; an orthopedic or other health impairment; an autism spectrum disorder; a traumatic brain injury; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia. Section 1007.02(2), F.S.
[92] Section 1003.572(3), F.S. These personnel include licensed speech-language pathologists, occupational therapists, physical therapists, and psychologists and must meet the background screening requirements in s. 1012.32 or s. 1012.321, F.S.
[93] Section 1008.25(5)(b), F.S.
[94] Section 1008.25(6)(b), F.S.
[95] Section 1008.25(6)(b)4., F.S.

requirements, and funding; and strengthening Scholarship Funding Organization (SFO) accountability and transparency.

Private School Autonomy

The bill provides that the purpose of the FTC program is not to prescribe standards or curriculum for private schools. More specifically, a private school in the FTC program retains the authority to determine its own standards and curriculum.

Student Eligibility, Performance, and Funding

Beginning in the 2014-15 school year and thereafter, the prior public school year enrollment requirements are eliminated. Students placed in out-of-home care that does not fall within the definition of foster care are eligible for the FTC program. Students in foster care or out-of-home care placement may apply to enter the program at any time and remain eligible until the student turns 21 or graduates high school, whichever comes first. The "first time recipient" limitation for student eligibility, for a student whose sibling is participating in the FTC program, is also removed from current law.

Beginning in the 2016-2017 school year and thereafter, an SFO must give priority to new applicants with household incomes up to 185 percent of the federal poverty level and to students in foster or out-of-home care.[96] The maximum household income level for student eligibility is reduced from 230 percent to 185 percent of the federal poverty level, while the maximum scholarship amount is increased from 80 percent to 82 percent of the Florida Education Finance Program (FEFP) per student funding amount.

If a parent decides that the student will participate in the statewide assessments pursuant to s. 1008.22, F.S., the bill shifts the responsibility of transportation to the assessment site from the parent to the private school, but in a manner as agreed upon by the parent. The private school is also responsible for making arrangements for the student to take the assessments at the assessment site designated by the school district and in accordance with the district's assessment schedule.

The bill designates the Learning System Institute at the Florida State University as the independent research organization to report on FTC student performance.[97] The institute will report student performance on a statewide and individual school basis. For the individual school basis, the report will include student performance for participating private schools in which at least 51 percent of the total enrolled students were FTC students in the prior year. Subject to student privacy laws, the report may be at the school-level and student level. For example, student cell size may drop below 30 students if the institute determines that no personally identifiable information will be disclosed; however, the student cell size is not permitted to drop below 10 students. Additionally, the bill strengthens the sharing and reporting of student data to the institute by specifically requiring compliance with state student confidentiality laws and applicable rules and regulations, in addition to existing law requiring compliance with the Family Educational Rights and Privacy Act.

[96] The bill also provides that students who received a scholarship in the prior year will continue to receive first priority.
[97] The term "student performance" is defined in CS/SB 1642 2nd Eng., to include, but not be limited to, student learning growth, achievement levels, and learning gains.

"Household income" is defined to correspond to the definition of "income" pursuant to the United States Department of Agriculture Income Eligibility Guidelines for free or reduced price meals.

Parents of students who wish to participate in FTC must authorize the SFO to access information held by other state or federal agencies necessary for verification of income.

Scholarship Funding Organization Accountability and Transparency

The bill creates an application process for a charitable organization to become an SFO. The organization must submit an application for approval to DOE by September 1 of the year prior to the year in which the organization intends to begin offering scholarships. The application must include types of information such as:

- The organization's incorporation documents.
- The organizational chart.
- A surety bond or letter of credit for the amount equal to 25 percent of anticipated donations or $100,000, whichever is greater.
- A description of the organization's financial plan and intended area of operation.
- A description of the criteria and methodology that will be used to evaluate student scholarship eligibility.
- A description of the student application process, including deadlines and associated fees.

An eligible SFO must annually submit a renewal application to maintain eligibility to continue to participate in FTC. The renewal application must include types of information such as:

- A surety bond or letter of credit equal to the amount of undispersed funds, with a minimum amount of $100,000 and a maximum of $25 million.
- The organization's IRS Form 990 from the previous year.
- A copy of the SFO's annual independent audit.
- An annual report regarding donations, administrative expenditures, scholarship application recipients, the amounts of funds received and distributed, and how administrative funds were spent.

In review of the initial and renewal application, DOE will consult with the Department of Revenue (DOR) and the Chief Financial Officer. The DOE will notify the organization of any deficiencies, and allow 30 days for correction. The DOE will provide a recommendation for each initial or renewal application to the State Board of Education for final approval or disapproval. Any funds held by an SFO whose application for renewal is denied will revert to DOR for redistribution to eligible SFOs.

The bond or letter of credit may be adjusted on a quarterly basis to equal the amount of undispersed donations based upon a statement from a certified public accountant verifying the amount. The surety bond or letter of credit requirement is waived if the cost of acquiring such bond or letter exceeds the average 10-year cost by 200 percent. An SFO that is already approved as of July 1, 2014, will have until August 1, 2014, to provide a copy of a surety bond or letter of credit.

The bill strengthens the background check requirements for owners and operators of an SFO by adding a number of additional disqualifying offenses specified in s. 435.04, F.S., and various other laws that primarily relate to fraudulent financial crimes.

The bill increases SFO accountability and transparency by strengthening audit requirements and review. For example, the bill:

- Revises existing law to require an SFO to provide the Auditor General a report on the results on the SFOs annual financial audit conducted by an independent certified public accountant. The audit will be in accordance with auditing standards that are generally accepted in the United States. The Auditor General will review all reports and request significant items that were omitted in violation of applicable rules.
- Requires, for audit purposes, that all eligible contributions carried forward into the next year by an SFO be identified for particular students and schools (as opposed to being reserved for non-scholarship expenses), subject to student privacy laws.
- Requires the Auditor General to conduct operational audits of SFO accounts and records. This audit will include review of any contracts for services with related entities, and a determination of compliance with applicable law. The Auditor General must provide a report on the results of the audit to the Governor, the President of the Senate, the Speaker of the House, the Chief Financial Officer, and the Joint Legislative Auditing Committee, within 30 days of completion of the audit.

The bill authorizes a state university, or an independent college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Grant Access Program, located and chartered in Florida, is not for profit, and is accredited by the Commission on Colleges of Southern Association of Colleges and Schools (ICUF Institution) to become an SFO. The university or ICUF institution may begin providing FTC scholarships in the 2015-2016 school year. The university or ICUF institution is exempt from the SFO application requirements in this bill. Rather, the university or ICUF institution must register with DOE pursuant to State Board of Education (SBE) rule. The SBE will also adopt rules for the university or ICUF institution to file the registration notice and for appropriate reporting requirements for fiscal, programmatic, and performance accountability purposes. The university or ICUF institution is exempt from SFO bond requirements.

The bill authorizes taxpayers to transfer tax credits received so long as the transfer is between members of an affiliated group of corporations. The transferred tax credit must be applied against the same tax as it was to be applied against prior to the transfer. The credit is not available until DOR approves the transfer.

The bill also authorizes credits against corporate income tax and insurance premium tax to be taken against the estimated payments made by a corporation throughout its taxable year.

The bill takes effect upon becoming a law, unless otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article IX, s. 1, Fla. Const., provides in part that "[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people require." For example, the Opportunity Scholarship Program (OSP) was found unconstitutional as fostering plural, nonuniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools in *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006). However, the Florida Supreme Court also noted that "[w]e reject the suggestion by the State and amici that other publicly funded educational and welfare programs would necessarily be affected by our decision. Other educational programs, such as the program for exceptional students at issue in *Scavella*, are structurally different from the OSP, which provides a systematic private school alternative to the public school system mandated by our constitution." *Id.* at 412.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Personal Learning Scholarship Accounts

A family of a student with a disability eligible to participate in this program would decide which services would best meet their student's needs and spend funds accordingly, within the limitations of the personal account established under CS/CS/SB 1512. Families of students not currently enrolled in a public school would be eligible for funding for authorized services, making those services more accessible and affordable.

Florida Tax Credit Scholarship Program

The bill will provide more families with the opportunity to participate in the Florida Tax Credit Scholarship Program, and, beginning in the 2016-2017 fiscal year, participating students may be eligible for a larger award amount under the program.

C. Government Sector Impact:

Personal Learning Scholarship Accounts

Student eligibility for funding under the Personal Learning Scholarship Accounts program is determined based on the student having a disability as defined in the bill and meeting the APD eligibility requirements.

This bill and Senate Bill 2500, First Engrossed, the General Appropriations Bill for Fiscal Year 2014-2015, appropriate $18.4 million to the Agency for Persons with Disabilities for implementation of this program. $1.5 million of this amount is provided as startup funding for planning and implementation of the statewide pilot program which will begin enrolling parents and students on a first-come, first-served basis, no later than January 31, 2015.

For the pilot program, the Agency for Persons with Disabilities will provide scholarships for eligible students in amounts from $5,000 to $19,000 based on funding categories established by the agency. Eligible students in public school, students who participate in the McKay Scholarship program or the Florida Tax Credit Scholarship program will receive 50% of the scholarship amount.

Florida Tax Credit Scholarship Program

This bill allows corporations and insurance companies to apply credits against their estimated payments of corporate income tax and premium taxes. The Revenue Estimating Conference has estimated that these provisions will reduce general revenue by $15.2 million in Fiscal year 2014-2015.

The bill removes the prior public school enrollment requirement for eligibility for 6th through 12th grade students. This will increase enrollments in the program and affect Florida Education Finance Program (FEFP) cost savings, but savings associated with the program will remain positive.

The bill also increases the maximum award amount to 82% of the FEFP per student funding from 80%, beginning in 2016-2017. This will affect FEFP cost savings, but the savings associated with the program will remain positive.

This bill designates the Learning System Institute at FSU as the independent research organization to annually report Florida tax Credit Scholarship Program (FTC) student performance on a statewide and school level. The bill requires DOE to issue 2-year grants to the institute, of up to $500,000 per year. Currently, the DOE has a set-aside in the

assessment budget of $120,000 which is provided to the University of Florida for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.45, 120.81, 409.1451, 1002.395, 1003.4282, 1003.572, 1007.263, and 1008.25.

This bill creates the following sections of the Florida Statutes: 1002.385, 1003.5716, and 1008.2121.

This bill repeals section 1003.438 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 22, 2014:
The committee substitute:

- Reassigns the major responsibilities for the Personal Learning Scholarship Accounts (program) from the school districts, the Department of Education, and the Commissioner of Education to the Agency for Persons with Disabilities.
- Revises the eligibility requirements for students whose parents choose to participate in the program.
- Requires the Agency for Persons with Disabilities (APD) to work with an Advisory Work Group to develop a newly created Individual Learning Service Plan, levels of services requirements, a system for payment of claims and providers, and a system to document and assess progress toward meeting the individual learning goals and objectives in the services plan.
- Requires rules to implement the program and enroll the first students in a statewide pilot program on a first-come, first-served basis no later than February 1, 2015.
- Provides that the new requirements for attaining a standard high school diploma apply to students for whom the Florida Alternate Assessment is the most appropriate measure of the student's skills.
- Defines an "educational consultant" as an approved APD provider and specifies the consultant's qualifications and responsibilities, which include assisting with the development of the student's individual learning services plan.
- Requires the plan to include the funding categories for the student;
- Defines Williams syndrome.

- Specifies that APD, rather than the APD Executive Director, assumes the enforcement responsibilities for approved providers.
- Removes a Coverdell contribution as an authorized use of program account funds;
- Specifies that the parent must affirm that he or she will not take possession of any funding provided for the Florida Personal Learning Scholarship Accounts;
- Changes the term "levels of services" to "funding category."
- Removes a reference to APD eligibility requirements.
- Provides that program funds received by an eligible student are not taxable income;
- Creates additional requirements for the Advisory Work Group, including working with a broader group of stakeholders.
- Adjusts the date by which the APD may enroll parents in a statewide pilot program and notify the DOE of applicants for the program.
- Specifies the requirements for earning a standard high school diploma for a student for whom the IEP team determines that mastery of academic and employment competencies is the most appropriate way for a student to demonstrate his or her skill.
- Affirms the authority of a private school to determine its own standards and curriculum.
- Defines "household income" to correspond to the term "income" use by the United States Department of Agriculture Income Eligibility Guidelines for free or reduced price meals.
- Revises student eligibility criteria, student household income levels, and scholarship reductions over a three-year period.
- Beginning in 2016-2017 and thereafter, the scholarship amount under the Florida Tax Credit (FTC) Scholarship Program is equal to 82 percent of the unweighted FTE.
- For a student who elects to take the statewide assessment, requires a private school to make arrangements for transportation for the student, as agreed upon by the parent.
- Designates the Learning System Institute at Florida State University as the independent research organization that annually reports FTC student performance on a statewide and individual school level.
- Requires specific, additional background screening requirements for owners or operators of the Scholarship Funding Organization (SFO).
- Revises an SFO to use funds in a manner that focuses on providing scholarships.
- Increases SFO audit requirements.
- Requires an SFO to have a surety bond or letter of credit.
- Allows a tax credit to be transferred between members of an affiliated group of corporations, subject to Department of Revenue approval.
- Allows corporations to apply tax credits to estimated payments, which will allow the impact to be one year earlier.
- Creates an SFO annual application process.
- Authorizes a state university or an accredited independent college or university of Florida (ICUF) institution to be an SFO, and exempts the university or ICUF institution from the bond requirement and application process.

CS by Education on March 18, 2014:
The committee substitute:

- Adds a definition of an "approved provider" to mean a provider approved by the Agency for Persons with Disabilities or approved by the Department of Education pursuant to s. 1002.66, F.S.;
- Adds that a student having Williams syndrome is eligible to participate in the program;
- Adds a new requirement that parents maintain a portfolio of records for two years to document student learning and further requires the portfolio to be available for inspection upon 15 days written notice from the district school superintendent;
- Adds a requirement for the State Board of Education to adopt rules to administer an electronic system of payment for authorized expenditures;
- Re-assigns to the Department of Education the Chief Financial Officer's responsibility for payments to fund personalized accounts;
- Clarifies that only a student who has an intellectual or cognitive disability and who takes the Florida Alternate Assessment may use new criteria to satisfy standard high school diploma requirements;
- Adds a provision allowing the parent of a third grade student who is at risk of retention to request that the school immediately start compiling a portfolio;
- Adds a requirement that a student who was granted a good cause exemption be provided with intensive reading instruction and intervention and requires the school district to help schools and teachers meet this requirement;
- Creates a new good cause exemption from retaining a 3rd grade student who:
  - Received intensive reading intervention for two or more years, but still demonstrates a deficiency in reading; and
  - Was previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of two years;
- Adds a provision that prohibits a student from being retained in 3rd grade more than once;
- Eliminates the specialty high school diploma designation; and
- Makes technical and conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Education; and Senators Stargel, Thrasher, Gardiner, and Galvano

581-02750-14 20141512c1

A bill to be entitled

An act relating to students with disabilities; creating s. 1002.385, F.S.; establishing the Florida Personalized Accounts for Learning; defining terms; specifying criteria for students who are eligible to participate in the program; identifying certain students who are not eligible to participate in the program; authorizing the use of awarded funds for specific purposes; prohibiting specific providers, schools, institutions, school districts, and other entities from sharing, refunding, or rebating program funds; specifying the terms of the program; requiring a school district to notify the parent regarding the option to participate in the program; specifying the school district's responsibilities for completing a matrix of services and notifying the Department of Education of the completion of the matrix; requiring the department to notify the parent regarding the amount of the awarded funds; authorizing the school district to change the matrix under certain circumstances; requiring the school district in which a student resides to provide locations and times to take all statewide assessments; requiring the school district to notify parents of the availability of a reevaluation; specifying the duties of the Department of Education relating to the program; requiring the Commissioner of Education to deny, suspend, or revoke participation in the program or use of program funds under certain circumstances; providing additional

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factors under which the commissioner may deny, suspend, or revoke a participation in the program or program funds; requiring a parent to sign an agreement with the Department of Education to enroll his or her child in the program which specifies the responsibilities of a parent or student for using funds in an account and for submitting a compliance statement to the department; providing that a parent who fails to comply with the responsibilities of the agreement forfeits the personalized account for learning; providing for funding and payments; requiring the department to request from the Department of Financial Services a sample of payments from the authorized financial institution for specified purposes; providing for the closing of a student's account and reversion of funds to the state; requiring the department to make payments to the personalized accounts for learning at the authorized financial institution, select an authorized financial institution through a competitive bidding process to administer the personalized accounts for learning, and require audits of the authorized financial institution's personalized accounts for learning; requiring the Chief Financial Officer to conduct audits; providing that the state is not liable for the award or use of awarded funds; providing for the scope of authority of the act; requiring the State Board of Education to adopt rules to administer the program; amending s. 1003.4282, F.S.; providing standard high

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school diploma requirements for certain students with an intellectual disability or cognitive disability; authorizing certain students with disabilities to continue to receive certain instructions and services; requiring an independent review and a parent's approval to waive statewide, standardized assessment requirements by the IEP team; repealing s. 1003.438, F.S., relating to special high school graduation requirements for certain exceptional students; creating s. 1003.5716, F.S.; providing that certain students with disabilities have a right to free, appropriate public education; requiring an individual education plan (IEP) team to begin the process of, and to develop an IEP for, identifying transition services needs for a student with a disability before the student attains a specified age; providing requirements for the process; requiring certain statements to be included and annually updated in the IEP; providing that changes in the goals specified in an IEP are subject to independent review and parental approval; requiring the school district to reconvene the IEP team to identify alternative strategies to meet transition objectives if a participating agency fails to provide transition services specified in the IEP; providing that the agency's failure does not relieve the agency of the responsibility to provide or pay for the transition services that the agency otherwise would have provided; amending s. 1003.572, F.S.; prohibiting a school district from charging fees

or imposing additional requirements on private instructional personnel; creating s. 1008.2121, F.S.; requiring the Commissioner of Education to permanently exempt certain students with disabilities from taking statewide, standardized assessments; requiring the State Board of Education to adopt rules; amending s. 1008.25, F.S.; requiring written notification relating to portfolios to a parent of a student with a substantial reading deficiency; requiring a student promoted to a certain grade with a good cause exemption to receive intensive reading instruction and intervention; requiring a school district to assist schools and teachers with the implementation of reading strategies; revising good cause exemptions; amending ss. 120.81, 409.1451, and 1007.263, F.S.; conforming cross-references; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1002.385, Florida Statutes, is created to read:

1002.385 Florida Personalized Accounts for Learning.—

(1) ESTABLISHMENT OF PROGRAM.—The Florida Personalized Accounts for Learning is established to provide the option for a parent to better meet the individual educational needs of his or her eligible child.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Approved provider" means a provider approved by the

Agency for Persons with Disabilities and a provider approved by the department pursuant to s. 1002.66.

(b) "Authorized financial institution" means the institution that is designated in writing by the parent to receive payment of program funds into the parent's personalized account for learning at such institution.

(c) "Chief Financial Officer" means the chief fiscal officer of this state, as defined in s. 17.001.

(d) "Curriculum" means a complete course of study for a particular content area or grade level, including any required supplemental materials.

(e) "Department" means the Department of Education.

(f) "Disability" means, for a student in kindergarten to grade 12, autism, as defined in s. 393.063(3); cerebral palsy, as defined in s. 393.063(4); Down syndrome, as defined in s. 393.063(13); an intellectual disability, as defined in s. 393.063(21); Prader-Willi syndrome, as defined in s. 393.063(25); or Spina bifida, as defined in s. 393.063(36); for a student in kindergarten, being a high-risk child, as defined in s. 393.063(20)(a); and Williams syndrome.

(g) "Eligible postsecondary educational institution" means a Florida College System institution, a state university, a school district technical center, a school district adult general education center, or an accredited nonpublic postsecondary educational institution, as defined in s. 1005.02, which is licensed to operate in the state pursuant to requirements specified in part III of chapter 1005.

(h) "Eligible private school" means a private school, as defined in s. 1002.01, which is located in this state, which

offers an education to students in any grade from kindergarten to grade 12, and which meets requirements of ss. 1002.42 and 1002.421.

(i) "IEP" means individual education plan.

(j) "Parent" means a resident of this state who is a parent, as defined in s. 1000.21.

(k) "Program" means the Florida Personalized Accounts for Learning established in this section.

(3) PROGRAM ELIGIBILITY.—A parent of a student with a disability may request and receive from the state a Florida personalized account for learning for the purposes specified in subsection (5) if:

(a) The student:

1. Is a resident of this state;

2. Is eligible to enroll in kindergarten through grade 12 in a public school in this state;

3. Has a disability as defined in paragraph (2)(f) and is eligible for Level 3 to Level 5 services; and

4. Is the subject of an IEP written in accordance with rules of the State Board of Education; and

(b) The parent has requested from the department a participation in the program at least 60 days before the date of the first payment. The request must be communicated directly to the department in a manner that creates a written or electronic record of the request and the date of receipt of the request. The department must notify the district of the parent's intent upon receipt of the parent's request.

(4) PROGRAM PROHIBITIONS.—

(a) A student is not eligible for the program while he or

she is:

1. Enrolled in a public school, including, but not limited to, the Florida School for the Deaf and the Blind, the Florida Virtual School, the College-Preparatory Boarding Academy, a developmental research school authorized under s. 1002.32, a charter school authorized under s. 1002.33, s. 1002.331, or s. 1002.332, or a virtual education program authorized under s. 1002.45;

2. Enrolled in a school operating for the purpose of providing educational services to youth in the Department of Juvenile Justice commitment programs;

3. Receiving a scholarship pursuant to the Florida Tax Credit Scholarship Program under s. 1002.395 or the John M. McKay Scholarships for Students with Disabilities Program under s. 1002.39; or

4. Receiving an educational scholarship pursuant to this chapter.

(b) A student is not eligible for the program if:

1. The student or student's parent has accepted any payment, refund, or rebate, in any manner, from a provider of any services received pursuant to subsection (5);

2. The student's participation in the program has been denied or revoked by the Commissioner of Education pursuant to subsection (9); or

3. The student's parent has forfeited participation in the program for failure to comply with requirements pursuant to subsection (10).

(5) AUTHORIZED USES OF PROGRAM FUNDS.—Program funds may be spent for the following purposes, as specified in the student's

IEP or the portion of the IEP regarding the transition of the student to postsecondary education and career opportunities pursuant to s. 1003.5716:

(a) Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content.

(b) Curriculum as defined in paragraph (2)(d).

(c) Specialized services by approved providers that are selected by the parent and specified in the student's IEP. These specialized services may include, but are not limited to:

1. Applied behavior analysis services as provided in ss. 627.6686 and 641.31098.

2. Services provided by speech-language pathologists as defined in s. 468.1125.

3. Occupational therapy services as defined in s. 468.203.

4. Services provided by physical therapists as defined in s. 486.021.

5. Services provided by listening and spoken language specialists and an appropriate acoustical environment for a child who is deaf or hard of hearing and who has received an implant or assistive hearing device.

(d) Enrollment in, or tuition or fees associated with enrollment in, an eligible private school, an eligible postsecondary educational institution, a private tutoring program authorized under s. 1002.43, a virtual program offered by a department-approved private online provider that meets the provider qualifications specified in s. 1002.45(2)(a), or an approved online course offered pursuant to ss. 1003.499 or 1004.0961.

(e) Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement Examinations, industry certification examinations, assessments related to postsecondary education, or other assessments specified in the student's IEP.

(f) Contributions to a Coverdell education savings account established pursuant to 26 U.S.C. s. 530 of the Internal Revenue Code for the benefit of the eligible student.

(g) Contracted services provided by a public school or school district, including classes and extracurricular programs for the services specified in the IEP or additional services. A student who receives services under a contract under this paragraph shall not be considered to be enrolled in a public school for eligibility purposes as specified in subsection (4).

A specialized service provider, eligible private school, eligible postsecondary educational institution, private tutoring program provider, online or virtual program provider, public school, school district, or other entity receiving payments pursuant to this subsection may not share, refund, or rebate any moneys from the Florida Personalized Account for Learning with the parent or participating student in any manner.

(6) TERM OF THE PROGRAM.—For purposes of continuity of educational choice, the program payments made under this section shall remain in force until a student participating in the program participates in any of the prohibited activities specified in subsection (4), has funds revoked by the Commissioner of Education pursuant to subsection (9), or returns to a public school, graduates from high school, or reaches 22 years of age, whichever occurs first. A participating student

who enrolls in a public school or public school program is considered to have returned to a public school for the purpose of determining the end of the program's term.

(7) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

(a) By April 1 of each year and within 10 days after an IEP meeting, a school district shall notify the parent of the student who meets eligibility requirements under subsection (3) of the option to participate in the program.

(b)1. For a student with a disability who does not have a matrix of services under s. 1011.62(1)(e), the school district shall complete a matrix that assigns the student to one of the levels of service as they existed before the 2000-2001 school year.

2.a. Within 10 school days after a school district receives notification of a parent's request for participation in the program under this section, the school district shall notify the student's parent if the matrix of services has not been completed and inform the parent that the district is required to complete the matrix within 30 days after receiving notice of the parent's request for participation. This notice must include the required completion date for the matrix.

b. The school district shall complete the matrix of services for a student who is participating in the program and shall notify the department of the student's matrix level within 30 days after receiving notification of a request to participate in the program. The school district must provide the student's parent with the student's matrix level within 10 school days after its completion.

c. The department shall notify the parent of the amount of

the funds awarded within 10 days after receiving the school district's notification of the student's matrix level.

d. A school district may change a matrix of services only if the change is to correct a technical, typographical, or calculation error.

(c) For each student participating in the program who takes statewide, standardized assessments under s. 1008.22, the school district in which the student resides must notify the student and his or her parent about the locations and times to take all statewide, standardized assessments.

(d) For each student participating in the program, a school district shall notify the parent about the availability of a reevaluation at least every 3 years.

(8) DEPARTMENT OF EDUCATION OBLIGATIONS.—The department shall:

(a) Establish an annual enrollment period and a process in which a parent may apply to enroll his or her student in the program. The enrollment period shall begin on July 1 and end on May 1 of each year for applications for the following state fiscal year. All applications must be approved by June 1 of each year for program participation for the following fiscal year.

(b) Conduct or contract for annual audits of the program to ensure compliance with this section.

(c) Notify the authorized financial institution of students who are approved to participate in the program. The notice must be made annually by June 1, after the department processes all applications to participate in the program.

(d) Establish a process by which a person may notify the department of any violation of laws or rules relating to

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participation in the program. The department shall conduct an inquiry of all signed, written, and legally sufficient complaints that allege a violation of this section or make a referral to the appropriate agency for an investigation. A complaint is legally sufficient if it contains ultimate facts showing that a violation of this section or a violation of a rule adopted under this section has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation from the complainant. A department inquiry is not subject to the requirements of chapter 120.

(e) Compare the list of students participating in the program with the public school enrollment lists before each program payment to avoid duplicate payments.

(f) Select an independent research organization, which may be a public or private entity or university, to which participating entities must report the scores of students participating in the program on the standardized assessments administered by the schools as specified in the IEP.

1. The independent research organization shall annually issue a report to the department which includes:

a. The year-to-year learning gains of students participating in the program.

b. To the extent possible, a comparison of the learning gains of students in the program to the statewide learning gains of public school students having backgrounds similar to those of the students in the program. In order to minimize the costs and time that the independent research organization requires for analysis and evaluation, the department shall conduct analyses

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of assessment data from matched students in public schools and shall calculate the learning gains of control groups using a methodology outlined in the contract with the independent research organization.

c. The aggregate year-to-year learning gains of students in the program in each participating entity in which there are at least 30 participating students that have scores for tests for 2 consecutive years at that entity.

2. The sharing and reporting of the learning gains of students pursuant to this paragraph must be in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and shall be for the sole purpose of creating the annual report required under subparagraph 1. All parties shall preserve the confidentiality of such information as required by law. The independent research organization may not disaggregate data in its annual report to a level that identifies individual participating entities, except as required under sub-subparagraph 1.c., or disclose the academic level of individual students.

3. The department shall publish on its website the annual report required by subparagraph 1.

(g) Coordinate with state-funded or federally funded benefits programs to advise a parent about the possible effect his or her child's participation in the program under this section may have on the child's eligibility for participating in those state-funded or federally funded benefits programs.

(h) Issue a report by December 15, 2014, and annually thereafter to the Governor, the President of the Senate, and the Speaker of the House of Representatives describing the

implementation of accountability mechanisms for the program, identifying any substantial allegations and violations of a law or rule governing the program, and describing the corrective actions taken by the department relating to violations of a law or rule governing the program.

(9) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

(a) The Commissioner of Education:

1. Shall deny, suspend, or revoke a student's participation in the program if the health, safety, or welfare of the student is threatened or fraud is suspected.

2. Shall deny, suspend, or revoke an authorized use of program funds if the health, safety, or welfare of the student is threatened or fraud is suspected.

3. May deny, suspend, or revoke an authorized use of program funds for material failure to comply with this section and applicable department rules if the noncompliance is correctable within a reasonable period of time. Otherwise, the commissioner shall deny, suspend, or revoke an authorized use for failure to materially comply with the law and rules adopted under this section.

4. Shall require compliance by the appropriate party by a date certain for all nonmaterial failures to comply with this section and applicable department rules. The commissioner may deny, suspend, or revoke program participation under this section thereafter.

(b) In determining whether to deny, suspend, or revoke in accordance with this subsection, the commissioner may consider factors that include, but are not limited to, acts or omissions by a participating entity which led to a previous denial or

revocation of participation in an education scholarship program; failure to reimburse the department for program funds improperly received or retained by the entity; imposition of a prior criminal sanction related to the entity or its officers or employees; imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an entity's management or operation; or other types of criminal proceedings in which the entity or its officers or employees were found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

(10) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—A parent who applies for program participation under this section is exercising his or her parental option to determine the appropriate placement or services that best meet the needs of his or her student. To enroll an eligible student in the program, the parent must sign an agreement with the department and annually submit a notarized, sworn compliance statement to the department to:

(a) Affirm that the student meets minimum student attendance requirements as provided in s. 1003.21.

(b) Use the program funds only for authorized purposes, as described in subsection (5).

(c) Affirm that the student takes all appropriate standardized assessments as specified in the student's IEP. The parent is responsible for transporting the student to the assessment site designated by the school district.

(d) Request participation in the program at least 60 days

before the date of the first program payment.

(e) Affirm that the student remains in good standing with the provider or school if those options are selected by the parent.

(f) Apply for admission of his or her child if the private school option is selected by the parent.

(g) Annually renew participation in the program. Notwithstanding any changes to the student's IEP, a student who was previously eligible for participation in the program shall remain eligible to apply for renewal as provided in subsection (6).

(h) Designate in writing the authorized financial institution to receive payment of program funds and maintain a separate personalized account for learning at that institution.

(i) Affirm that the parent will not transfer any college savings funds to another beneficiary.

(j) Affirm that the parent will not take possession of any funding contributed by the state.

(k) Maintain a portfolio of records and materials which must be preserved by the parent for 2 years and be made available for inspection by the district school superintendent or the superintendent's designee upon 15 days' written notice. This paragraph does not require the superintendent to inspect the portfolio. The portfolio of records and materials consists of:

1. A log of educational instruction and services which is made contemporaneously with delivery of the instruction and services and which designates by title any reading materials used; and

2. Samples of any writings, worksheets, workbooks, or creative materials used or developed by the student.

A parent who fails to comply with this subsection forfeits the personalized account for learning.

(11) FUNDING AND PAYMENT.—

(a)1. The maximum funding amount granted for an eligible student with a disability, pursuant to subsection (3), shall be equivalent to the base student allocation in the Florida Education Finance Program multiplied by the appropriate cost factor for the educational program which would have been provided for the student in the district school to which he or she would have been assigned, multiplied by the district cost differential.

2. In addition, an amount equivalent to a share of the guaranteed allocation for exceptional students in the Florida Education Finance Program shall be determined and added to the amount in subparagraph 1. The calculation shall be based on the methodology and the data used to calculate the guaranteed allocation for exceptional students for each district in chapter 2000-166, Laws of Florida. Except as provided in subparagraph 3., the calculation shall be based on the student's grade, the matrix level of services, and the difference between the 2000-2001 basic program and the appropriate level of services cost factor, multiplied by the 2000-2001 base student allocation and the 2000-2001 district cost differential for the sending district. The calculated amount must also include an amount equivalent to the per-student share of supplemental academic instruction funds, instructional materials funds, technology

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funds, and other categorical funds as provided in the General Appropriations Act.

3. Until the school district completes the matrix required under paragraph (7)(b), the calculation shall be based on the matrix that assigns the student to support level 3 of services. When the school district completes the matrix, the amount of the payment shall be adjusted as needed.

(b) The amount of the awarded funds shall be 90 percent of the calculated amount.

(c) The school district shall report all students who are participating in the program. The participating students who have previously been included in the Florida Education Finance Program and are included in public school enrollment counts shall be reported separately from other students reported for purposes of the Florida Education Finance Program. Participating students who have been enrolled in nonpublic schools shall also be reported separately.

(d) Following notification on July 1, September 1, December 1, or February 1 of the number of program participants:

1. For students who have been enrolled in public schools and are included in public school enrollment counts, the department shall transfer, from General Revenue funds only, the amount of the awarded program funds calculated pursuant to paragraph (b) from the school district's total funding entitlement under the Florida Education Finance Program and from authorized categorical accounts to a separate account for the program for quarterly disbursement to the personalized account for learning at an authorized financial institution on behalf of the parent and student; and

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2. For students who have been and will continue to be enrolled in nonpublic schools, the department shall also transfer from an appropriation for the program the amount calculated under paragraph (b) to a separate account for the program for quarterly disbursement to the personalized account for learning at an authorized financial institution on behalf of the parent and student. Nonpublic school students shall be provided awarded funds on a first-come, first-served basis.

(e) When a student enters the program, the department must receive, at least 30 days before the first quarterly program payment is made to the personalized account for learning for the student, all documentation required for the student's participation in the program.

(f) Upon notification by the department that it has received the documentation required under paragraph (d), the department shall make payments in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year in which the awarded funds are in force. The initial payment shall be made after department verification of the establishment of the personalized account for learning at an authorized financial institution, and subsequent payments shall be made upon verification of parental obligations under subsection (10). Payment must be by individual warrant made payable to the personalized account for learning on behalf of the parent and student. The authorized financial institution shall mail or electronically process payments as directed by the parent for authorized uses.

(g) Subsequent to each payment, the department shall request from the Department of Financial Services a sample of

payments from the authorized financial institution for authorized uses to endorsed warrants to review and confirm compliance with this section.

(h) Upon an eligible student's graduation from an eligible postsecondary educational institution or after any period of 4 consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary educational institution, the student's personalized account for learning shall be closed, and any remaining funds shall revert to the state.

(i) The department shall make payments to fund personalized accounts for learning at the authorized financial institution pursuant to this section.

(j) The department shall develop a system for payment of benefits by electronic funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of electronic payment that the department deems to be commercially viable or cost-effective. Commodities or services related to the development of such a system shall be procured by competitive solicitation unless they are purchased from a state term contract pursuant to s. 287.056. The State Board of Education shall adopt rules to administer this paragraph.

(k) The department shall require audits of the authorized financial institution's personalized accounts for learning pursuant to this section. The Chief Financial Officer shall conduct audits pursuant to this section.

(12) LIABILITY.—The state is not liable for the award or any use of awarded funds under this section.

(13) SCOPE OF AUTHORITY.—This section does not expand the

regulatory authority of this state, its officers, or any school district to impose additional regulation on participating private schools, nonpublic postsecondary educational institutions, and private providers beyond those reasonably necessary to enforce requirements expressly set forth in this section.

(14) RULES.—The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section. The rules must identify the appropriate school district personnel who must complete the matrix of services.

Section 2. Present subsection (10) of section 1003.4282, Florida Statutes, is renumbered as subsection (11), and a new subsection (10) is added to that section, to read:

1003.4282 Requirements for a standard high school diploma.—

(10) STUDENTS WITH DISABILITIES.—Beginning with students entering grade 9 in the 2014-2015 school year, this subsection applies to a student with an intellectual or cognitive disability for whom the IEP team has determined that the Florida Alternate Assessment is the most appropriate measure of the student's skills.

(a) A parent of the student with a disability shall, in collaboration with the individual education plan team pursuant to s. 1003.5716, declare an intent for the student to graduate from high school with either a standard high school diploma or a certificate of completion. A student with a disability who does not satisfy the standard high school diploma requirements pursuant to this section shall be awarded a certificate of completion.

(b) The following options, in addition to the other options

specified in this section, may be used to satisfy the standard high school diploma requirements, as specified in the student's individual education plan:

1. A combination of course substitutions, assessments, industry certifications, and other acceleration options appropriate to the student's unique skills and abilities that meet the criteria established by State Board of Education rule.

2. A portfolio of quantifiable evidence that documents a student's mastery of academic standards through rigorous metrics established by State Board of Education rule. A portfolio may include, but is not limited to, documentation of work experience, internships, community service, and postsecondary credit.

(c) A student with a disability who meets the standard high school diploma requirements in this section may defer the receipt of a standard high school diploma if the student:

1. Has an individual education plan that prescribes special education, transition planning, transition services, or related services through age 21; and

2. Is enrolled in accelerated college credit instruction pursuant to s. 1007.27, industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or pre-apprenticeship program.

(d) A student with a disability who receives a certificate of completion and has an individual education plan that prescribes special education, transition planning, transition services, or related services through 21 years of age may

continue to receive the specified instruction and services.

(e) Any waiver of the statewide, standardized assessment requirements by the individual education plan team, pursuant to s. 1008.22(3)(c), must be approved by the parent and is subject to verification for appropriateness by an independent reviewer selected by the parent as provided for in s. 1003.572.

Section 3. Effective July 1, 2015, section 1003.438, Florida Statutes, is repealed.

Section 4. Section 1003.5716, Florida Statutes, is created to read:

1003.5716 Transition to postsecondary education and career opportunities.—All students with disabilities who are 3 years of age to 21 years of age have the right to a free, appropriate public education. As used in this section, the term "IEP" means individual education plan.

(1) To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, an IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability attains the age of 14 years in order for his or her postsecondary goals and career goals to be identified and in place when he or she attains the age of 16 years. This process must include, but is not limited to:

(a) Consideration of the student's need for instruction in the area of self-determination and self-advocacy to assist the student's active and effective participation in an IEP meeting; and

(b) Preparation for the student to graduate from high

school with a standard high school diploma pursuant to s. 1003.4282 with a Scholar designation unless the parent chooses a Merit designation.

(2) Beginning not later than the first IEP to be in effect when the student turns 16, or younger, if determined appropriate by the parent and the IEP team, the IEP must include the following statements that must be updated annually:

(a) A statement of intent to pursue a standard high school diploma and a Scholar or Merit designation, pursuant to s. 1003.4285, as determined by the parent.

(b) A statement of intent to receive a standard high school diploma before the student reaches the age of 22 and a description of how the student will fully meet the requirements in s. 1003.428 or s. 1003.4282, as applicable, including, but not limited to, a portfolio pursuant to s. 1003.4282(10)(b) that meets the criteria specified in State Board of Education rule. The IEP must also specify the outcomes and additional benefits expected by the parent and the IEP team at the time of the student's graduation.

(c) A statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services, including courses of study needed to assist the student in reaching those goals.

(3) Any change in the IEP for the goals specified in subsection (2) must be approved by the parent and is subject to verification for appropriateness by an independent reviewer selected by the parent as provided in s. 1003.572.

(4) If a participating agency responsible for transition services, other than the school district, fails to provide the transition services described in the IEP, the school district shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student that are specified in the IEP. However, this does not relieve any participating agency of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Section 5. Subsection (3) of section 1003.572, Florida Statutes, is amended to read:

1003.572 Collaboration of public and private instructional personnel.—

(3) Private instructional personnel who are hired or contracted by parents to collaborate with public instructional personnel must be permitted to observe the student in the educational setting, collaborate with instructional personnel in the educational setting, and provide services in the educational setting according to the following requirements:

(a) The student's public instructional personnel and principal consent to the time and place.

(b) The private instructional personnel satisfy the requirements of s. 1012.32 or s. 1012.321.

For the purpose of implementing this subsection, a school district may not impose any requirements beyond those requirements specified in this subsection or charge any fees.

Section 6. Section 1008.2121, Florida Statutes, is created

to read:

1008.2121 Students with severe cognitive or physical disabilities; permanent exemption.—Based on information that a reasonably prudent person would rely upon, including, but not limited to, facts contained within an individual education plan under s. 1008.212, documentation from an appropriate health care provider, or certification from the district school board superintendent, the Commissioner of Education shall perfunctorily grant a permanent exemption to a student who suffers from such a severe cognitive disability or physical disability that the student permanently lacks the capacity to take statewide, standardized assessments. The State Board of Education shall adopt rules to administer this section, including, but not limited to, expediting the exemption process to demonstrate the utmost compassion and consideration for meeting the parent's and student's needs.

Section 7. Paragraph (c) of subsection (5) and paragraph (b) of subsection (6) of section 1008.25, Florida Statutes, are amended to read:

1008.25 Public school student progression; remedial instruction; reporting requirements.—

(5) READING DEFICIENCY AND PARENTAL NOTIFICATION.—

(c) The parent of any student who exhibits a substantial deficiency in reading, as described in paragraph (a), must be notified in writing of the following:

1. That his or her child has been identified as having a substantial deficiency in reading.

2. A description of the current services that are provided to the child.

3. A description of the proposed supplemental instructional services and supports that will be provided to the child that are designed to remediate the identified area of reading deficiency.

4. That if the child's reading deficiency is not remediated by the end of grade 3, the child must be retained unless he or she is exempt from mandatory retention for good cause.

5. Strategies for parents to use in helping their child succeed in reading proficiency.

6. That the Florida Comprehensive Assessment Test (FCAT) is not the sole determiner of promotion and that additional evaluations, portfolio reviews, and assessments are available to the child to assist parents and the school district in knowing when a child is reading at or above grade level and ready for grade promotion.

7. The district's specific criteria and policies for a portfolio as provided in subparagraph (6)(b)4. and the evidence required for a student to demonstrate mastery of Florida's academic standards for English Language Arts. A parent of a student in grade 3 who is identified anytime during the year as being at risk of retention may request that the school immediately begin collecting evidence for a portfolio.

8.~~7.~~ The district's specific criteria and policies for midyear promotion. Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level.

(6) ELIMINATION OF SOCIAL PROMOTION.—

(b) The district school board may only exempt students from mandatory retention, as provided in paragraph (5)(b), for good

cause. A student who is promoted to grade 4 with a good cause exemption shall be provided intensive reading instruction and intervention that include specialized diagnostic information and specific reading strategies to meet the needs of each student so promoted. The school district shall assist schools and teachers with the implementation of reading strategies for students promoted with a good cause exemption which research has shown to be successful in improving reading among students that have reading difficulties. Good cause exemptions shall be limited to the following:

1. Limited English proficient students who have had less than 2 years of instruction in an English for Speakers of Other Languages program.

2. Students with disabilities whose individual education plan indicates that participation in the statewide assessment program is not appropriate, consistent with the requirements of State Board of Education rule.

3. Students who demonstrate an acceptable level of performance on an alternative standardized reading or English Language Arts assessment approved by the State Board of Education.

4. A student who demonstrates through a student portfolio that he or she is performing at least at Level 2 on FCAT Reading or the common core English Language Arts assessment, as applicable under s. 1008.22.

5. Students with disabilities who participate in FCAT Reading or the common core English Language Arts assessment, as applicable under s. 1008.22, and who have an individual education plan or a Section 504 plan that reflects that the

student has received intensive remediation in reading and English Language Arts for more than 2 years but still demonstrates a deficiency and was previously retained in kindergarten, grade 1, grade 2, or grade 3.

6. Students who have received intensive reading intervention for 2 or more years but still demonstrate a deficiency in reading and who were previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of 2 years. A student may not be retained more than once in grade 3.

7.~~6.~~ Students who have received intensive remediation in reading and English Language Arts, as applicable under s. 1008.22, for 2 or more years but still demonstrate a deficiency and who were previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of 2 years. Intensive instruction for students so promoted must include an altered instructional day that includes specialized diagnostic information and specific reading strategies for each student. The district school board shall assist schools and teachers to implement reading strategies that research has shown to be successful in improving reading among low-performing readers.

Section 8. Effective July 1, 2015, paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.428, s. 1003.429, ~~s. 1003.438,~~ s.

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1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 9. Effective July 1, 2015, subsection (2) of section 409.1451, Florida Statutes, is amended to read:

409.1451 The Road-to-Independence Program.—

(2) POSTSECONDARY EDUCATION SERVICES AND SUPPORT.—

(a) A young adult is eligible for services and support under this subsection if he or she:

1. Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 16 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption;

2. Spent at least 6 months in licensed care before reaching his or her 18th birthday;

3. Earned a standard high school diploma or its equivalent pursuant to s. 1003.428, s. 1003.4281, s. 1003.429, or s. 1003.435~~, or s. 1003.438~~;

4. Has been admitted for enrollment as a full-time student or its equivalent in an eligible postsecondary educational institution as provided in s. 1009.533. For purposes of this section, the term "full-time" means 9 credit hours or the vocational school equivalent. A student may enroll part-time if he or she has a recognized disability or is faced with another challenge or circumstance that would prevent full-time attendance. A student needing to enroll part-time for any reason other than having a recognized disability must get approval from his or her academic advisor;

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5. Has reached 18 years of age but is not yet 23 years of age;

6. Has applied, with assistance from the young adult's caregiver and the community-based lead agency, for any other grants and scholarships for which he or she may qualify;

7. Submitted a Free Application for Federal Student Aid which is complete and error free; and

8. Signed an agreement to allow the department and the community-based care lead agency access to school records.

Section 10. Effective July 1, 2015, subsection (4) of section 1007.263, Florida Statutes, is amended to read:

1007.263 Florida College System institutions; admissions of students.—Each Florida College System institution board of trustees is authorized to adopt rules governing admissions of students subject to this section and rules of the State Board of Education. These rules shall include the following:

(4) A student who has been awarded ~~a special diploma as defined in s. 1003.438 or~~ a certificate of completion as defined in s. 1003.428(7)(b) is eligible to enroll in certificate career education programs.

Each board of trustees shall establish policies that notify students about developmental education options for improving their communication or computation skills that are essential to performing college-level work, including tutoring, extended time in gateway courses, free online courses, adult basic education, adult secondary education, or private provider instruction.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 2, 2014

The Honorable Joe Negron
Senate Appropriations Committee, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I am respectfully requesting that SB 1512, related to *Students with Disabilities*, and SB 950, related to *Teacher Certification* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Ann Roberts/ AA

REPLY TO:
❒ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 15, 2014

The Honorable Joe Negron
Senate Appropriations Committee, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I am respectfully requesting that SB 698, related to *Sexual Misconduct with Students by Authority Figures*, SB 950, related to *Teacher Certification*, and SB 1512, related to *Students with Disabilities*, and SB 1632, related to *Special Districts*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Alicia Weiss/ AA

REPLY TO:
❒ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/24/14
Meeting Date

Topic Education

Bill Number 1512 *(if applicable)*

Name Debbie HARRison Rumberger

Amendment Barcode 532862 *(if applicable)*

Job Title ~~Exec~~ Govt. Liaison

Address 540 Beverly Court
Street

Phone 850-224-2565

Tallahassee FL 32301
City *State* *Zip*

E-mail LWVFLbecky@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic _____ Bill Number 1512 *(if applicable)*

Name JIM HORNE Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO BOX 8339 Phone 904-759-4596

Street

FLEMING ISL FL 32006 E-mail _____

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AIF (Waive in Support)

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Students with disabilities / school choice Bill Number SB 1512 *(if applicable)*

Name James Herzog Amendment Barcode 910124 *(if applicable)*

Job Title Associate Director for Education

Address 201 W Park Ave Phone 205-6823
Street

Tallahassee FL 32301 E-mail jherzog@flacathconf.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/25/12
Meeting Date

Topic [redacted] PLA's

Bill Number [redacted] 1512 *(if applicable)*

Name Lynda Russell

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 213 S. Adams St *Street*

Phone 850-224-2078

City Tallahassee State FL Zip 32301

E-mail _____

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Education Assn

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Students With Disabilities

Bill Number S 1512 *(if applicable)*

Name Mindy Gould

Amendment Barcode *(if applicable)*

Job Title Legislation Chair

Address 18181 NE 31st Court #409
Street
Aventura FL 33160
City *State* *Zip*

Phone 305-439-8979

E-mail mindygould pta@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-27
Meeting Date

Topic Wage Theft — Bill Number SB 1512 *(if applicable)*

Name Ken Williams — Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 7411 meadow Dr — Phone 813 493 7685
Street

Tampa FL 33634 — E-mail _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing self

Appearing at request of Chair: ☐ Yes ☒ No — Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-22-2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic WAGE THEFT Bill Number SB 1512 *(if applicable)*

Name LARRY DUPREE Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 8301 N. RIVER HIGHLANDS PL Phone 813-984-8828

Street

TAMPA FL 33617 E-mail _____

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 1576
INTRODUCER:	Appropriations Committee; Agriculture Committee; Environmental Preservation and Conservation Committee; and Senator Dean and others
SUBJECT:	Springs
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Akhavein	Becker	AG	**Fav/CS**
3.	Howard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1576 provides for the protection of springs in Florida. Specifically, the bill:

- Creates Part VIII of ch. 373, F.S.;
- Provides findings, intent, and definitions;
- Directs the Department of Environmental Protection (DEP), in coordination with the water management districts (WMDs), to delineate spring protection and management zones (SPMZs);
- Requires the establishment of minimum flows and levels (MFLs) in Outstanding Florida Springs (OFSs)by July 1, 2022 and the adoption of recovery or prevention strategies under certain circumstances;
- Directs the DEP to make determinations of impairment for OFSs and develop basin management action plans (BMAPs);
- Provides requirements for BMAPs in SPMZs;
- Directs local governments within SPMZs to adopt ordinances that meet or exceed those of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
- Requires upgrading certain domestic wastewater treatment plants and onsite sewage treatment and disposal systems (OSTDSs), and implementation of nutrient reduction and monitoring methods for agricultural operations;
- Directs the DEP to create a program to evaluate, select, and rank project proposals;

- Prohibits certain activities in SPMZs related to new municipal or industrial wastewater disposal systems, new OSTDSs, new hazardous waste facilities, land application of Class A and B biosolids, and new agricultural operations;
- Assigns duties to several agencies to carry out the provisions of Part VIII of ch. 373, F.S.;
- Provides extensions to local governments and rural areas of critical economic concern for completing projects;
- Requires the Department of Agriculture and Consumer Services (DACS) and the DEP to study new or revised basin management action plans (BMPs); and
- Requires a yearly report by the DEP and the WMDs on the progress of TMDL, BMAP, MFL, and recovery or prevention strategies, beginning on July 1, 2015.

Based on the new springs program requirements, there is a significant fiscal impact to the DEP and the WMDs which is indeterminate. Funding to support the bill is to be provided in the Fiscal Year 2014-2015 General Appropriations Act, or similar legislation. For subsequent fiscal years, funding will be determined annually by the Legislature and provided in the General Appropriations Act. See Section V.

DACS will incur an indeterminate amount of costs for staff time and travel to participate in new studies and rule development efforts and an estimated $50,000 in costs to contract with a third party to complete a required report related to public health, engineering, public perception, fiscal, and rate structure issues.

II. Present Situation:

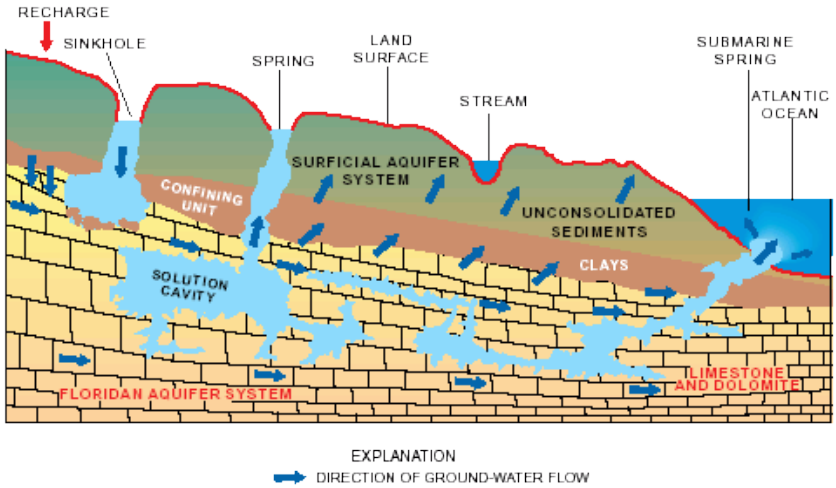
Florida's Springs

Florida's springs are unique and beautiful resources. The historically crystal clear waters provide not only a variety of recreational opportunities and habitats, but also great economic value for recreation and tourism. The springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitza, Homosassa, and Ichetucknee.[1] Additionally, Florida's springs provide a "window" into the Floridan Aquifer system, which provides most of the state's drinking water.

The Floridan Aquifer System is a limestone aquifer that has enormous freshwater storage and transmission capacity. The upper portion of the aquifer consists of thick carbonate rocks that have been heavily eroded and covered with unconsolidated sand and clay. The surficial aquifer is located within the sand deposits and forms the land surface that is present today. In portions of Florida, the surficial aquifer lies on top of deep layers of clay sediments that prevent the downward movement of water. Springs form when groundwater is forced out through natural openings in the ground.[2]

[1] Department of Community Affairs, *Protecting Florida's Springs: An Implementation Guidebook*, 3-1 (Feb. 2008), *available at* http://www.dep.state.fl.us/springs/reports/files/springsimplementguide.pdf (last visited Mar. 27, 2014).
[2] *Id*. at 3-1 to 3-2.

The Water Cycle – Springs[3]



Florida has more than 700 recognized springs. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day. Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on a spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.[4]

The springshed is the area within the groundwater and surface water basins that contributes to the discharge of the spring. The spring recharge basin consists of all areas where water can be shown to contribute to groundwater flow discharging from the spring.

Spring protection zones are sub-areas of the groundwater and surface water basins of each spring or spring system that supply water to the spring and within which human activities, such as waste disposal or water use, are most likely to have negative impacts on the water discharging from the spring. When adverse conditions occur within a spring protection zone, the conditions can be minimized by:

- Land-use management and zoning by county or municipal government;
- Adoption of best management practices (BMPs);
- Educating the public concerning environmental sensitivity; and
- If necessary, regulatory action.[5]

Nutrients

Phosphorus and nitrogen are essential nutrients for plants and animals and are the limiting nutrients in aquatic environments. The correct balance of both of these nutrients is necessary for

[3] U.S. Environmental Protection Agency, *The Water Cycle: Springs*, http://water.usgs.gov/edu/watercyclesprings.html (last visited Mar. 27, 2014).
[4] Florida Geological Survey, *Springs of Florida Bulletin No. 66*, *available at* http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (last visited Mar. 27, 2014).
[5] Upchurch, S.B. and Champion, K.M., *Delineation of Spring Protection Areas at Five, First-Magnitude Springs in North-Central Florida (Draft)*, 1 (Apr. 28, 2004), *available at* www.waterinstitute.ufl.edu/suwannee-hydro-observ/pdf/delineation-of-spring-protection-zones.pdf (last visited Mar. 27, 2014).

a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems. Typically, nitrogen is the limiting nutrient in spring systems. Therefore, even modest increases in nitrogen above optimum levels can accelerate algae growth, plant growth, and deplete oxygen levels.[6]

Phosphorus and nitrogen are derived from natural and anthropogenic sources. Natural inputs include the atmosphere, soils, and the decay of plants and animals. Anthropogenic sources include sewage disposal systems (wastewater treatment facilities and septic tanks), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.

Excessive nutrients may result in harmful algal blooms, nuisance aquatic weeds, and alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and generally impair the aesthetics and tastes of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities. Increased algae production, as a result of increased nutrients, can alter plant communities and affect natural systems.

In pristine conditions, spring water is high quality and lacks contaminants. It can be used directly for public water supplies or for irrigation. When pollutants are introduced to the land surface, some will be retained, but some will travel into the aquifer and later appear in spring flow. Often, nutrients introduced close to a spring will quickly reach the spring, especially in unconfined areas of the aquifer. While springs are valuable recreational and tourist attractions, they are also an indicator of reduced quality of the water in the aquifer.[7]

Urban Fertilizer Usage and Florida's Model Ordinance

Application of fertilizer in urban areas impacts springsheds when it runs off lawns and impervious surfaces into stormwater collection systems or directly into the surface water. The Department of Environmental Protection (DEP) has provided guidelines to minimize the impact of urban fertilizer usage and has adopted the "Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes." The model ordinance provides counties and municipalities with a range of ordinances to help minimize fertilizer inputs from urban applications. Some of the suggestions contained in the model ordinance are:

- Restricting the times fertilizer may be applied, such as restricting its application during the rainy season;
- Creating fertilizer free zones around sensitive waterbodies such as ponds, streams, watercourses, lakes, canals, or wetlands;
- Controlling application practices, for example, by restricting fertilizer application on impervious surfaces and requiring prompt cleanup of any fertilizer that is spilled on impervious surfaces; and

[6] EPA, *Health and Environmental Effects Research*, http://www.epa.gov/nheerl/research/aquatic_stressors/nutrient_loading.html#decreased_o2 (last visited Mar. 27, 2014).
[7] *Supra* note 1, at 3-4.

- Managing grass clipping and vegetative matter by disposing of such materials properly rather than simply blowing them into the street, ditches, stormwater drains, or waterbodies.[8]

Water Pollution Control Programs

Total Maximum Daily Loads (TMDLs) and Water Quality Standards (WQSs)

Under s. 303 of the federal Clean Water Act (CWA), states are incentivized to adopt WQSs for their navigable waters and must review and update those standards at least once every three years. These standards include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, and navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative standards, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.[9]

In 1999, the Legislature passed the Florida Watershed Restoration Act (WRA),[10] which codified the establishment of TMDLs for pollutants of waterbodies as required by the CWA.[11] Each TMDL, which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by the waterbody while still meeting WQSs. Waterbodies that do not meet the established WQSs are deemed impaired and, pursuant to the CWA, the DEP establishes a TMDL for the waterbody or section of the waterbody that is impaired.[12] A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background. Waste load allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources such as the runoff from farms, forests, and urban areas. [13]

The U.S. Environmental Protection Agency (EPA) and the DEP enforce WQSs through the implementation and enforcement of the National Pollutant Discharge Elimination System (NPDES) permitting program. Every point source that discharges a pollutant into waters of the United States must obtain an NPDES permit establishing the amount of a particular pollutant that an individual point source can discharge into a specific waterbody. The amount of the pollutant that a point source can discharge under a NPDES permit is determined through the establishment of a technology-based effluent limitation. If a waterbody fails to meet the applicable WQS

[8] DEP, *Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes*, 6-9 (2010), *available at* http://www.dep.state.fl.us/water/nonpoint/docs/nonpoint/dep-fert-modelord.pdf (last visited Mar. 27, 2014).
[9] 33 U.S.C. s. 1313(c)(2)(A) (2014); 40 C.F.R. ss. 131.6 and 131.10-131.12.
[10] Chapter 99-223, Laws of Fla.
[11] Section 403.067, F.S.
[12] *Id*.
[13] Rule 62-620.200(37), F.A.C. Point source means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are essentially sources of pollution that are not point sources. They can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

through the application of a technology-based effluent limitation, a more stringent pollution control program called the water quality based effluent limitation is applied.

Basin Management Action Plans

The DEP is the lead agency in coordinating the implementation of TMDLs and basin management action plans (BMAPs) through existing water quality protection programs. Such programs include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Non-regulatory and incentive-based programs, including BMPs, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), F.S., and public education;[14]
- Public works, including capital facilities; and
- Land acquisition.[15]

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific water body. First, the BMAP equitably allocates pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources.[16] Then the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP process has the flexibility to allow for adaptive changes if necessary. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the general public to collectively determine and share water quality clean-up responsibilities. The DEP works with stakeholders to develop effective BMAPs.[17]

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the plan must be made as appropriate.[18]

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.[19] A nonpoint source discharger may be subject to enforcement action by the DEP or a WMD based upon a failure to implement these responsibilities.[20]

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[14] Section 403.061, F.S., grants the DEP the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows the DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.
[15] Section 403.067(7)(b), F.S.
[16] Section 403.067(7), F.S.
[17] DEP, *Basin Management Action Plans (BMAPs)*, http://www.dep.state.fl.us/central/Home/Watershed/BMAP.htm (last visited Mar. 27, 2014).
[18] Section 403.067(7)(a)5., F.S.
[19] BMPs for agriculture, for example, include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[20] Section 403.067(7)(b)1.h., F.S.

Provisions of a BMAP must be included in subsequent NPDES permits. The DEP is prohibited from imposing limits or conditions associated with an adopted TMDL in a NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.[21]

NPDES permits issued between the time a TMDL is established and a BMAP is adopted contain a compliance schedule allowing time for the BMAP to be developed. Once the BMAP is developed, a permit will be reopened and individual allocations consistent with the BMAP will be established in the permit. The timeframe for this to occur cannot exceed five years. NPDES permittees may request an individual allocation during the interim, and the DEP may include an individual allocation in the permit.[22]

For an individual point source, reducing pollutant loads established under the TMDL and water quality based effluent limitation regulatory programs can be difficult to accomplish. It may require investment in expensive technology or other costly measures to reduce pollutant loads.[23]

Agricultural Operations

Only lands that are used primarily for bona fide agricultural purposes are classified as agricultural in Florida.[24] The term "bona fide agricultural purposes" means good faith commercial agricultural use of the land. Certain factors may be taken into account in determining whether an agricultural operation is bona fide:

- The length of time the land has been used for agriculture;
- Whether the use has been continuous;
- The purchase price paid;
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment;
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and
- Other factors as may be applicable.[25]

Best Management Practices on Agricultural Lands

Agricultural BMPs are guidelines advising producers how to manage the water, nutrients, and pesticides they use to minimize agricultural impacts on Florida's natural resources. Agricultural activity is dependent on the application of fertilizer and pesticides and is linked to the contamination of watersheds with nutrients such as nitrogen and phosphorus. BMPs tend to cover four major areas, which overlap: nutrient management, or how producers use fertilizers;

[21] Florida Senate Committee on Environmental Preservation and Conservation, *CS/SB 754 Analysis* (Mar. 14, 2013), *available at* http://flsenate.gov/Session/Bill/2013/0754/Analyses/2013s0754.pre.ep.PDF (last visited Mar. 27, 2014).
[22] *Id*.
[23] *Id*.
[24] Section 193.461(3)(b), F.S.
[25] *Id*.

pest management, or how they use pesticides; water management, or how they use and discard water; and sediment management, or how they affect the sediments on and around their properties.[26]

BMPs reduce the amount of nutrients, sediments, and pesticides that enter the water system, and help reduce water use. Because much of the state is built on limestone, which allows water to return relatively unfiltered to the aquifer, pollutants can enter the water supply quickly, endangering humans and ecosystems.[27]

The Office of Agricultural Water Policy, a division of the Department of Agriculture and Consumer Services (DACS), is actively involved in developing BMPs. DACS works cooperatively with agricultural producers, industry groups, the DEP, the university system, the water management districts (WMDs), and other interested parties to develop and implement BMP programs that are economically and technically feasible.[28]

Onsite Sewage Treatment and Disposal Systems

In Florida, septic systems are referred to as onsite sewage treatment and disposal systems or septic systems (OSTDS). An OSTDS can contain any one of the following components: a septic tank; a subsurface drainfield; an aerobic treatment unit (ATU); a graywater tank; a laundry wastewater tank; a grease interceptor; a pump tank; a waterless, incinerating or organic waste-composting toilet; and a sanitary pit privy.[29] Septic systems are located underground and treat sewage without the presence of oxygen. Sewage flows from a home or business through a pipe into the first chamber, where solids settle out. The liquid then flows into the second chamber where anaerobic bacteria in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber into a drainfield.[30] Engineers licensed in Florida may specially design OSTDSs to meet the needs of individual property owners. Engineer-designed OSTDS plans are subject to review by the local county health department and must be certified by the engineer as complying with all requirements pertaining to such system.[31]

Onsite Sewage Programs, part of the Department of Health (DOH), develops statewide rules and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of OSTDSs within the state.[32] The Bureau also

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[26] University of Florida Institute of Food and Agricultural Sciences, *Best Management Practices*, http://solutionsforyourlife.ufl.edu/hot_topics/agriculture/bmps.html (last visited Mar. 27, 2013).
[27] *Id*.
[28] DACS, Office of Agricultural Water Policy, *Home Page* (Jan. 8, 2014), http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Water-Policy (last visited Mar. 27, 2014).
[29] DEP, *Wastewater: Septic Systems*, http://www.dep.state.fl.us/water/wastewater/dom/septic.htm (last visited Mar. 27, 2014).
[30] EPA, *Primer for Municipal Wastewater Treatment Systems*, 22 (2004), *available at* http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf (last visited Mar. 27, 2014).
[31] *See* Rules 64E-6.003 and 6.004, F.A.C.
[32] The DOH does not permit the use of onsite sewage treatment and disposal systems where the estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd) or the commercial sewage flow is over 5,000 gpd; where there is a likelihood that the system will receive toxic, hazardous or industrial wastes; where a sewer system is available; or of any system or flow from the establishment is currently regulated by the DEP. The DEP issues the permits for systems that discharge more than 10,000 gpd.

licenses over 700 septic tank contractors and oversees 2.6 million onsite wastewater systems in Florida. [33]

The EPA concluded in its 1997 Report to Congress that "adequately managed decentralized wastewater systems are a cost-effective and long-term option for meeting public health and water quality goals, particularly in less densely populated areas." In Florida, development is dependent on OSTDSs due to the cost and time it takes to install central sewer. In rural areas and low-density developments, central sewer is not cost effective. Less than one percent of Florida systems are actively managed. The remainder generally only receive maintenance when they fail, often leading to costly repairs that could have been avoided with routine tank pump outs and service.[34]

Land Spreading of Septage

Septage is defined as a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an OSTDS.[35] Approximately 100,000 septic tanks are pumped each year, generating 100 million gallons of septage requiring treatment and disposal.[36] The septage is treated and disposed of at a number of septage treatment facilities regulated by the DOH. When used for land application, the septage is stabilized by raising the pH to 12 for at least two hours or to a pH of 12.5 for 30 minutes.[37]The treated septage is then spread over the land at DOH-regulated land application sites.[38] In addition to septage, onsite systems serving restaurants include tanks that separate grease from the sewage stream. The grease is collected, hauled, treated, and land applied similarly to septage. There are currently 92 DOH-regulated land application sites that receive treated septage from 108 DOH-regulated septage treatment facilities. Approximately 40 percent of septage removed from septic tanks is treated at septage treatment facilities and then land applied.[39]

In 2010, the Legislature enacted a law prohibiting the land application of septage from septic tanks effective January 1, 2016.[40] In addition, the bill required the DOH, in consultation with the DEP, to provide a report to the Governor and the Legislature recommending alternative methods to establish enhanced treatment levels for the land application of septage by February 1, 2011. The report provided several alternatives to the land application of septage as it is currently performed.[41]

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[33] Hall, P. and Clancy, S.J., *Statewide Inventory of Onsite Sewage Treatment and Disposal Systems in Florida, Final Report*, 6 (June 29, 2009), *available at* http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/_documents/research-reports/_documents/inventory-report.pdf (last visited Mar.27, 2014).
[34] DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, 1 (Oct. 1, 2008), *available at* http://www.noticeandcomment.com/Report-on-Range-of-Costs-to-Implement-a-Mandatory-Statewide-5-Year-Septic-Tank-Inspection-Program-October-fn-14050.aspx (last visited Mar. 27, 2014).
[35] Section 381.0065(2)(n), F.S.
[36] DOH, *Report on Alternative Methods for the Treatment and Disposal of Septage*, 1 (Feb. 1, 2011), *available at* http://pk.b5z.net/i/u/6019781/f/FINAL_REPORT_ON_ALTERNATIVE_METHODS_FOR_THE_TREATMENT_AND_DISPOSAL_OF_SEPTAGE_03282011__2_.pdf (last visited Mar. 27, 2014).
[37] Rule 64E-6.010(7)(a), F.A.C.
[38] See Rule 64E-6.010, F.A.C.
[39] *Supra* note 36.
[40] Section 381.0065(6), F.S.
[41] *Supra* note 36, at 2.

Treatment of septage at domestic wastewater treatment facilities

Treating septage takes advantage of available wastewater treatment facilities' capacity while at the same time centralizing waste treatment operations. However, not all wastewater treatment facilities accept septage because it is a high strength waste, which has the potential to upset facilities' processes and may result in increased operation and maintenance requirements and costs. Furthermore, the distance between central facilities with available treatment capacity and the locations where septage is collected in rural areas can make transport to such facilities cost prohibitive.[42]

Disposal of septage at landfills

Acceptance of septage at Class I landfills has positive impacts to the landfills because it increases microbial activity that results in increased waste decomposition and more rapid waste stabilization. However, landfill instability may result due to disposal of the wet waste stream. Increased difficulty in operating compaction equipment may result due to creation of a slick working surface. Many landfills choose not to accept loads of septage, making land application sites one of the only available options for the disposal of septage.[43]

Advanced Treatment

While most of Florida's OSTDSs are conventional OSTDSs, or passive septic systems, there are other advanced systems capable of providing additional or advanced treatment of wastewater prior to disposal in the drainfield. Advanced OSTDSs can utilize various approaches to improve treatment before discharge to a drainfield, or the drainfield itself can be modified. On occasion, engineers have included the drainfield as part of the treatment process, usually as a means to achieve fecal coliform reduction.[44]

Advanced systems differ in three respects from conventional treatment systems that consist of a septic tank with drainfield. First, the design of advanced systems is more variable than the approach for conventional systems. Second, they need more frequent checkups and maintenance, which is the reason they require operating permits. Third, the performance expectations are more specific, while failures for advanced systems are less defined.[45] Advanced systems are significantly more expensive to purchase, install, and operate.

Aerobic Treatment Units (ATUs) offer advanced treatment for wastewater. ATUs force compressed air through the liquid effluent in the tank to create a highly oxygenated (aerobic) environment for bacteria. Bacteria that thrive in oxygen-rich environments work to break down and digest the wastewater inside the aerobic treatment unit. Aerobic units come in a variety of sizes and shapes and can be made of concrete, fiberglass, or polyurethane. They are designed to collect and treat all the water from a home, including water from toilets, showers, bathtubs,

[42] *Supra* note 36, at 2.
[43] *Supra* note 36, at 3.
[44] DOH, Assessment of Water Quality Protection, *Advanced Onsite Sewage Treatment and Disposal Systems: Performance, Management, Monitoring, Draft Final Report*, 14 (August 19, 2013), *available at* http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/advancedostdsfinalreportdraft.pdf (last visited Mar. 27, 2014).
[45] Prepared for DEP by DOH, Bureau of Onsite Sewage Programs, *Revised Quality Assurance Project Plan Assessment of Water Quality Protection by Advanced Onsite Sewage Treatment and Disposal Systems (OSTDS): Performance, Management, Monitoring*, 8 (Aug. 22, 2011) *available at* http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/_documents/final319qapp.pdf (last visited Mar. 27, 2014).

sinks, and laundry. There are as many as three stages that ATUs take wastewater through before the effluent is dispersed into the drainfield.[46]

Water Pollution Management

Urban Stormwater Management

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface waters and groundwaters. Factors that exacerbate unmanaged runoff include:

- Compaction of soil;
- Addition of impervious surfaces such as roads and parking lots;
- Alteration of natural landscape features such as natural depression areas that hold water, floodplains, and wetlands;
- Construction of highly efficient drainage systems that alter the ability of the land to assimilate precipitation; and
- Pollutant loading of receiving water bodies from stormwater discharge.[47]

Urbanization within a watershed decreases the amount of rainwater that seeps into the soil. Rainwater is critical for recharging aquifers, maintaining water levels in lakes and wetlands, and maintaining spring and stream flows. The increased volume, speed, and pollutant loading in stormwater discharged from developed areas leads to flooding, water quality problems, and loss of habitat.[48]

In 1982, to manage urban stormwater and minimize impacts to natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for new development. The rule included a performance standard for the minimum level of treatment and design criteria for BMPs to achieve the performance standard. It also included a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria would meet WQSs.[49] The performance standard was to reduce post-development stormwater pollutant loading of total suspended solids[50] by 80 percent, or by 95 percent for Outstanding Florida Waters.[51]

In 1990, the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).[52] This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of the DEP, the WMDs, and local governments. One of the primary goals of the program is to maintain the

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[46] Florida Health, Lee County, *Aerobic Treatment Unit Homeowner Education*, http://www.floridahealth.gov/chdlee/EH/OSTDSatu.html (last visited Mar. 27, 2014).
[47] DEP, *State Stormwater Treatment Rule Development Background*, http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm (last visited Mar. 27, 2014).
[48] *Id*.
[49] *Id*.
[50] Total Suspended Solids is listed as a conventional pollutant under s. 304(a)(4) of the CWA. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.
[51] Rule 62-302.700, F.A.C., provides that an Outstanding Florida Water is a designated water body worthy of special protection because of its natural attributes. This special designation is applied to certain water bodies, and is intended to protect and preserve their existing states.
[52] *Supra* note 47. See also Rule. 62-40, F.A.C.

predevelopment stormwater characteristics of a site. The rule sets a minimum performance standard for stormwater treatment systems to remove 80 percent of the post-development stormwater pollutants "that cause or contribute to violations of WQSs."[53]

The DEP and the WMDs jointly administer the Environmental Resource Permitting (ERP) program for activities that alter surface water flows.[54] Alteration or construction of new stormwater management systems in urban redevelopment areas is regulated by the ERP program pursuant to s. 373.413, F.S., and must comply with all other relevant sections of ch. 373, Part IV, F.S.

Wastewater Treatment Plants

Wastewater treatment is one of the most common forms of pollution control in the United States. Sewerage system components include collection sewers, pumping stations, and treatment plants. Sewage is collected and sent to a treatment plant to remove solids and biological contaminants. Once sewage has been treated, it is typically discharged into streams and other receiving waters, or reused.[55]

The basic function of wastewater treatment is to speed up natural processes by which water is purified. Typically, sewage is treated by primary and secondary processes. In the primary stage, solids are allowed to settle and are removed from the wastewater. The secondary stage uses biological processes to further purify wastewater.[56]

Limits in Florida for effluent to surface water from wastewater treatment plants are required to contain no more than 20 mg/L carbonaceous biochemical oxygen demand (CBOD5)[57] and 20 mg/L total suspended solids (TSS),[58] or 90 percent removal of each from the wastewater influent, whichever is more stringent.[59] There are other limits depending on where the effluent is being discharged.

Advanced Wastewater Treatment

Advanced wastewater treatment (AWT) systems perform additional treatment beyond secondary treatment. AWT systems can remove more than 99 percent of all impurities from sewage, producing an effluent that may be drinking-water quality. The related technology can be expensive, requiring a high level of technical expertise and well trained treatment plant operators, a steady energy supply, chemicals, and specific equipment that may not be readily available. An example of an AWT process is the modification of a conventional secondary treatment plant to remove additional phosphorus and nitrogen. The effluent standards for AWT on an annual average basis are:

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[53] *Supra* note 47.
[54] Chapter 373, Part IV, F.S. See also DEP, *Environmental Resource Permitting (ERP) Program*, http://www.dep.state.fl.us/water/wetlands/erp/index.htm (last visited Mar. 27, 2014).
[55] U.S. Environmental Protection Agency, Office of Water, *How Wastewater Treatment Works: The Basics*, Report no. 833-F-98-002, 1 (May 1998), *available at* http://www.epa.gov/npdes/pubs/bastre.pdf (last visited Mar. 27, 2014).
[56] *Id*.
[57] For more information on CBOD5, see Rule 62-601.200(6), F.A.C.
[58] For more information on TSS, see Rule 62-601.200(54), F.A.C.
[59] Rule 62-600.420, F.A.C.

- CBOD5 – 5 mg/L;
- Suspended solids – 5 mg/L;
- Total Nitrogen – 3 mg/L;
- Total Phosphorus – 1 mg/L; and
- High levels of disinfection.[60]

Residuals

Biosolids are the solid, semisolid, or liquid residue generated during the biological wastewater treatment process. Florida generates approximately 320,000 dry tons of biosolids annually. Biosolids are normally high in organic content and contain moderate amounts of nutrients such as nitrogen and phosphorus, making them valuable as a fertilizer or soil amendment.[61] They may be used beneficially or disposed of in landfills.[62]

Biosolids are classified as AA, A, or B. Class AA biosolids are considered the highest quality biosolids. They must be treated to a level that essentially eliminates pathogens and meets strict concentration limits for heavy metals. They may be used as fertilizer through commercial distribution and marketing.[63] Class A biosolids are biosolids that meet the same pathogen reduction requirements as Class AA biosolids, meet the same vector attraction (meaning the attraction of disease spreading animals) requirements as Class B biosolids, and meet a series of concentration limits for nine different elements.[64] Class B biosolids must be treated to significantly reduce pathogens and must meet certain concentration limits for heavy metals. Application rates are limited to crop nutrient needs. They are subject to site application restrictions and restrictions on harvesting, grazing, and public access. Also, cumulative heavy metals must be tracked for Class A and B biosolids; however, in Florida, land applied biosolids are almost exclusively Class B. In 2012, approximately 108,272 dry tons of Class B biosolids were land applied.[65]

Total Maximum Daily Load (TMDL) Restoration Grants Program

The TMDL Water Quality Restoration Grants program was developed to provide grants to fund the implementation of BMPs to reduce pollutant loads to impaired waters from urban stormwater discharges.[66] The DEP funds research into BMPs to reduce pollutant loads from urban nonpoint sources of pollution.

The eligibility criteria for TMDL Water Quality Restoration Grants are:

- Projects that reduce stormwater pollutant loadings from urban areas that discharge to water bodies on the state's verified list of impaired waters;
- The project is at least at the 60 percent design phase;

[60] Section 403.086(4), F.S.
[61] DEP, *Biosolids in Florida: 2012 Summary*, 1 (Dec. 2013), *available at* http://www.dep.state.fl.us/water/wastewater/dom/docs/BiosolidsFlorida-2012-Summary.pdf (last accessed Mar. 27, 2014.
[62] *Id*.
[63] *Id*.
[64] Rule 62-640.200(9), F.A.C.
[65] *Supra* note 61.
[66] Rule 62-305.100(1), F.A.C.

- The project is permitted or the permit has been scheduled for approval at the next meeting of the WMD governing board or the DEP;
- The project includes storm event monitoring to determine the actual load reduction;
- The construction will be completed within three years of appropriation of the funds by the Legislature in order to ensure funds remain available;
- The applicant provides a minimum of 50 percent of the total project cost in matching funds, of which at least 25 percent are provided by the local government; and
- The grant funds are used for construction of BMPs, monitoring to determine pollutant load reductions, or public education activities specifically associated with the project and may only occur after the date of contract. Funds spent in advance of contract may be used for match, such as design, land acquisition, and other costs incurred by the applicant.[67]

The submitted projects are then evaluated and ranked. The criteria include:

- Impairment status of the receiving waterbody;
- Estimated load reduction of the pollutants of concern;
- Percentage of local matching funds;
- Cost effectiveness based on the cost per pound of Total Nitrogen and/or Total Phosphorus removed per acre treated;
- Inclusion of a robust educational component; and
- Whether the local government sponsor has implemented a dedicated funding source for stormwater management, such as a stormwater utility fee.[68]

Grant applications may be submitted throughout the year. The DEP reviews and ranks projects in March, July, and November.[69] Projects selected for grant funding are based on ranking and availability of funds. Projects that are not selected for funding remain in the pool of projects for one year from the date of submittal.[70]

Minimum Flows and Levels (MFLs)

MFLs are established for water bodies in order to prevent significant harm as a result of withdrawals. MFLs are typically determined based on evaluations of topography, soils, and vegetation data collected within plant communities and other pertinent information associated with the water resource. MFLs take into account the ability of wetlands and aquatic communities to adjust to changes in hydrologic conditions and allow for an acceptable level of hydrologic change to occur. When uses of water resources shifts the hydrologic conditions below levels defined by MFLs, significant ecological harm can occur.[71] The goal of establishing an MFL is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource.[72] Consumptive uses of water draw down water levels

[67] DEP, *TMDL Water Quality Restoration Grants*, http://www.dep.state.fl.us/water/watersheds/tmdl_grant.htm (last visited Mar. 27, 2014).
[68] *Id*. See also rule 305.400, F.A.C. (Project Selection Criteria).
[69] Rule 62-305.300(2), F.A.C.
[70] *Supra* note 67.
[71] St. Johns River Water Management District, *Water Supply: An Overview of Minimum Flows and Levels*, http://www.sjrwmd.com/minimumflowsandlevels/ (last visited Mar. 27, 2014).
[72] DEP, *Minimum Flows and Levels*, http://www.dep.state.fl.us/water/waterpolicy/mfl.htm (last visited Mar. 27, 2014).

and reduce pressure in the aquifer.[73] By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new consumptive use permit (CUP) application.[74]

Section 373.042, F.S., requires the DEP or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. While the DEP has the authority to adopt MFLs under ch. 373, F.S., the WMDs have the primary responsibility for MFL adoption. The WMDs submit annual MFL priority lists and schedules to the DEP for review and approval. MFLs are considered rules by the WMDs and are subject to ch. 120, F.S., challenges. MFLs are established using the best available data and are subject to independent scientific peer review at the election of the WMD, or, if requested, by a third party.[75]

MFLs apply to decisions affecting permit applications, declarations of water shortages and assessments of water supply sources. Computer water budget models for surface waters and groundwater are used to evaluate the effects of existing and/or proposed consumptive uses and the likelihood they might cause significant harm. The WMD Governing Boards are required to develop recovery or prevention strategies in those cases where a water body or watercourse currently does not or is anticipated to not meet an established MFL. Water uses cannot be permitted that cause any MFL to be violated.[76]

Recovery or Prevention Strategies

At the time of the initial adoption or revision of a water body's MFL, if the water body is below or is projected within 20 years to fall below the MFL, the WMD must simultaneously approve a recovery or prevention strategy or modify an existing recovery or prevention strategy. The WMD may adopt the revised MFL prior to the approval of the recovery or prevention strategy if the revised MFL is less constraining on existing or projected future consumptive uses.[77]

For water bodies without a recovery or prevention strategy, when the WMD determines the water body has fallen below, or is projected within 20 years to fall below the adopted MFL, the WMD shall expeditiously approve a recovery or prevention strategy.[78]

An MFL recovery or prevention strategy must include a phasing or timetable that allows for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including the development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals. In the development of a recovery or prevention strategy, the WMD will consider the need for water resource or water supply development, additional regulatory measures, and implementation of additional water conservations measures.[79]

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[73] *Supra* note 1, at 3-5.
[74] Florida Senate Committee on Environmental Preservation and Conservation, *SB 244 Analysis*, 2 (Feb. 22, 2013), *available at* http://flsenate.gov/Session/Bill/2013/0244/Analyses/2013s0244.ep.PDF (last visited Mar. 27, 2014).
[75] *Id*.
[76] *Supra* note 71.
[77] Rule 62-40.473(5), F.A.C.
[78] *Id*.
[79] Rule 62-40.473(6), F.A.C.

Consumptive Use Permits (CUPs)

A CUP establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the DEP and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- Be a "reasonable-beneficial use" as defined in s. 373.019(16), F.S.;
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.

Rural Areas of Critical Economic Concern

Rural areas of critical economic concern are rural communities, or regions composed of rural communities, designated by the Governor, that have been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.[80] The Governor may waive criteria of any economic development incentive for such areas.[81]

Rural communities are:

- Counties with a population of 75,000 or fewer;
- Counties with a population of 125,000 or fewer that are contiguous to a county with a population of 75,000 or fewer;
- Designated municipalities within a county that meets the thresholds of the two previous criteria; and
- An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or less and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified below.[82]

Economic distress factors are:

- Low per capita income;
- Low per capita taxable values;
- High unemployment;
- High underemployment;
- Low weekly earned wages compared to the state average;
- Low housing values compared to the state average;
- High percentages of the population receiving public assistance;
- High poverty levels compared to the state average; and

[80] Section 288.0656(2)(d), F.S.
[81] Florida Department of Economic Opportunity, Rural Areas of Critical Economic Concern, http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-critical-economic-concern (last visited Apr. 23, 2014).
[82] Section 288.0656(2)(e), F.S.

- A lack of year-round stable employment opportunities.[83]

The Governor may waive the criteria of any economic development incentive for such areas. The three areas in Florida designated as rural areas of critical economic concern are the Northwest, South Central, and the North Central.[84]

Northwest Rural Area of Critical Economic Concern is made up of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and the City of Freeport in Walton County. [85]

The South Central Rural Areas of Critical Economic Concern is made up of Desoto, Glades, Hendry, Highlands, and Okeechobee Counties. It also includes the cities of Pahokee, Belle Glade, South Bay, and Immokalee.[86]

The North Central Rural Area of Critical Economic Concern is made up of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.[87]

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 373.042 and 373.0421, F.S., respectively, requiring the standard of "harm" to be applied when determining the minimum flow level (MFL) of an Outstanding Florida Springs (OFS). They also make conforming changes.

Section 3 creates Part VIII of ch. 373, F.S., consisting of ss. 373.801, 373.802, 373.803, 373.805, 373.807, 373.809, 373.811, and 373.813, F.S., and provides the title, "Florida Springs and Aquifer Protection Act." The requirements of this act are discussed in Sections 6-12 of this section of the analysis.

Section 4 creates s. 373.801, F.S., providing legislative findings and intent:

- Detailing the importance of Florida's springs, and various benefits they provide to the state including providing critical habitat for plants and animals. They provide immeasurable natural, recreational, economic, and inherent value. They are indicators of the health of the Floridan aquifer. They also provide recreational opportunities for Floridians and visitors to the state;
- Stating that water quantity and water quality in springs are related. It also specifies the primary responsibilities of the Department of Environmental Protection (DEP), water management districts (WMDs), Department of Agriculture and Consumer Services (DACS), and local governments;
- Recognizing that springs are only as healthy as their springsheds and identifies several of the problems affecting springs, including pollution runoff from urban and agricultural lands,

[83] Section 288.0656(2)(c), F.S.
[84] *Supra* note 81.
[85] *Supra* note 81.
[86] *Supra* note 81.
[87] *Supra* note 81.

stormwater runoff, and reduced water levels of the Floridan Aquifer, which may have led to the degradation of many of Florida's springs;
- Recognizing that without significant action, the quality of Florida's springs will continue to degrade;
- Stating that springshed boundaries need to be delineated using the best available data;
- Recognizing that springsheds often cross WMDs and local government jurisdictional boundaries, which requires a coordinated response;
- Recognizing that aquifers and springs are complex systems affected by many variables and influences; and
- Recognizing that sufficient information exists to act, action is urgently needed, and action can be continually modified as additional data is acquired.

Section 5 creates s. 373.802, F.S., providing definitions for "department," "local government," "onsite sewage and treatment disposal system," "spring run," "springshed," and "spring vent."

The bill also defines:
- "Outstanding Florida Spring," meaning all historic first magnitude springs, as determined by the department using the most recent version of the Florida Geological Survey's springs bulletin. The following springs are also considered (OFSs): Deleon Spring, Peacock Spring, Poe Spring Rock Springs, Wekiwa Spring, and Gemini Spring; and
- Spring protection and management zone (SPMZ)," meaning the areas of a springshed where the Floridan Aquifer is vulnerable to sources of contamination or reduced levels, as determined by the DEP in consultation with the appropriate WMD.

Section 6 creates s. 373.803, F.S., directing the DEP, in consultation with the WMDs, to delineate SPMZs for each OFS, using the best available data. The bill requires the delineation of the zones to be completed by July 1, 2015. It directs the DEP to consider groundwater travel time, hydrogeology, and nutrient load when delineating spring protection zones. Additionally, the bill directs each WMD to adopt, by rule, maps that delineate SPMZs for each OFS within its jurisdiction by July 1, 2016.

Section 7 creates s. 373.805, F.S., directing each WMD to establish an minimum flow level (MFL) for each OFS located within its jurisdiction by July 1, 2015. The bill provides for yearly extensions until July 1, 2022, if the WMD provides sufficient evidence to the DEP that an extension is in the best interest of the public. It directs the DEP to establish MFLs for OFSs that are affected or have been affected by withdrawals in areas that cross WMD boundaries by July 1, 2017.

The bill requires the simultaneous adoption of a recovery or prevention strategy when an MFL is adopted for an OFS and when the spring is below, or is projected within 20 years to be below the MFL. MFLs adopted before July 1, 2014, must be revised by July 1, 2017, and a recovery or prevention strategy must be adopted or revised if the OFS is below, or is projected within 20 years to be below the MFL. Finally, it requires the adoption of a recovery or prevention strategy by the DEP or WMD when there is no recovery or prevention strategy and the OFS is below, or is projected to be below the adopted MFL.

The bill provides minimum requirements for a recovery or prevention strategy for an OFS. The strategy, at a minimum, must include:

- A listing of all specific projects identified for implementation to achieve the recovery or prevention strategy;
- A priority listing of each project;
- The estimated cost for each listed project;
- The source and amount of financial assistance from the WMD for each project, which may not be less than 25 percent of the total cost of the project, unless another funding source or sources are identified which will provide more than 75 percent of the total project cost. The bill exempts the Northwest Florida and Suwannee River WMDs from the requirement to provide 25 percent of the total project cost;
- An estimate of each project's anticipated benefit;
- A map and legal descriptions of the SPMZ; and
- An implementation plan detailing how MFLs will be restored within 15 years of the adoption of a recovery or prevention strategy with interim milestones at five and 10 years.
- Local governments may apply for an extension of up to five years from the DEP, or 10 years for local governments in rural areas of critical economic concern, for any project in an adopted recovery or prevention strategy if the local government provides sufficient evidence to the DEP that an extension is in the best interest of the public.

Section 8 creates s. 373.807, F.S., providing a deadline of July 1, 2014, for the DEP to initiate assessment of any OFS for which a determination of impairment has not been made and complete the assessment of them under the numeric nutrient standards for spring vents by July 1, 2017. The bill requires that:

- When a total maximum daily load (TMDL) is adopted, the DEP, or the DEP in coordination with a WMD, will simultaneously initiate development of a BMAP;
- For OFSs that have an adopted nutrient TMDL by July 1, 2014, the DEP, or the DEP in coordination with a WMD, will initiate development of a BMAP by July 1, 2014; and
- As the BMAP is developed, if OSTDSs are identified as a source of pollution that needs to be addressed, the local government must develop an OSTDS remediation plan.

BMAPs must be completed within three years of their initiation and must include:

- A list of all projects for implementing a TMDL;
- A list of all projects in an OSTDS remediation plan, if applicable;
- A priority ranking of all projects;
- The estimated cost of each project;
- The estimated date of completion of each project;
- The source and amount of any financial assistance from the DEP, WMD, or other entity;
- The estimate of each project's nutrient load reduction;
- A map and legal descriptions of the SPMZ;
- The identification of each point source of category of nonpoint sources; and
- An implementation plan detailing how the TMDL will be achieved within 15 years of the adoption of a BMAP along with interim milestones at five and 10 years.

The bill requires BMAPs adopted by July 1, 2014, that affect an OFS to be revised by the DEP, or the DEP in conjunction with a WMD, by July 1, 2017. Any completed OSTDS remediation

plans will be considered incorporated in an existing BMAP until the BMAP is revised. Additionally, a local government may apply for an extension of up to five years, or 10 years in the case of a local government within a rural area of critical economic concern, for any project in an adopted BMAP upon showing that an extension is in the best interest of the public.

Within six months of delineating an SPMZ of an OFS located fully or partially within a local government's jurisdictional boundaries, the local government must adopt an ordinance that meets or exceeds the requirements of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The ordinance must require that, within an SPMZ of an OFS with an adopted nutrient TMDL, the nitrogen application rate of fertilizer may not exceed the lowest, basic maintenance rate of the most recent recommendations by the University of Florida's Institute of Food and Agricultural Sciences (IFAS). The DEP must adopt rules to implement this provision that establish reasonable minimum standards and reflect advancements of improvements regarding nutrient load reduction.

By July 1, 2016, the DEP, in conjunction with the Department of Health and local governments, must identify OSTDSs within each SPMZ and provide that information to the local governments where they are located within 60 days. If the DEP determines that OSTDSs are a source of pollution that needs to be addressed during the basin management action plan (BMAP) development process, it will notify the local government that it needs to develop an OSTDS remediation plan within one year of notification by the DEP. For each system or group of systems, the plan must include whether the systems require upgrading, connection to a central sewerage system, or no action. The plan must also include a priority ranking of each system or group of systems that require remediation and each plan must be submitted to the DEP for approval. In reviewing and approving remediation plans, the DEP must consider, at a minimum:

- The density of onsite sewage treatment and disposal systems (OSTDSs);
- The number of OSTDSs;
- The proximity of the OSTDSs to an OFS;
- The estimated nutrient loading of the OSTDSs; and
- The cost of the proposed action.

In developing the OSTDS remediation plan, the local government must hold at least one public meeting in order to receive public comment on the plan.

Regarding implementation of the OSTDS remediation plan, a property owner with an OSTDS identified by the plan is not required to pay any of the costs of an inspection or upgrade of the system, or connection fees for connection to a sanitary sewer system. This does not apply to local government programs in existence before July 1, 2014, that do not comply with these cost provisions.

Section 9 creates s. 373.808 F.S., providing for funding for the restoration of OFSs.

It directs the DEP to adopt rules to fund pilot projects each project selection cycle that test the effectiveness of technologies or practices designed to minimize nutrient pollution or conserve water in Florida springs by December 31, 2014. Funding for pilot projects may only be provided if the DEP determines that the pilot project will not be harmful to the ecological resources in the study area. It also directs the DEP to develop rules by December 31, 2014, to evaluate, select,

and rank projects or land acquisitions eligible for funding . The rules must give preference to projects that will result in the greatest improvement to water quality and water quantity for the funds expended. The bill specifies that the DEP must consider, at a minimum:

- The level of nutrient impairment of the OFS in which the project is located;
- The quantity of pollutants the project is estimated to remove from an SPMZ;
- The flow necessary for the OFS to meet its adopted MFL;
- The anticipated impact the project will have on restoring or increasing water flow or water level;
- The amount of matching funds for the project that will be provided by the entities responsible for implementing the project;
- Whether the project is located in a rural area of critical economic concern, with preference given to the local government responsible for implementing the project;
- For multi-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project;
- The cost of the project and the length of time it will take to complete relative to its expected benefits; and
- Whether the applicant has used its own funds for projects to improve water quality or conserve water use within a springshed or SPMZ of an OFS since July 1, 2009.

Section 10 creates s. 373.811, F.S., detailing prohibited activities within an SPMZ of an OFS. Prohibited activities are:

- Construction of municipal or industrial wastewater disposal system with permitted capacities of 100,000 gallons per day or greater unless the system meets a treatment standard of 3 mg/L Total Nitrogen on an annual permitted basis, unless the DEP determines a higher standard is necessary;
- Construction of OSTDSs on lots less than one acre, except for passive nitrogen removing systems approved by the DOH. This prohibition will not take effect until six months after the DOH has approved such a system for use;
- Construction of facilities for disposal of hazardous waste;
- Land application of class A or B domestic wastewater biosolids or septage; and
- New agriculture operations that do not implement BMPs, measures necessary to achieve pollution reduction levels established by the DEP, or a groundwater monitoring plan approved by a WMD or the DEP.

Section 11 creates s. 373.813, F.S., directing the DEP to adopt rules to create a program to improve water quantity and water quality based on the TMDL Water Quality Restoration Grants rule. It allows the DOH, DACS, and the WMDs to adopt rules to administer Part VIII of ch. 373, F.S.

The bill specifies DACS is the lead agency for coordinating the reduction of agricultural nonpoint sources of pollution for the protection of OFSs. DACS and the DEP will study and, if necessary, initiate rulemaking to implement new or revised BMPs, in cooperation with applicable local governments, and stakeholders. The purpose of the rules is to implement new or revised BMPs for improving and protecting OFSs and to require the implementation of such practices within a reasonable time.

The bill directs the DEP, DACS, and Institute of Food and Agriculture Sciences (IFAS) to conduct research into improved or additional nutrient management tools, with a sensitivity to the necessary balance between water quality improvements and agricultural productivity. If necessary, the tools must be incorporated into revised BMPs adopted by rule by DACS.

Section 12 creates s. 373.815, F.S., requiring a progress report by the DEP, in conjunction with the WMDs, by July 1, 2015, and annually thereafter, be submitted to the Governor, the Senate President, and the Speaker of the House of Representatives. The report must detail the status of each TMDL, BMAP, MFL, and recovery or prevention strategies adopted pursuant to Part VIII of ch. 373, F.S. It must also include the status of each project identified to achieve a TMDL and MFL, as applicable.

If the report states that any interim five or 10 year milestone, or the 15 year deadline, will not be met, the report must include specific corrective actions that will be taken to achieve these milestones and deadlines, and, if necessary, executive and legislative recommendations.

Section 13 creates an unnumbered section of Florida law that provides for funding for the Florida Springs and Aquifer Protection Act for the 2014-2015 fiscal year. It states that funding for future years will be at the discretion of the Legislature and provided in the General Appropriations Act.

Section 14 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Existing regulatory programs require local governments to expend funds to comply with minimum flows and levels (MFLs), water quality standards (WQSs), and basin management action plans (BMAPs). This bill requires additional expenditures for onsite sewage and disposal systems (OSTDS) remediation plans and implementation of those plans. A comprehensive fiscal analysis of the bill is required to determine the total impact and whether this bill is a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exact impact of CS/CS/CS/SB 1576 on the private sector and individuals cannot be calculated because many of the costs are dependent on activities, such as delineation of spring protection and management zone (SPMZs) that have not occurred. Listed below are examples of potential private sector impacts.

- Provisions that will require some property owners in spring protection zones to upgrade their onsite sewage treatment and disposal systems (OSTDSs) or connect to a central sewerage system. This could result in higher rates for sewage disposal compared to the costs of using an OSTDS. Aerobic treatment units (ATUs) are also more costly to operate than conventional OSTDSs.
- Rate payers may pay for ongoing operation and maintenance for advanced wastewater treatment (AWT) plants, through rate increases, in addition to costs associated with disposal of Class A and B biosolids in landfills.
- Property owners may have to pay for more expensive passive OSTDSs to install in new developments with lots of less than one acre. They may also face more expensive pump out costs as a result of more expensive disposal options.
- Urban fertilizer use may decrease because of ordinances causing a reduction in revenue for fertilizer companies.
- Septic tank contractors may benefit due to increased scrutiny and required upgrades to OSTDSs.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services (DACS) has indicated that while the bill does not significantly change the role of DACS in water resources protection through best management practices development and implementation, it does direct the department to participate in new studies and rule development efforts. The cost for staff time and travel to implement these duties is unknown. Also, DACS would need funding to contract with a third party entity, estimated at $50,000, to complete the required report related to public health, engineering, public perception, fiscal, and rate structure issues.

Due to the increased workload related to this bill, the Department of Environmental Protection (DEP) would need additional positions and funding. While the exact need is indeterminate at this time, the DEP estimates up to 35 additional positions based on its existing water program. However, because the grant program anticipated by this bill will be based on the DEP's existing program, the exact number of additional positions and costs are indeterminate.

The bill would require the water management districts (WMDs) and the DEP to establish Minimum Flows and Levels (MFLs) which is expected to cost between $280,000 and $2.25 million per MFL, including agency costs for extensive data collection, analysis and modeling, stakeholder coordination, and rulemaking. Costs can vary widely depending on the complexity of the system and the amount and type of scientific and technical data that exists or must be collected. Future reevaluation of the 17 MFLs already established or in

rulemaking due to the change of the standard from "significant harm" to "harm" would add additional costs that are indeterminate.

The bill requires the DEP to develop Basin Management Action Plans (BMAPs). The DEP estimates the need for one additional position for each spring and that six springs would need BMAPs. The estimated total cost for each BMAP is $250,000 to $340,000 per year which includes one position's salary and benefits costs along with contracted service costs. It is difficult to estimate the level of work needed for each spring; however, the total estimates range from $1.5 million to $2 million.

The WMDs (excluding Northwest Florida and Suwannee River WMDs) would be required to fund at least 25 percent of recovery or prevention strategies projects. However, the WMDs may provide less than a 25 percent match if another specific source(s) of funding will provide more than 75 percent of the project cost. Since the number of project applicants and project costs is unknown, the fiscal impact is indeterminate at this time.

The bill requires the DEP to assess outstanding Florida springs for determination of impairment by July 1, 2017. This deadline would be difficult to achieve due to the time needed to gather sufficient data. Until an assessment of data gaps can be completed, the cost of securing the additional data is unknown.

Funding to support the bill is to be provided in the Fiscal Year 2014-2015 General Appropriations Act, or similar legislation. For subsequent fiscal years, funding will be determined annually by the Legislature and provided in the General Appropriations Act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines outstanding Florida springs as all first magnitude springs in Florida, as defined in the most recent version of the Florida Geological Survey's springs bulletin. A future bulletin could remove one of the first magnitude springs from its list, creating problems for ongoing projects by removing the regulatory structure established in this bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.042 and 373.0421.

This bill creates the following sections of the Florida Statutes: 373.801, 373.802, 373.803, 373.805, 373.807, 373.809, 373.811, 373.813, and 373.815.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on April 22, 2014:

- Removes provisions providing for funding from documentary stamp revenues;
- Funding to support the bill is to be provided in the Fiscal Year 2014-2015 General Appropriations Act, or similar legislation. For subsequent fiscal years, funding will be determined annually by the Legislature and provided in the General Appropriations Act;
- Removes the definition of "Responsible Management Entities" and all references to responsible management entities in the bill;
- Extends the deadline for establishment of minimum flow levels from July 1, 2020, to July 1, 2022;
- Adds provisions requiring the establishment of recovery or prevention strategies under certain circumstances;
- Adds requirements for recovery and prevention strategies;
- Requires the Department of Environmental Protection (DEP) to begin water quality assessments by July 1, 2014, and requires them to be completed by July 1, 2017;
- Requires the development of a basin management action plan (BMAP) simultaneously with the adoption of a total maximum daily loads (TMDLs);
- Requires BMAPs to be adopted within three years of their initiation;
- Requires the revision of BMAPs adopted before July 1, 2014, by July 1, 2017;
- Requires the initiation of the development of a BMAP by July 1, 2014, for OFSs that have a TMDL adopted before July 1, 2014;
- Requires the development of onsite sewage treatment and disposal systems (OSTDS) remediation plans if OSTDSs are identified as a nonpoint source of pollution that needs to be addressed;
- Removes all references to "Spring Action Plans";
- Provides additional requirements for items included in a BMAP;
- Changes requirements for local governments to develop OSTDS remediation plans and requires them only when the DEP determines that OSTDSs are a source of nutrient pollution that needs to be addressed;
- Removes a provision stating that remedial actions are not required until adequate funding is made available;
- Removes a provision requiring existing wastewater treatment facilities in an springs protection and management zone (SPMZ) to meet certain treatment levels;
- Removes a provision requiring agricultural producers in SPMZs to implement BMPs or other measures by July 1, 2019;
- Removes a provision requiring local governments to submit funding requests at least every two years;
- Requires public involvement in the development of OSTDS remediation plans;
- Provides that local governments that do not comply with certain provisions may be ineligible for funding;

- Allows local governments to apply for extensions of up to five years from the DEP for any project in an adopted recovery or prevention strategy or an adopted BMAP. Local governments in Rural Areas of Critical Economic Concern may apply for extensions of up to 10 years.
- Requires the DEP to consider whether projects are located in Rural Areas of Critical Economic Concern when developing rules to evaluate, rank and select projects for funding;
- Changes a requirement for the DEP to approve funding for at least two pilot projects per funding cycle by requiring the DEP to fund "pilot projects" each funding cycle;
- Adds criteria the DEP is required to consider when developing rules to fund projects;
- Prohibits new wastewater disposal systems in SPMZs with capacities of 100,000 gallons per day or more that do not meet an effluent standard of 3 mg/L Total Nitrogen, rather than prohibiting all new wastewater disposal systems that do not meet that standard;
- Changes an effective date for a provision requiring new OSTDSs in SPMZs to have passive nitrogen removing components approved by the Department of Health (DOH) from July 1, 2015, to six months after the DOH approves such a system;
- Changes the prohibition of the application of all biosolids in SPMZs to a prohibition of the application of Class A and B biosolids;
- Removes a provision prohibiting concentrated animal feeding operations and intense cattle finishing and slaughter operations in SPMZs;
- Adds a provision prohibiting new agriculture operations that do not meet certain requirements;
- Removes a section related to variances and exceptions; and
- Adds a requirement for a yearly status report by the DEP on TMDLs, BMAPs, MFLs, and recovery or prevention strategies.

CS/CS by Agriculture on March 31, 2014:

- Adds Poe Spring to the list of Outstanding Florida Springs;
- Clarifies that the aquifer is vulnerable to multiple sources of contamination, not just not just surface sources;
- Amends the definition of "springshed" to delete "historically contributed" and add those areas of the springshed in favor of an analysis that takes into account "relevant facts, circumstances, and data";
- Clarifies timelines for the DEP to develop and adopt spring action plans. In the CS, there was no completion date, as it was intended that these plans were to be open ended. This led to confusion;
- Specifies that the spring action plan must be continually updated;
- Clarifies that the projects may be partially or fully within a spring protection management zone;
- Requires an estimated allocation for each point source or category of nonpoint source pollutant loads instead of a "detailed allocation." A detailed allocation analysis could significantly slow down progress as those determinations would have to be made first;
- Specifies considerations the DEP must account for when reviewing an onsite sewage treatment and disposal system remediation plan, including density of systems, the

total number of systems, the proximity to an OFS, the estimated nutrient load, and an estimated cost of the remedial action;
- Defines "adequate funding" to mean that the DEP provides 100 percent of its portion of the project proposal's costs;
- Specifies that even though certain remedial actions are dependent on adequate funding, the protection for taking action based on funding is supplemental to other specific requirements or authority provided by other controlling laws;
- Specifies that pilot projects can now consider practices in addition to technologies; and
- Extends the ban on new onsite sewage treatment and disposal systems until July 1, 2015.

CS by Environmental Preservation and Conservation on March 20, 2014:
- Removes provisions concerning the Acquisition and Restoration Council;
- Renames the act, calling it the "Florida Springs and Aquifer Protection Act;"
- Removing legislative intent provision stating that a precautionary approach should be taken in addressing spring protection, and that the DEP or the WMDs should take common sense actions to protect springs;
- Adds legislative recognition that aquifers and springs are complex systems affected by many variable and influences;
- Removes the definition of "bedroom";
- Directs the DEP to consider groundwater travel time, hydrogeology, and nutrient load when delineating SPMZs;
- Removes a one-year extension for the DEP to delineate SPMZs by July 1, 2015;
- Provides a yearly extension until July 1, 2020, for each WMD to establish MFLs for all OFSs within its jurisdiction;
- Provides that an MFL adopted for an OFS prior to July 1, 2014, does not have to be changed until it is revised or amended, rather than directing it to be revised by July 1, 2014;
- Provides that land spreading, dumping, or disposal of all domestic wastewater residuals or septage is not allowed in SPMZs;
- Removes a provision stating that a WMD may not issue new CUPs unless the entity requesting the CUP provides reasonable assurance that the withdrawal will not cause harm to the OFS. It was a restatement of existing law;
- Provides that WMDs may provide less than 25 percent of total project cost if there is another funding source that provides more than 75 percent of the funding costs, and exempts the Northwest Florida and Suwannee River WMDs from the requirement to provide 25 percent of total project costs;
- Shortens a deadline from July1, 2017, to July 1, 2015, for the DEP to assess any OFS that does not have an impairment determination;
- Clarifies that detailed allocations have to be listed for categories of nonpoint sources rather than each one;
- Creates and describes the concept of a spring action plan;
- Removes a provision requiring that fertilizer ordinances mandate the use of 50 percent slow release nitrogen;
- Removes a provision regarding revision of stormwater management plans;

- Changes a deadline from July 1, 2019, to July 1, 2021, for wastewater treatment facilities to upgrade to a standard of 3mg/L Total Nitrogen;
- Provides a deadline of July 1, 2016, for wastewater treatment facilities to file a plan for complying with requirement of 3 mg/L Total Nitrogen;
- Provides that required remedial actions do not have to be taken if funding is not available unless those actions are required as part of a BMAP;
- Provides a deadline of July 1, 2019, for agricultural producers within an SPMZ to implement BMPs;
- Provides a deadline of July 1, 2016, for local governments to develop an OSTDS remediation plan;
- Directs the DEP to provide rules for funding water conservation pilot projects and provides considerations;
- Directs the DEP to create a program to evaluate and rank submitted projects based on the TMDL Water Quality Restoration Grants program;
- Provides conditions for establishing RMEs; and
- Removes a provision requiring the study of nutrient loading from row crops.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (1) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are subject to the service charge imposed in s. 215.20(1). Prior to distribution under this section, the Department of Revenue shall deduct amounts necessary to pay the

costs of the collection and enforcement of the tax levied by this chapter. Such costs and the service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. After distributions are made pursuant to subsection (1), all of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2013, secured by revenues distributed pursuant to subsection (1). All taxes remaining after deduction of costs and the service charge shall be distributed as follows:

(1) Sixty-three and thirty-one hundredths percent of the remaining taxes shall be used for the following purposes:

(c) After the required payments under paragraphs (a) and (b), the remainder shall be paid into the State Treasury to the credit of:

1. The State Transportation Trust Fund in the Department of Transportation in the amount of the lesser of 38.2 percent of the remainder or $541.75 million in each fiscal year. Out of such funds, the first $50 million for the 2012-2013 fiscal year; $65 million for the 2013-2014 fiscal year; and $75 million for the 2014-2015 fiscal year and all subsequent years, shall be transferred to the State Economic Enhancement and Development Trust Fund within the Department of Economic Opportunity. The remainder shall ~~is to~~ be used for the following specified purposes, notwithstanding any other law ~~to the contrary~~:

a. For the purposes of capital funding for the New Starts

Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, 10 percent of these funds;

b. For the purposes of the Small County Outreach Program specified in s. 339.2818, 5 percent of these funds. Effective July 1, 2014, the percentage allocated under this sub-subparagraph shall be increased to 10 percent;

c. For the purposes of the Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, 75 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b.; and

d. For the purposes of the Transportation Regional Incentive Program specified in s. 339.2819, 25 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b. Effective July 1, 2014, the first $60 million of the funds allocated pursuant to this sub-subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

2. The Grants and Donations Trust Fund in the Department of Economic Opportunity in the amount of the lesser of 0.23 ~~.23~~ percent of the remainder or $3.25 million in each fiscal year to fund technical assistance to local governments.

3. The Ecosystem Management and Restoration Trust Fund in the amount of:

a. The lesser of 2.12 percent of the remainder or $30 million in each fiscal year~~,~~ to be used for the preservation and repair of the state's beaches as provided in ss. 161.091-161.212; and

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b. Five and four tenths percent of the remainder in each fiscal year to be used for the restoration and protection of springs pursuant to part VIII of chapter 373, and for the acquisition of parcels identified by the Department of Environmental Protection or by a water management district for the restoration and protection of Outstanding Florida Springs, as defined in s. 373.802.

4. General Inspection Trust Fund in the amount of the lesser of 0.02 ~~.02~~ percent of the remainder or $300,000 in each fiscal year to be used to fund oyster management and restoration programs as provided in s. 379.362(3).

Moneys distributed pursuant to this paragraph may not be pledged for debt service unless such pledge is approved by referendum of the voters.

Section 2. Subsection (1) of section 373.042, Florida Statutes, is amended to read:

373.042 Minimum flows and levels.—

(1) Within each section, or within the water management district as a whole, the department or the governing board shall establish the following:

(a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse is ~~shall be~~ the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(b) Minimum water level. The minimum water level is ~~shall be~~ the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.

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(c) Minimum flow and minimum water level for an Outstanding Florida Spring, as defined in s. 373.802. The minimum flow and minimum water level are the limit and level, respectively, at which further withdrawals would be harmful to the water resources or ecology of the area.

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and minimum water levels may be calculated to reflect seasonal variations. The department and the governing board shall ~~also~~ consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and minimum water levels.

Section 3. Paragraph (a) of subsection (1) of section 373.0421, Florida Statutes, is amended to read:

373.0421 Establishment and implementation of minimum flows and levels.—

(1) ESTABLISHMENT.—

(a) Considerations.—When establishing minimum flows and minimum water levels pursuant to s. 373.042, the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. 373.042(1)(a) and (b), or harm as provided by s. 373.042(1)(c), caused by withdrawals.

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Section 4. Part VIII of chapter 373, Florida Statutes, consisting of sections 373.801, 373.802, 373.803, 373.805, 373.807, 373.809, 373.811, 373.813, and 373.815, Florida Statutes, is created and entitled the "Florida Springs and Aquifer Protection Act."

Section 5. Section 373.801, Florida Statutes, is created to read:

373.801 Legislative findings and intent.—

(1) The Legislature finds that springs are a unique part of this state's scenic beauty. Springs provide critical habitat for plants and animals, including many endangered or threatened species. Springs also provide immeasurable natural, recreational, economic, and inherent value. Flow level and water quality of springs are indicators of local conditions of the Floridan Aquifer, which is the source of drinking water for many residents of this state. Springs are of great scientific importance in understanding the diverse functions of aquatic ecosystems. In addition, springs provide recreational opportunities for swimming, canoeing, wildlife watching, fishing, cave diving, and many other activities in this state. Because of such recreational opportunities and the accompanying tourism, state and local economies benefit from many of the springs in this state.

(2) Water quantity and water quality in springs are related. For regulatory purposes, the department has primary responsibility for water quality; the water management districts have primary responsibility for water quantity; the Department of Agriculture and Consumer Services has primary responsibility for the development and implementation of best management

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practices; and local governments have primary responsibility for providing wastewater and stormwater management. The foregoing responsible entities must work together in a coordinated manner to restore and maintain the water quantity and water quality for Outstanding Florida Springs.

(3) The Legislature recognizes that:

(a) Springs are only as healthy as their springsheds. The groundwater that supplies springs is derived from water that recharges the aquifer system in the form of seepage from the land surface and through direct conduits such as sinkholes. Springs may be adversely affected by polluted runoff from urban and agricultural lands; discharge resulting from inadequate wastewater and stormwater management practices; stormwater runoff; and the reduced water levels of the Floridan Aquifer. As a result, the hydrologic and environmental conditions of a spring or spring run are directly influenced by activities and land uses within a springshed and by water withdrawals from the Floridan Aquifer.

(b) Springs, whether found in urban or rural settings, or on public or private lands, are threatened by actual or potential flow reductions and declining water quality. Many of this state’s springs are demonstrating signs of significant ecological imbalance, increased nutrient loading, and declining water flow. Without effective remedial actions, further declines in water quality and water quantity may occur.

(c) Springshed boundaries and areas of high vulnerability within a springshed need to be identified and delineated using the best available data.

(d) Because springsheds cross water management district and

local government jurisdictional boundaries, a coordinated statewide springs protection plan is needed.

(e) The aquifers and springs of this state are complex systems affected by many variables and influences.

(4) The Legislature recognizes that sufficient information exists to act, action is urgently needed, and action can be continually modified as additional data is acquired.

Section 6. Section 373.802, Florida Statutes, is created to read:

373.802 Definitions.—As used in this part, the term:

(1) "Department" means the Department of Environmental Protection, which includes the Florida Geological Survey or its successor agency or agencies.

(2) "Local government" means a county or municipal government the jurisdictional boundaries of which include an Outstanding Florida Spring, or any part of a delineated springshed or spring protection and management zone for an Outstanding Florida Spring.

(3) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The

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term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(4) "Outstanding Florida Spring" includes all historic first magnitude springs, as determined by the department using the most recent Florida Geological Survey springs bulletin, and the following springs, and their associated spring runs:

(a) DeLeon Spring;

(b) Peacock Spring;

(c) Poe Spring;

(d) Rock Springs;

(e) Wekiwa Spring; and

(f) Gemini Spring.

(5) "Spring protection and management zone" means the area or areas of a springshed where the Floridan Aquifer is vulnerable to sources of contamination or reduced levels, as determined by the department in consultation with the appropriate water management districts.

(6) "Spring run" means a body of flowing water that originates from a spring or whose primary source of water is a spring or springs under average rainfall conditions.

(7) "Springshed" means the areas within the groundwater and surface water basins which contribute, based upon all relevant facts, circumstances, and data, to the discharge of a spring as defined by potentiometric surface maps and surface watershed boundaries.

(8) "Spring vent" means a location where groundwater flows out of a natural, discernable opening in the ground onto the land surface or into a predominantly fresh surface waterbody.

Section 7. Section 373.803, Florida Statutes, is created to

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read:

373.803 Delineation of spring protection and management zones for Outstanding Florida Springs.—Using the best data available from the water management districts and other credible sources, the department, in coordination with the water management districts, shall delineate one or more spring protection and management zones for each Outstanding Florida Spring. In delineating spring protection and management zones, the department shall consider groundwater travel time to the spring, hydrogeology, and nutrient load. The delineation of spring protection and management zones must be completed by July 1, 2015. In conjunction with delineating a spring protection and management zone for an Outstanding Florida Spring, the department shall adopt by rule, pursuant to ss. 120.536(1) and 120.54, maps and legal descriptions that depict the delineated spring protection and management zone or zones for that spring as soon as practicable but no later than July 1, 2016.

Section 8. Section 373.805, Florida Statutes, is created to read:

373.805 Minimum flows and minimum water levels for Outstanding Florida Springs.—

(1)(a) Each water management district shall establish a minimum flow and minimum water level for each Outstanding Florida Spring within its jurisdiction by July 1, 2015, in accordance with ss. 373.042 and 373.0421. The deadline may be extended each year until July 1, 2022, if a water management district provides sufficient evidence to the department that an extension is in the best interest of the public.

(b) If an area contributes or has contributed to the flow

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of an Outstanding Florida Spring and that area is in more than one water management district or is impacted by withdrawals outside of the water management district where the Outstanding Florida Spring is located, the department, in conjunction with the affected water management districts, shall establish a minimum flow and minimum water level by July 1, 2017, in accordance with ss. 373.042 and 373.0421.

(2) At the time a minimum flow or minimum water level is adopted for an Outstanding Florida Spring, if the spring is below or is projected within 20 years to fall below the initial minimum flow or minimum water level, a water management district, pursuant to paragraph (1)(a), or the department, pursuant to paragraph (1)(b), shall simultaneously adopt a recovery or prevention strategy required by s. 373.0421.

(3) For an Outstanding Florida Spring, a minimum flow and minimum water level adopted before July 1, 2014, must be revised by July 1, 2017. When a minimum flow or minimum water level is revised, if the spring is below or is projected within 20 years to fall below the revised minimum flow or minimum water level, a water management district, pursuant to paragraph (1)(a), or the department, pursuant to paragraph (1)(b), shall simultaneously adopt a recovery or prevention strategy required by s. 373.0421(2) or modify an existing recovery or prevention strategy. A district or the department may adopt the revised minimum flow and minimum water level prior to the adoption of a recovery or prevention strategy if the revised minimum flow and minimum water level is less constraining on existing or projected future consumptive uses.

(4) For an Outstanding Florida Spring without an adopted

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recovery or prevention strategy, when a district or the department determines the spring has fallen below, or is projected within 20 years to fall below the adopted minimum flow or minimum water level, a water management district, pursuant to paragraph (1)(a), or the department, pursuant to paragraph (1)(b), shall expeditiously adopt a recovery or prevention strategy.

(5) The recovery or prevention strategy for each Outstanding Florida Spring must include, at a minimum:

(a) A listing of all specific projects identified for implementation of a recovery or prevention strategy.

(b) A priority listing of each project.

(c) The estimated cost for each listed project.

(d) For each listed project, the estimated date of completion.

(e) The source and amount of financial assistance to be made available by the water management district for each listed project, which may not be less than 25 percent of the total project cost unless a specific funding source or sources are identified which will provide more than 75 percent of the total project cost. The Northwest Florida Water Management District and the Suwannee River Water Management District are not required to provide matching funds pursuant to this paragraph.

(f) An estimate of each listed project's benefit to an Outstanding Florida Spring.

(g) A map and legal descriptions depicting the spring protection and management zones established pursuant to s. 373.803.

(h) An implementation plan to achieve the adopted minimum

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flow and minimum water level within 15 years of the adoption of a recovery or prevention strategy. The plan must include measureable interim milestones to be achieved within 5 and 10 years to achieve the adopted minimum flow and minimum water level.

Section 9. Section 373.807, Florida Statutes, is created to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2014, the department shall initiate assessment, pursuant to 403.067(3), of each Outstanding Florida Spring for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2017.

(1)(a) Simultaneously with the adoption of a nutrient total maximum daily load for an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan, as specified in s. 403.067. For an Outstanding Florida Spring with a nutrient total maximum daily load adopted prior to July 1, 2014, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan by July 1, 2014. During the development of a basin management action plan, if the department identifies onsite sewage treatment and disposal systems as nonpoint sources of nutrient pollution that need addressing within a local government jurisdiction, the department shall notify the local government within 30 days, which shall develop an onsite sewage treatment and disposal system remediation plan pursuant to subsection (3)

for inclusion in the basin management action plan.

(b) A basin management action plan for an Outstanding Florida Spring shall be adopted within 3 years of its initiation and must include, at minimum:

1. A list of all specific projects identified to implement a nutrient total maximum daily load.

2. A list of all specific projects identified in an onsite sewage treatment and disposal system remediation plan, if applicable.

3. A priority rank for each listed project.

4. The estimated cost for each listed project.

5. For each listed project, the estimated date of completion.

6. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project.

7. An estimate of each listed project's nutrient load reduction.

8. A map and legal descriptions depicting the spring protection and management zones established pursuant to s. 373.803.

9. Identification of each point source or category of nonpoint sources, including but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources.

10. An implementation plan to achieve the adopted nutrient

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total maximum daily load within 15 years of the adoption of a basin management action plan. The plan must include measureable interim milestones to be achieved within 5 and 10 years to achieve the adopted nutrient total maximum daily load.

(c) For a basin management action plan adopted before July 1, 2014, that addresses an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall revise the plan by July 1, 2017, pursuant to this section.

(d) Upon approval of an onsite sewage treatment and disposal system remediation plan, the plan shall be deemed incorporated as part of the appropriate basin management action plan until such time as the basin management action plan is revised pursuant to s. 403.067(7).

(2) Within 6 months of the delineation of a spring protection and management zone or zones of an Outstanding Florida Spring that is fully or partially within the jurisdiction of a local government, a local government must develop, enact, and implement an ordinance that meets or exceeds the requirements of the department’s Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. Such ordinance must require that, within a spring protection and management zone of an Outstanding Florida Spring with an adopted nutrient total maximum daily load, the nitrogen application rate of any fertilizer applied to turf or landscape plants may not exceed the lowest, basic maintenance rate of the most recent recommendations by the Institute of Food and Agricultural Sciences. The department shall adopt rules to implement this paragraph which establish reasonable minimum standards and

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reflect advancements or improvements regarding nutrient load reductions.

(3) By July 1, 2016, the department, in conjunction with the Department of Health and local governments, must identify onsite sewage treatment and disposal systems within each spring protection and management zone. Within 60 days of the department's completion of the identification of these systems, the department shall provide the location of these systems to the local governments in which they are located. If notified by the department pursuant to subsection (1), the local government, in consultation with the department, shall develop an onsite sewage treatment and disposal system remediation plan within 12 months of notification by the department. For each onsite sewage treatment and disposal system or group of systems, the plan must include whether the systems require upgrading, connection to a central sewerage system, or no action. The plan must also include a priority ranking for each system or group of systems that require remediation. Each remediation plan must be submitted to the department for approval.

(a) In reviewing and approving the remediation plans, the department shall consider, at a minimum:

1. The density of onsite sewage treatment and disposal systems.

2. The number of onsite sewage treatment and disposal systems.

3. The proximity of the onsite sewage treatment and disposal system or systems to an Outstanding Florida Spring

4. The estimated nutrient loading of the onsite sewage treatment and disposal system or systems.

5. The cost of the proposed remedial action.

(b) Prior to submitting an onsite sewage treatment and disposal system remediation plan to the department, the local government shall hold at least one public meeting to provide the public an opportunity to comment on the plan. The approval of an onsite sewage treatment and disposal system remediation plan by the department constitutes a final agency action.

(c) If a local government does not substantially comply with this subsection, it may be ineligible for funding pursuant to s. 373.809.

(4) With respect to implementation of an onsite sewage treatment and disposal system remediation plan, a property owner with an onsite sewage treatment and disposal system identified by the plan may not be required to pay any of the costs of a system inspection or for upgrading a system, or connection fees for connection to a sanitary sewer system. This subsection does not apply to local government programs in existence before July 1, 2014, that are inconsistent with this subsection.

Section 10. Section 373.809, Florida Statutes, is created to read:

373.809 Funding for the restoration and preservation of Outstanding Florida Springs.—

(1) Projects to implement an adopted basin management action plan or an adopted recovery or prevention strategy for Outstanding Florida Springs are eligible for funding from documentary stamp tax revenues deposited into the Ecosystem Management and Restoration Trust Fund in accordance with s. 201.15(1)(c)3.b. The Legislature may use other sources of revenue to fund projects that will benefit an adopted basin

management action plan or an adopted recovery or prevention strategy for Outstanding Florida Springs.

(2) By December 31, 2014, the department shall adopt rules to fund pilot projects that test the effectiveness of innovative or existing nutrient reduction or water conservation technologies or practices designed to minimize nutrient pollution in the springs of this state. The department may approve funding for pilot projects each funding cycle if the department determines that the pilot project will not be harmful to the ecological resources in the study area.

(3) By December 31, 2014, the department shall adopt rules to evaluate, rank, and select projects eligible for funding under this part or land acquisition pursuant to s. 201.15(1)(c)3.b. In developing these rules, the department shall give preference to the projects that will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project. At a minimum, the department shall consider:

(a) The level of nutrient impairment of the Outstanding Florida Spring in which the project is located.

(b) The quantity of pollutants, particularly total nitrogen, the project is estimated to remove from an Outstanding Florida Spring with an adopted nutrient total maximum daily load.

(c) The flow necessary to restore the Outstanding Florida Spring to its adopted minimum flow or minimum water level.

(d) The anticipated impact the project will have on restoring or increasing water flow or water level.

(e) The amount of matching funds for the project that will

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be provided by the entities responsible for implementing the project.

(f) For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project.

(g) The cost of the project and the length of time it will take to complete relative to its expected benefits.

(h) Whether the entities responsible for implementing the project, since July 1, 2009, have used their own funds for projects to improve water quality or conserve water use within a springshed or spring protection and management zone of an Outstanding Florida Spring, with preference given to those entities that have expended such funds.

(4) Moneys in the Ecosystem Management and Restoration Trust Fund not needed in the current fiscal year to meet obligations incurred under this part shall be deposited with the Chief Financial Officer to the credit of the fund and may be invested in the manner provided by law. Interest received on such investments shall be credited to the fund to be used for the purposes of this part.

Section 11. Section 373.811, Florida Statutes, is created to read:

373.811 Prohibited activities within a spring protection and management zone of an Outstanding Florida Spring.—The following activities are prohibited within a spring protection and management zone of an Outstanding Florida Spring:

(1) New municipal or industrial wastewater disposal facilities, including rapid infiltration basins, with permitted capacities of 100,000 gallons per day or more, except for those

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facilities that meet an advanced wastewater treatment standard of no more than 3 mg/L Total Nitrogen, expressed as N, on an annual permitted basis, or a higher treatment standard if the department determines the higher standard is necessary to prevent impairment or aid in the recovery of an Outstanding Florida Spring.

(2) New onsite sewage treatment and disposal systems on lots less than 1 acre, except for passive nitrogen removing onsite sewage treatment and disposal systems approved by the Department of Health. This subsection does not take effect until 6 months after the Department of Health has approved such a system for use.

(3) New facilities for the disposal of hazardous waste.

(4) The land application of Class A or B domestic wastewater biosolids or septage.

(5) New agriculture operations that do not implement best management practices, measures necessary to achieve pollution reduction levels established by the department, or a groundwater monitoring plan approved by a water management district or the department.

Section 12. Section 373.813, Florida Statutes, is created to read:

373.813 Rules.—

(1) The department shall adopt rules to create a program to improve water quantity and water quality pursuant to ss. 120.536(1) and 120.54 to administer this part, as applicable. In developing rules to administer s. 373.808, the department shall use the Total Maximum Daily Load Water Quality Restoration Grants rule as guidance to develop a comparable program for the

356190

restoration and protection of the water quality and water quantity for Outstanding Florida Springs.

(2) The Department of Health, the Department of Agriculture and Consumer Services, and the water management districts may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this part, as applicable.

(3)(a) The Department of Agriculture and Consumer Services is the lead agency coordinating the reduction of agricultural nonpoint sources of pollution for the protection of Outstanding Florida Springs. The Department of Agriculture and Consumer Services and the department, pursuant to s. 403.067(7)(c)4., shall study new or revised best management practices for improving and protecting Outstanding Florida Springs and, if necessary, in cooperation with applicable local governments and stakeholders, initiate rulemaking to require the implementation of such practices within a reasonable time period.

(b) The department, the Department of Agriculture and Consumer Services, and the University of Florida's Institute of Food and Agricultural Sciences shall cooperate in conducting the necessary research and demonstration projects to develop improved or additional nutrient management tools, including the use of controlled release fertilizer that can be used by agricultural producers as part of an agricultural best management practices program. The development of such tools must reflect a balance between water quality improvement and agricultural productivity and, when applicable, must be incorporated into the revised best management practices adopted by rule of the Department of Agriculture and Consumer Services.

Section 13. Section 373.815, Florida Statutes, is created

356190

to read:

373.815 Reports.—By July 1, 2015, and annually thereafter on July 1, the department, in conjunction with the water management districts, shall submit progress reports to the Governor, President of the Senate and Speaker of the House of Representatives on the status of each total maximum daily load, basin management action plan, minimum flow and minimum water level, and recovery or prevention strategy adopted pursuant to this part. The report must include the status of each project identified to achieve a total maximum daily load and a minimum flow and minimum water level, as applicable. If a report indicates that any of the interim 5 or 10 year milestones, or the 15 year deadline will not be met, the report must include specific corrective actions that will be taken to achieve these milestones and deadlines, and, if necessary, executive and legislative recommendations.

Section 14. This act shall take effect July 1, 2014.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to springs; amending s. 201.15, F.S.; specifying distributions to the Ecosystem Management and Restoration Trust Fund; amending s. 373.042, F.S.; requiring the Department of Environmental Protection or the governing board of a water management district to establish the minimum flow and water level for an

356190

Outstanding Florida Spring; specifying minimum flows and water levels for an Outstanding Florida Spring; amending s. 373.0421, F.S.; conforming a cross-reference; creating part VIII of chapter 373, F.S., entitled "Florida Springs and Aquifer Protection Act"; creating s. 373.801, F.S.; providing legislative findings and intent; creating s. 373.802, F.S.; defining terms; creating s. 373.803, F.S.; requiring the Department of Environmental Protection to delineate a spring protection and management zone for each Outstanding Florida Spring; requiring the department to adopt by rule maps that depict the delineation of each spring protection and management zone for each Outstanding Florida Spring; providing a deadline; creating s. 373.805, F.S.; requiring the water management districts to adopt minimum flows and levels for Outstanding Florida Springs; requiring a water management district to implement a recovery or prevention strategy under certain circumstances; providing minimum criteria; providing deadlines; creating s. 373.807, F.S.; requiring assessments for Outstanding Florida Springs; requiring the Department of Environmental Protection to develop basin management action plans, providing minimum criteria, providing deadlines; requiring local governments to adopt an urban fertilizer ordinance; requiring local governments to develop onsite sewage treatment and disposal system remediation plans; creating s. 373.809, F.S.; providing for funding mechanisms for

356190

the restoration of Outstanding Florida Springs; providing minimum ranking criteria; creating s. 373.811, F.S.; specifying prohibited activities within a spring protection and management zone of an Outstanding Florida Spring; creating s. 373.813, F.S.; providing rulemaking authority; creating s. 373.815, F.S.; requiring the Department of Environmental Protection to submit annual reports; providing effective dates.

361488

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (356190) (with title amendment)

Delete lines 5 - 83.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 614 - 616

and insert:

An act relating to springs; amending s. 373.042, F.S.;

571098

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (356190)

Delete lines 71 - 75
and insert:
Outstanding Florida Springs pursuant to part VIII of chapter 373 and for the acquisition of parcels, identified on the most current Board of Trustees Florida Forever Priority List or by a water management district, which restore and protect the water quality or conservation of water within a spring protection and management zone, as defined in s. 373.802, of an

571098

Outstanding Florida Spring.

103328

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2014	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (356190)

Delete lines 335 - 511
and insert:
(6) A local government may apply for an extension of up to 5 years from the department for any project in an adopted recovery or prevention strategy. The department may grant the extension if the local government provides sufficient evidence to the department that an extension is in the best interest of the public. For a local government in a rural area of critical

state concern, as defined in s. 288.0656, the department may grant an extension of up to 10 years.

Section 9. Section 373.807, Florida Statutes, is created to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2014, the department shall initiate assessment, pursuant to 403.067(3), of each Outstanding Florida Spring for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2017.

(1)(a) Simultaneously with the adoption of a nutrient total maximum daily load for an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan, as specified in s. 403.067. For an Outstanding Florida Spring with a nutrient total maximum daily load adopted prior to July 1, 2014, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan by July 1, 2014. During the development of a basin management action plan, if the department identifies onsite sewage treatment and disposal systems as nonpoint sources of nutrient pollution that need addressing within a local government jurisdiction, the department shall notify the local government within 30 days, which shall develop an onsite sewage treatment and disposal system remediation plan pursuant to subsection (3) for inclusion in the basin management action plan.

(b) A basin management action plan for an Outstanding Florida Spring shall be adopted within 3 years of its initiation

and must include, at a minimum:

1. A list of all specific projects identified to implement a nutrient total maximum daily load.

2. A list of all specific projects identified in an onsite sewage treatment and disposal system remediation plan, if applicable.

3. A priority rank for each listed project.

4. The estimated cost for each listed project.

5. For each listed project, the estimated date of completion.

6. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project.

7. An estimate of each listed project's nutrient load reduction.

8. A map and legal descriptions depicting the spring protection and management zones established pursuant to s. 373.803.

9. Identification of each point source or category of nonpoint sources, including but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources.

10. An implementation plan to achieve the adopted nutrient total maximum daily load within 15 years of the adoption of a basin management action plan. The plan must include measureable interim milestones to be achieved within 5 and 10 years to

achieve the adopted nutrient total maximum daily load.

(c) For a basin management action plan adopted before July 1, 2014, that addresses an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall revise the plan by July 1, 2017, pursuant to this section.

(d) Upon approval of an onsite sewage treatment and disposal system remediation plan, the plan shall be deemed incorporated as part of the appropriate basin management action plan until such time as the basin management action plan is revised pursuant to s. 403.067(7).

(e) A local government may apply for an extension of up to 5 years from the department for any project in an adopted basin management action plan. The department may grant the extension if the local government provides sufficient evidence to the department that an extension is in the best interest of the public. For a local government in a rural area of critical state concern, as defined in s. 288.0656, the department may grant an extension of up to 10 years.

(2) Within 6 months of the delineation of a spring protection and management zone or zones of an Outstanding Florida Spring that is fully or partially within the jurisdiction of a local government, a local government must develop, enact, and implement an ordinance that meets or exceeds the requirements of the department’s Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. Such ordinance must require that, within a spring protection and management zone of an Outstanding Florida Spring with an adopted nutrient total maximum daily load, the nitrogen application rate

of any fertilizer applied to turf or landscape plants may not exceed the lowest, basic maintenance rate of the most recent recommendations by the Institute of Food and Agricultural Sciences. The department shall adopt rules to implement this paragraph which establish reasonable minimum standards and reflect advancements or improvements regarding nutrient load reductions.

(3) By July 1, 2016, the department, in conjunction with the Department of Health and local governments, must identify onsite sewage treatment and disposal systems within each spring protection and management zone. Within 60 days of the department's completion of the identification of these systems, the department shall provide the location of these systems to the local governments in which they are located. If notified by the department pursuant to subsection (1), the local government, in consultation with the department, shall develop an onsite sewage treatment and disposal system remediation plan within 12 months of notification by the department. For each onsite sewage treatment and disposal system or group of systems, the plan must include whether the systems require upgrading, connection to a central sewerage system, or no action. The plan must also include a priority ranking for each system or group of systems that require remediation. Each remediation plan must be submitted to the department for approval.

(a) In reviewing and approving the remediation plans, the department shall consider, at a minimum:

1. The density of onsite sewage treatment and disposal systems.

2. The number of onsite sewage treatment and disposal

systems.

3. The proximity of the onsite sewage treatment and disposal system or systems to an Outstanding Florida Spring.

4. The estimated nutrient loading of the onsite sewage treatment and disposal system or systems.

5. The cost of the proposed remedial action.

(b) Prior to submitting an onsite sewage treatment and disposal system remediation plan to the department, the local government shall hold at least one public meeting to provide the public an opportunity to comment on the plan. The approval of an onsite sewage treatment and disposal system remediation plan by the department constitutes a final agency action.

(c) If a local government does not substantially comply with this subsection, it may be ineligible for funding pursuant to s. 373.809.

(4) With respect to implementation of an onsite sewage treatment and disposal system remediation plan, a property owner with an onsite sewage treatment and disposal system identified by the plan may not be required to pay any of the costs of a system inspection or for upgrading a system, or connection fees for connection to a sanitary sewer system. This subsection does not apply to local government programs in existence before July 1, 2014, that are inconsistent with this subsection.

Section 10. Section 373.809, Florida Statutes, is created to read:

373.809 Funding for the restoration and preservation of Outstanding Florida Springs.—

(1) Projects to implement an adopted basin management action plan or an adopted recovery or prevention strategy for

Outstanding Florida Springs are eligible for funding from documentary stamp tax revenues deposited into the Ecosystem Management and Restoration Trust Fund in accordance with s. 201.15(1)(c)3.b. The Legislature may use other sources of revenue to fund projects that will benefit an adopted basin management action plan or an adopted recovery or prevention strategy for Outstanding Florida Springs.

(2) By December 31, 2014, the department shall adopt rules to fund pilot projects that test the effectiveness of innovative or existing nutrient reduction or water conservation technologies or practices designed to minimize nutrient pollution in the springs of this state. The department may approve funding for pilot projects each funding cycle if the department determines that the pilot project will not be harmful to the ecological resources in the study area.

(3) By December 31, 2014, the department shall adopt rules to evaluate, rank, and select projects eligible for funding under this part or land acquisition pursuant to s. 201.15(1)(c)3.b. In developing these rules, the department shall give preference to the projects that will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project. At a minimum, the department shall consider:

(a) The level of nutrient impairment of the Outstanding Florida Spring in which the project is located.

(b) The quantity of pollutants, particularly total nitrogen, the project is estimated to remove from an Outstanding Florida Spring with an adopted nutrient total maximum daily load.

(c) The flow necessary to restore the Outstanding Florida Spring to its adopted minimum flow or minimum water level.

(d) The anticipated impact the project will have on restoring or increasing water flow or water level.

(e) The amount of matching funds for the project that will be provided by the entities responsible for implementing the project.

(f) Whether the project is located in a rural area of critical state concern, as defined in s. 288.0656, with preference given to the local government responsible for implementing the project.

(g) For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project.

(h) The cost of the project and the length of time it will take to complete relative to its expected benefits.

(i) Whether the entities responsible for implementing the

966234

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (356190)

Delete lines 335 - 401
and insert:
(6) A local government may apply for an extension of up to 5 years from the department for any project in an adopted recovery or prevention strategy. The department may grant the extension if the local government provides sufficient evidence to the department that an extension is in the best interest of the public. For a local government in a rural area of critical

state concern, as defined in s. 288.0656, the department may grant an extension of up to 10 years.

Section 9. Section 373.807, Florida Statutes, is created to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2014, the department shall initiate assessment, pursuant to 403.067(3), of each Outstanding Florida Spring for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2017.

(1)(a) Simultaneously with the adoption of a nutrient total maximum daily load for an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan, as specified in s. 403.067. For an Outstanding Florida Spring with a nutrient total maximum daily load adopted prior to July 1, 2014, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan by July 1, 2014. During the development of a basin management action plan, if the department identifies onsite sewage treatment and disposal systems as nonpoint sources of nutrient pollution that need addressing within a local government jurisdiction, the department shall notify the local government within 30 days, which shall develop an onsite sewage treatment and disposal system remediation plan pursuant to subsection (3) for inclusion in the basin management action plan.

(b) A basin management action plan for an Outstanding Florida Spring shall be adopted within 3 years of its initiation

966234

and must include, at a minimum:

1. A list of all specific projects identified to implement a nutrient total maximum daily load.

2. A list of all specific projects identified in an onsite sewage treatment and disposal system remediation plan, if applicable.

3. A priority rank for each listed project.

4. The estimated cost for each listed project.

5. For each listed project, the estimated date of completion.

6. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project.

7. An estimate of each listed project's nutrient load reduction.

8. A map and legal descriptions depicting the spring protection and management zones established pursuant to s. 373.803.

9. Identification of each point source or category of nonpoint sources, including but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources.

10. An implementation plan to achieve the adopted nutrient total maximum daily load within 15 years of the adoption of a basin management action plan. The plan must include measureable interim milestones to be achieved within 5 and 10 years to

966234

achieve the adopted nutrient total maximum daily load.

(c) For a basin management action plan adopted before July 1, 2014, that addresses an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall revise the plan by July 1, 2017, pursuant to this section.

(d) Upon approval of an onsite sewage treatment and disposal system remediation plan, the plan shall be deemed incorporated as part of the appropriate basin management action plan until such time as the basin management action plan is revised pursuant to s. 403.067(7).

(e) A local government may apply for an extension of up to 5 years from the department for any project in an adopted basin management action plan. The department may grant the extension if the local government provides sufficient evidence to the department that an extension is in the best interest of the public. For a local government in a rural area of critical state concern, as defined in s. 288.0656, the department may grant an extension of up to 10 years.

844544

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (356190) (with title amendment)

Delete lines 468 - 523
and insert:
(1) By December 31, 2014, the department shall adopt rules to fund pilot projects that test the effectiveness of innovative or existing nutrient reduction or water conservation technologies or practices designed to minimize nutrient pollution in the springs of this state. The department may

844544

approve funding for pilot projects each funding cycle if the department determines that the pilot project will not be harmful to the ecological resources in the study area.

(2) By December 31, 2014, the department shall adopt rules to evaluate, rank, and select projects eligible for funding under this part or land acquisition pursuant to s. 201.15(1)(c)3.b. In developing these rules, the department shall give preference to the projects that will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project. At a minimum, the department shall consider:

(a) The level of nutrient impairment of the Outstanding Florida Spring in which the project is located.

(b) The quantity of pollutants, particularly total nitrogen, the project is estimated to remove from an Outstanding Florida Spring with an adopted nutrient total maximum daily load.

(c) The flow necessary to restore the Outstanding Florida Spring to its adopted minimum flow or minimum water level.

(d) The anticipated impact the project will have on restoring or increasing water flow or water level.

(e) The amount of matching funds for the project that will be provided by the entities responsible for implementing the project.

(f) Whether the project is located in a rural area of critical state concern, as defined in s. 288.0656, with preference given to the local government responsible for implementing the project.

(g) For multiple-year projects, whether the project has

844544

funding sources that are identified and assured through the expected completion date of the project.

(h) The cost of the project and the length of time it will take to complete relative to its expected benefits.

(i) Whether the entities responsible for implementing the project, since July 1, 2009, have used their own funds for projects to improve water quality or conserve water use within a springshed or spring protection and management zone of an Outstanding Florida Spring, with preference given to those entities that have expended such funds.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 648 - 649

and insert:

373.809, F.S.;

690158

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (356190) (with title amendment)

Between lines 606 and 607
insert:
Section 14. For the 2014-15 fiscal year, funding for the Florida Springs and Aquifer Protection Act is provided in Specific Appropriations 1645 and 1390 in Senate Bill 2500, House Bill 5001, or similar legislation becoming law. Funding and implementation of this act for subsequent fiscal years shall be

690158

determined annually by the Legislature and provided in the General Appropriations Act.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 656 and 657

insert:

funding in the General Appropriations Act for fiscal year 2014-15; providing

By the Committees on Agriculture; and Environmental Preservation and Conservation; and Senators Dean, Montford, Soto, Simmons, Hays, Altman, and Abruzzo

575-03484-14 20141576c2

A bill to be entitled

An act relating to springs; amending s. 201.15, F.S.; specifying distributions to the Ecosystem Management and Restoration Trust Fund; amending s. 373.042, F.S.; requiring the Department of Environmental Protection or the governing board of a water management district to establish the minimum flow and water level for an Outstanding Florida Spring; specifying minimum flows and water levels for an Outstanding Florida Spring; amending s. 373.0421, F.S.; conforming a cross-reference; creating part VIII of chapter 373, F.S., entitled "Florida Springs and Aquifer Protection Act"; creating s. 373.801, F.S.; providing legislative findings and intent; creating s. 373.802, F.S.; defining terms; creating s. 373.803, F.S.; requiring the Department of Environmental Protection to delineate the spring protection and management zone for each Outstanding Florida Spring; requiring the department to adopt by rule maps that depict the delineation of each spring protection and management zone for each Outstanding Florida Spring; creating s. 373.805, F.S.; requiring the water management districts to adopt minimum flows and levels for Outstanding Florida Springs; requiring a water management district to implement a recovery or prevention strategy under certain circumstances; authorizing the water management districts to adopt rules; creating s. 373.807, F.S.; providing procedures for improving water quality in Outstanding Florida

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

575-03484-14 20141576c2

Springs; requiring the Department of Environmental Protection to develop a spring action plan; providing requirements; creating s. 373.808, F.S.; providing for funding mechanisms for the restoration of Outstanding Florida Springs; prohibiting a project from being funded under this part unless it is listed on a spring action plan; creating s. 373.809, F.S.; specifying prohibited activities within a spring protection and management zone of an Outstanding Florida Spring; creating s. 373.811, F.S.; providing rulemaking authority; creating s. 373.813, F.S.; providing for variances and exemptions under certain circumstances; amending s. 381.0065, F.S.; defining the term "responsible management entity"; requiring the Department of Health to submit a report to the Governor and the Legislature on responsible management entities; authorizing the establishment of responsible management entities; repealing s. 381.00651, F.S., relating to periodic evaluation and assessment of onsite sewage treatment and disposal systems; requiring the Department of Agriculture and Consumer Services and the Department of Environmental Protection to conduct a comprehensive study on nutrient reduction improvements and the expansion of the beneficial use of reclaimed water; requiring the departments to jointly hold a public meeting to gather input on the design of the comprehensive study and provide an opportunity for public comment; requiring the final report to be submitted to the Governor and

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the Legislature by a certain date; providing for future expiration; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (1) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are subject to the service charge imposed in s. 215.20(1). Prior to distribution under this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. Such costs and the service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. After distributions are made pursuant to subsection (1), all of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2013, secured by revenues distributed pursuant to subsection (1). All taxes remaining after deduction of costs and the service charge shall be distributed as follows:

(1) Sixty-three and thirty-one hundredths percent of the remaining taxes shall be used for the following purposes:

(c) After the required payments under paragraphs (a) and (b), the remainder shall be paid into the State Treasury to the credit of:

1. The State Transportation Trust Fund in the Department of Transportation in the amount of the lesser of 38.2 percent of the remainder or $541.75 million in each fiscal year. Out of such funds, the first $50 million for the 2012-2013 fiscal year; $65 million for the 2013-2014 fiscal year; and $75 million for the 2014-2015 fiscal year and all subsequent years, shall be transferred to the State Economic Enhancement and Development Trust Fund within the Department of Economic Opportunity. The remainder shall ~~is to~~ be used for the following specified purposes, notwithstanding any other law ~~to the contrary~~:

a. For the purposes of capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, 10 percent of these funds;

b. For the purposes of the Small County Outreach Program specified in s. 339.2818, 5 percent of these funds. Effective July 1, 2014, the percentage allocated under this sub-subparagraph shall be increased to 10 percent;

c. For the purposes of the Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, 75 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b.; and

d. For the purposes of the Transportation Regional Incentive Program specified in s. 339.2819, 25 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b. Effective July 1, 2014, the first $60 million of the funds allocated pursuant to this sub-subparagraph shall be allocated annually to the Florida Rail

Enterprise for the purposes established in s. 341.303(5).

2. The Grants and Donations Trust Fund in the Department of Economic Opportunity in the amount of the lesser of 0.23 ~~.23~~ percent of the remainder or $3.25 million in each fiscal year to fund technical assistance to local governments.

3. The Ecosystem Management and Restoration Trust Fund in the amount of:

a. The lesser of 2.12 percent of the remainder or $30 million in each fiscal year~~,~~ to be used for the preservation and repair of the state's beaches as provided in ss. 161.091-161.212; and

b. Thirty-six and nine-tenths percent of the remainder in each fiscal year to be used for the restoration and protection of Outstanding Florida Springs pursuant to part VIII of chapter 373 and for the acquisition of lands identified on the most current Board of Trustees Florida Forever Priority List, or by a water management district, which protect the essential parcels of the named spring projects that improve water quality or conserve water use and are located partially or fully within a spring protection and management zone of an Outstanding Florida Spring.

4. General Inspection Trust Fund in the amount of the lesser of 0.02 ~~.02~~ percent of the remainder or $300,000 in each fiscal year to be used to fund oyster management and restoration programs as provided in s. 379.362(3).

Moneys distributed pursuant to this paragraph may not be pledged for debt service unless such pledge is approved by referendum of the voters.

Section 2. Subsection (1) of section 373.042, Florida Statutes, is amended to read:

373.042 Minimum flows and levels.—

(1) Within each section, or within the water management district as a whole, the department or the governing board shall establish the following:

(a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse is ~~shall be~~ the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(b) Minimum water level. The minimum water level is ~~shall be~~ the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.

(c) Minimum flow and minimum water level for an Outstanding Florida Spring, as defined in s. 373.802. The minimum flow and minimum water level are the limit and level, respectively, at which further withdrawals would be harmful to the water resources or ecology of the area.

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and minimum water levels may be calculated to reflect seasonal variations. The department and the governing board shall ~~also~~ consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and minimum water levels.

Section 3. Paragraph (a) of subsection (1) of section

373.0421, Florida Statutes, is amended to read:

373.0421 Establishment and implementation of minimum flows and levels.—

(1) ESTABLISHMENT.—

(a) *Considerations.*—When establishing minimum flows and minimum water levels pursuant to s. 373.042, the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. 373.042(1)(a) and (b), or harm as provided by s. 373.042(1)(c), caused by withdrawals.

Section 4. Part VIII of chapter 373, Florida Statutes, consisting of sections 373.801, 373.802, 373.803, 373.805, 373.807, 373.808, 373.809, 373.811, and 373.813, Florida Statutes, is created and entitled the "Florida Springs and Aquifer Protection Act."

Section 5. Section 373.801, Florida Statutes, is created to read:

373.801 Legislative findings and intent.—

(1) The Legislature finds that springs are a unique part of this state's scenic beauty, deserving the highest level of protection under s. 7, Art. II of the State Constitution. Springs provide critical habitat for plants and animals, including many endangered or threatened species. Springs also provide immeasurable natural, recreational, economic, and inherent value. Flow level and water quality of springs are

indicators of local conditions of the Floridan Aquifer, which is the source of drinking water for many residents of this state. Springs are of great scientific importance in understanding the diverse functions of aquatic ecosystems. In addition, springs provide recreational opportunities for swimming, canoeing, wildlife watching, fishing, cave diving, and many other activities in this state. Because of such recreational opportunities and the accompanying tourism, state and local economies benefit from many of the springs in this state.

(2) Water quantity and water quality in springs are directly related. For regulatory purposes, the department has primary responsibility for water quality; the water management districts have primary responsibility for water quantity; the Department of Agriculture and Consumer Services has primary responsibility for the development and implementation of best management practices; and local governments have primary responsibility for providing wastewater and stormwater management. The foregoing responsible entities must work together in a coordinated manner to restore and maintain the water quantity and water quality for Outstanding Florida Springs.

(3) The Legislature recognizes that:

(a) Springs are only as healthy as their springsheds. The groundwater that supplies springs is derived from water that recharges the aquifer system in the form of seepage from the land surface and through direct conduits such as sinkholes. Springs are adversely affected by polluted runoff from urban and agricultural lands; discharge resulting from inadequate wastewater and stormwater management practices; stormwater

runoff; and the reduced water levels of the Floridan Aquifer. As a result, the hydrologic and environmental conditions of a spring or spring run are directly influenced by activities and land uses within a springshed and by water withdrawals from the Floridan Aquifer.

(b) Springs, whether found in urban or rural settings, or on public or private lands, are threatened by actual or potential flow reductions and declining water quality. Many of this state's springs are demonstrating signs of significant ecological imbalance, increased nutrient loading, and declining water flow. Without effective remedial actions, further declines in water quality and water quantity will occur.

(c) The state standards regulating both water quality and quantity, including minimum criteria relating to nutrient concentrations in groundwater, need to protect both human health and the complex biological and ecological systems that contribute to the integrity of springs.

(d) Springshed boundaries and areas of high vulnerability within a springshed need to be identified and delineated using the best available data.

(e) Because springsheds cross water management district and local government jurisdictional boundaries, a coordinated statewide springs protection plan is needed.

(f) The aquifers and springs of this state are complex systems affected by many variables and influences.

(4) The Legislature recognizes that sufficient information exists to act, action is urgently needed, and action can be continually modified as additional data is acquired. Therefore, state agencies and water management districts shall work

together with local governments to delineate springsheds and spring protection and management zones and develop comprehensive plans and land development regulations that protect the springs of this state for future generations.

(5) The Legislature intends to establish a spring and aquifer protection program to be administered by the department.

Section 6. Section 373.802, Florida Statutes, is created to read:

373.802 Definitions.—As used in this part, the term:

(1) "Department" means the Department of Environmental Protection, which includes the Florida Geological Survey or its successor agency or agencies.

(2) "Local government" means a county or municipal government the jurisdictional boundaries of which include an Outstanding Florida Spring, or any part of a delineated springshed or spring protection and management zone for an Outstanding Florida Spring.

(3) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and

other treatment works regulated under chapter 403.

(4) "Outstanding Florida Spring" includes all historic first magnitude springs, as determined by the department using the most recent Florida Geological Survey springs bulletin, and the following springs and their associated spring runs:

(a) DeLeon Spring;

(b) Peacock Spring;

(c) Poe Spring;

(d) Rock Springs;

(e) Wekiwa Spring; and

(f) Gemini Spring.

(5) "Responsible management entity" means a legal entity established for the purpose of providing localized nutrient management services with the requisite managerial, financial, and technical capacity to ensure long-term management of onsite sewage treatment and disposal systems and other local nutrient sources at the option of the local government within its jurisdiction.

(6) "Spring protection and management zone" means the area or areas of a springshed where the Floridan Aquifer is vulnerable to sources of contamination or reduced levels, as determined by the department in consultation with the appropriate water management districts.

(7) "Spring run" means a body of flowing water that originates from a spring or whose primary source of water is a spring or springs under average rainfall conditions.

(8) "Springshed" means the areas within the groundwater and surface water basins which contribute, based upon all relevant facts, circumstances, and data, to the discharge of a spring as

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defined by potentiometric surface maps and surface watershed boundaries.

(9) "Spring vent" means a location where groundwater flows out of a natural, discernable opening in the ground onto the land surface or into a predominantly fresh surface waterbody.

Section 7. Section 373.803, Florida Statutes, is created to read:

373.803 Delineation of spring protection and management zones for Outstanding Florida Springs.—Using the best data available from the water management districts and other credible sources, the department, in consultation with the water management districts, shall delineate one or more spring protection and management zones for each Outstanding Florida Spring. In delineating spring protection and management zones, the department shall consider groundwater travel time to the spring, hydrogeology, and nutrient load. The delineation of spring protection and management zones must be completed by July 1, 2015. In conjunction with delineating a spring protection and management zone for an Outstanding Florida Spring, the department shall adopt by rule, pursuant to ss. 120.536(1) and 120.54, maps and legal descriptions that depict the delineated spring protection and management zone or zones for that spring.

Section 8. Section 373.805, Florida Statutes, is created to read:

373.805 Minimum flow and minimum water level for Outstanding Florida Springs.—

(1) Each water management district shall establish a minimum flow and minimum water level for each Outstanding Florida Spring within its jurisdiction by July 1, 2015, in

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accordance with ss. 373.042 and 373.0421. The deadline may be extended each year until July 1, 2020, if a water management district provides sufficient evidence to the department that an extension is in the best interest of the public. This subsection does not apply to minimum flows and minimum water levels adopted before July 1, 2014, for a spring included in the definition of Outstanding Florida Springs in s. 373.802, until such time as the minimum flow or minimum water level is revised, or otherwise amended.

(2) By July 1, 2017, each water management district shall approve a recovery or prevention strategy, as required by ss. 373.042 and 373.0421, for each Outstanding Florida Spring in its jurisdiction in which the existing flow or water level of the Outstanding Florida Spring is below, or is projected within the next 20 years to fall below, the applicable minimum flow or minimum water level established pursuant to s. 373.042. The recovery or prevention strategy for each Outstanding Florida Spring must include, at a minimum:

(a) A listing of all specific projects identified for implementation of a recovery or prevention strategy.

(b) A priority listing of each project.

(c) The estimated cost for each listed project.

(d) The source and amount of financial assistance to be made available by the water management district for each project, which may not be less than 25 percent of the total project cost unless a specific funding source or sources are identified which will provide more than 75 percent of the total project cost. The Northwest Florida Water Management District and the Suwannee River Water Management District are not

required to provide matching funds pursuant to this paragraph.

Section 9. Section 373.807, Florida Statutes, is created to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2015, the department shall assess each Outstanding Florida Spring for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents.

(1) BASIN MANAGEMENT ACTION PLAN.—By July 1, 2017, the department shall develop basin management action plans, as specified in s. 403.067(7), for Outstanding Florida Springs impaired by nutrients.

(2)(a) SPRING ACTION PLAN.—By July 1, 2014, the department shall begin preparation of a spring action plan for each Outstanding Florida Spring that has an adopted basin management action plan or an implemented recovery or prevention strategy, or as soon as a basin management action plan is adopted, a recovery or prevention strategy is implemented, or the department projects the Outstanding Florida Spring will be impaired by nutrients within 20 years. Each initial spring action plan shall be adopted within one year of when the department begins preparation of the spring action plan. Further, the spring action plan must be continually updated to reflect newly added and completed projects.

(b) A spring action plan must include all of the following:

1. All projects in the basin management action plan which are located fully or partially within a spring protection and management zone.

2. All projects in the regional water supply plan which are

located fully or partially within a spring protection and management zone.

3. All projects included in a recovery or prevention strategy which are located fully or partially within a spring protection and management zone.

4. All projects proposed to or by the department that will prevent or stop potential nutrient impairment.

5. An estimate of each listed project's reduction of nutrient loading.

6. A map and legal descriptions depicting the spring protection and management zones established pursuant to s. 373.803.

7. Identification of each point source or category of nonpoint sources, including but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load shall be provided for each point source or category of nonpoint sources.

(3) REQUIREMENTS.—

(a) Within 6 months of the delineation of a spring protection and management zone or zones of an Outstanding Florida Spring that is fully or partially within the jurisdiction of a local government, a local government must develop, enact, and implement an ordinance that meets or exceeds the requirements of the department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. Such ordinance must require that, within a spring protection and management zone of an Outstanding Florida Spring impaired by

nutrients, the nitrogen content of any fertilizer applied to turf or landscape plants may not exceed the lowest, basic maintenance rate of the most recent recommendations by the Institute of Food and Agricultural Sciences. The department shall adopt rules to implement this paragraph which establish reasonable minimum standards and reflect advancements or improvements regarding nutrient load reductions.

(b) By July 1, 2016, the owner or operator of each existing wastewater treatment facility in a spring protection and management zone shall file for approval by the department a plan for complying with this paragraph. Upon a showing to the department of inordinate expense or that a delay is in the best interest of the public, the department may grant a local government or wastewater treatment facility an extension of up to 2 years to implement the plan. The owner and operator shall submit a proposal for funding at least once every 2 years until the plan is fully implemented.

(c) By July 1, 2016, the department, in consultation with the Department of Health and local governments, must identify onsite sewage treatment and disposal systems within a spring protection and management zone. Within 60 days of the department's completion of the identification of these systems, the department shall provide the location of these systems to the local governments in which these systems are located. Within 1 year of identification of these systems, and in consultation with the department, the local governments in which they are located shall develop an onsite sewage treatment and disposal system remediation plan. For each onsite sewage treatment and disposal system or group of systems, the plan must include

whether the systems require upgrading, connection to a central sewerage system, or no action. The plan must also include a priority ranking for each system or group of systems that require remediation. Each remediation plan must be submitted to the department for approval. In reviewing and approving the remediation plans, the department shall consider, at a minimum, all of the following:

1. The density of the onsite sewage treatment and disposal systems.

2. The number of onsite sewage treatment and disposal systems.

3. The proximity of the onsite sewage treatment and disposal system or systems to an Outstanding Florida Spring

4. The estimated nutrient loading of the onsite sewage treatment and disposal system or systems.

5. The cost of the proposed remedial action.

(d) Remedial actions required under this paragraph are not required until adequate funding for the specific project is provided pursuant to s. 373.808. As used in this paragraph, the term "adequate funding" means that the department has agreed to provide 100 percent of the state's portion of funding requested for the project under s. 373.808. The provisions of this paragraph are supplemental to any other specific requirements or authority provided by law.

1. By July 1, 2021, the owner or operator of each existing wastewater treatment facility in a spring protection and management zone shall meet a standard of no more than 3 mg/L Total Nitrogen, expressed as N, on an annual permitted basis, unless granted a variance or exemption pursuant to s. 373.813.

2. By July 1, 2019, each agricultural producer in a spring protection and management zone must implement best management practices or other measures necessary to achieve pollution reduction levels established by the department. The Department of Agriculture and Consumers Services, in consultation with the department, shall adopt rules to implement this subparagraph.

3. Within 6 months after approval of the onsite sewage treatment and disposal system remediation plan by the department, the local government shall begin implementing the approved remediation plan by making proposals to the department for funding pursuant to s. 373.808. The costs of connection to a central sewerage system or upgrading the onsite sewage treatment and disposal systems are eligible for funding of up to 100 percent of the total project cost. Further, the costs of connection to a central sewerage system or upgrading the onsite sewage treatment and disposal system may not be imposed on the property owner. The local government shall submit a proposal for funding at least every two years until the remediation plan is fully implemented.

Section 10. Section 373.808, Florida Statutes, is created to read:

373.808 Funding for the restoration of Outstanding Florida Springs.—

(1) In order to satisfy the requirements under this part, state agencies, water management districts, local governments, special districts, utilities, and regional management entities, if applicable, shall cooperate with property owners and agricultural producers to submit project proposals to the department in order to receive funding for up to 75 percent of

the total project cost. Project submittals for upgrades or connections of onsite sewage treatment and disposal systems, and those submitted by a fiscally constrained county as described in s. 218.67(1) or in a municipality located therein, are eligible for funding of up to 100 percent of the total project cost.

(2) Projects approved by the department shall be funded by moneys from documentary stamp tax revenues deposited into the Ecosystem Management and Restoration Trust Fund in accordance with s. 201.15(1)(c)3.b. The Legislature may use other sources of revenue to fund projects submitted to the department pursuant to this part.

(3) The department may distribute moneys deposited into the Ecosystem Management and Restoration Trust Fund pursuant to subsection (2) to any person who submits a project proposal application to the department for which funding is approved. The department shall distribute moneys to state agencies and water management districts for all reasonable administrative costs related to implementing this part. In addition, the department may adopt rules to develop grant application procedures to cover reasonable administrative costs of a fiscally constrained county as described in s. 218.67(1) or a municipality located therein.

(4) Moneys in the fund not needed in the current fiscal year to meet obligations incurred under this part shall be deposited to the credit of the fund and may be invested in the manner provided by law. Interest received on such investments shall be credited to the Ecosystem Management and Restoration Trust Fund for the purposes specified in s. 201.15(1)(c)3.b.

(5) By December 31, 2014, the department shall adopt rules to fund pilot projects that test the effectiveness of innovative

or existing nutrient reduction or water conservation technologies or practices designed to minimize nutrient pollution in the springs of this state. The department must approve funding for at least two pilot projects in each project selection cycle if the department determines that the project will not be harmful to the ecological resources in the study area.

(6) By December 31, 2014, the department shall develop and recommend rules to competitively evaluate, select, and rank projects eligible for partial or complete funding under this section. In developing these rules, the department shall give preference to the projects that it estimates will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project. At a minimum, the department shall consider the following criteria:

(a) Whether the project is within a spring protection and management zone of an Outstanding Florida Spring impaired by nutrients.

(b) The level of nutrient impairment of the Outstanding Florida Spring in which the project is located.

(c) The quantity of pollutants, particularly total nitrogen, the project is estimated to remove from a spring protection and management zone.

(d) Whether the project is within a spring protection and management zone of an Outstanding Florida Spring that is not meeting its adopted minimum flow or minimum water level.

(e) The flow necessary to restore the Outstanding Florida Spring to its adopted minimum flow or minimum water level.

(f) The anticipated impact the project will have on

restoring or increasing water flow or water level.

(g) Whether the project facilitates or enhances an existing basin management action plan adopted by the department to address pollutant loadings.

(h) Whether the project is identified and prioritized in an adopted regional water supply plan.

(i) The percentage by which the amount of matching funds provided by the applicant exceeds the statutory minimum required under s. 373.805 or s. 373.807.

(j) For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project.

(k) The cost of the project and the length of time it will take to complete relative to its expected benefits.

(l) Whether the applicant, since July 1, 2009, has used its own funds for projects to improve water quality or conserve water use within a springshed or spring protection and management zone of an Outstanding Florida Spring, with preference given to those applicants that have expended such funds.

(7) In addition to the criteria set forth in subsection (6), a project may not be funded by the department under this part unless it is listed on a spring action plan.

Section 11. Section 373.809, Florida Statutes, is created to read:

373.809 Prohibited activities within a spring protection and management zone of an Outstanding Florida Spring.—The following activities are prohibited within a spring protection and management zone of an Outstanding Florida Spring:

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(1) New municipal or industrial wastewater disposal systems, including rapid infiltration basins, except those systems that meet an advanced wastewater treatment standard of no more than 3 mg/L Total Nitrogen, expressed as N, on an annual permitted basis, or a higher treatment standard if the department determines the higher standard is necessary to prevent impairment or aid in the recovery of an Outstanding Florida Spring.

(2) New onsite sewage treatment and disposal systems on lots less than 1 acre, except for active or passive nitrogen removing onsite sewage treatment and disposal systems approved by the Department of Health. This subsection shall take effect July 1, 2015.

(3) New facilities for the disposal of hazardous waste.

(4) The land spreading, dumping, or disposal of all domestic wastewater residuals or septage.

(5) Concentrated animal feeding operations or intense cattle finishing and slaughter operations. This subsection does not apply to operations permitted by July 1, 2014, or the future expansion of livestock or poultry operations engaged in the occupation of bona fide agriculture as of July 1, 2014.

Section 12. Section 373.811, Florida Statutes, is created to read:

373.811 Rules.—

(1) The department shall adopt rules to create a program to improve water quantity and water quality pursuant to ss. 120.536(1) and 120.54 to administer this part, as applicable. In developing rules to administer s. 373.808, the department shall use the Total Maximum Daily Load Water Quality Restoration

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Grants rule as guidance to develop a comparable program for the restoration and protection of the water quality and water quantity for Outstanding Florida Springs.

(2) The Department of Health, the Department of Agriculture and Consumer Services, the water management districts, and responsible management entities may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this part, as applicable.

(3)(a) The Department of Agriculture and Consumer Services is the lead agency coordinating the reduction of agricultural nonpoint sources of pollution for the protection of Outstanding Florida Springs. The Department of Agriculture and Consumer Services and the department, pursuant to s. 403.067(7)(c)4., shall study new or revised best management practices for improving and protecting Outstanding Florida Springs and, if necessary, in cooperation with applicable local governments and stakeholders, initiate rulemaking to require the implementation of such practices within a reasonable time period.

(b) The department, the Department of Agriculture and Consumer Services, and the University of Florida's Institute of Food and Agricultural Sciences shall cooperate in conducting the necessary research and demonstration projects to develop improved or additional nutrient management tools, including the use of controlled release fertilizer that can be used by agricultural producers as part of an agricultural best management practices program. The development of such tools must reflect a balance between water quality improvement and agricultural productivity and, when applicable, must be incorporated into the revised best management practices adopted by rule of the Department of Agriculture and Consumer Services.

Section 13. Section 373.813, Florida Statutes, is created to read:

373.813 Variances and exemptions.—A person may apply to the appropriate agency or a water management district for a variance or exemption from any requirement in this part. An agency or a water management district may approve the application upon receiving reasonable assurance that the applicant's proposed activity, evaluated individually and as part of cumulative impacts, will not cause or contribute to violations of water quality standards, minimum flows, or minimum water levels in an Outstanding Florida Spring.

Section 14. Present paragraphs (n) through (q) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (o) through (r), respectively, a new paragraph (n) is added to that subsection, and subsection (7) is added to that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(n) "Responsible management entity" has the same meaning as in s. 373.802.

(7) RESPONSIBLE MANAGEMENT ENTITIES.—

(a) By March 1, 2015, the department and the Department of Environmental Protection shall submit a report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the creation and operation of responsible management entities within spring protection and management zones of Outstanding Florida Springs,

as defined in s. 373.802. The report must focus on the feasibility of different management models to prevent, reduce, and control nutrient pollution from onsite sewage treatment and disposal systems, including the costs associated with each model. In addition, the report must compare the results of the differing management models to a mandatory onsite sewage treatment and disposal system evaluation and assessment program or any other option that would achieve similar nutrient pollution reductions in the short and long term.

(b) A local government may not create a responsible management entity without the prior approval of the department, in consultation with the Department of Environmental Protection. In reviewing requests for the creation of a responsible management entity, the local government must demonstrate to the department, in consultation with the Department of Environmental Protection, that it has the management skills, personnel, financial capacity, and technical expertise to properly operate and maintain such an entity.

(c) The department shall ensure that responsible management entities adopt rules and policies that are at least as restrictive as state law.

Section 15. Section 381.00651, Florida Statutes, is repealed.

Section 16. Comprehensive study on nutrient reduction improvements and the beneficial use of reclaimed water, stormwater, and excess surface water.—

(1) The Department of Agriculture and Consumer Services and the Department of Environmental Protection, in cooperation with the five water management districts, shall conduct a

comprehensive study on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water in this state. The final report of the study must:

(a) Describe factors that currently prohibit or otherwise complicate the expansion of the beneficial use of reclaimed water and include recommendations for the mitigation or elimination of such factors.

(b) Identify environmental, public health, public perception, engineering, and fiscal issues, and user fee amounts, including utility rate structures for potable and reclaimed water.

(c) Identify areas in the state where making reclaimed water available for irrigation or other uses is necessary because the use of traditional water supply sources is constrained by limitations on availability.

(d) Evaluate the costs to users of reclaimed water compared to the cost associated with traditional water sources, including an examination of the nutrient concentrations in reclaimed water and the necessity for additional fertilizer supplementation.

(e) Evaluate permitting incentives, such as further extending current authorization for long-term consumptive use permits to all entities substituting reclaimed water for traditional water sources or including in such permits a provision that authorizes conversion to traditional water sources if reclaimed water becomes unavailable or cost prohibitive.

(f) Describe the basic feasibility, benefit, and cost estimates for the infrastructure needed to construct regional storage features on public or private lands for reclaimed water,

stormwater, or excess surface water, including collection and delivery mechanisms for beneficial uses rather than discharge to tide, such as agricultural irrigation, power generation, public water supply, wetland restoration, groundwater recharge, and water body base flow augmentation.

(g) Describe any other alternative processes, systems, or technology that may be comparable or preferable to a regional storage system or that may effectively complement or be a substitute for a regional storage system.

(h) Evaluate the impact of implementation of a comprehensive reclaimed water plan on traditional water sources and aquifer levels.

(2) The Department of Agriculture and Consumer Services and the Department of Environmental Protection shall jointly hold a public meeting to gather input on the design of the comprehensive study and to provide an opportunity for public comment before publishing the final report of the study.

(3) The final report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2015.

(4) This section expires on December 1, 2015.

Section 17. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

April 3, 2014

The Honorable Joe Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron,

I respectfully request you place Committee Substitute for Committee Substitute for Senate Bill 1576, relating to Springs, on your Appropriations Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Cindy Kynoch, Staff Director

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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-22-14
Meeting Date

Topic Sprays

Bill Number CS/CS 1576 *(if applicable)*

Name Doug Mann

Amendment Barcode — *(if applicable)*

Job Title —

Address 310 W. College Ave.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 222-7535

E-mail —

Speaking: ☐ For ☑ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic SPRINGS

Bill Number SB 1576 as amended
(if applicable)

Name CHARLES PATTISON

Amendment Barcode
(if applicable)

Job Title PRESIDENT

Address 308 N. MONROE
Street

TALLAHASSEE 32308
City *State* *Zip*

Phone 222-6277 x 103

E-mail cpattison@1000FoF.org

Speaking: ☑ For ☐ Against ☐ Information

Representing 1000 FRIENDS OF FLORIDA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/2014
Meeting Date

Topic Springs & Aquifer Protection

Bill Number 1576 *(if applicable)*

Name Dan Peterson

Amendment Barcode *(if applicable)*

Job Title Exec. Director

Address ~~22~~2878 S ~~Osceola~~ Osceola Ave

Phone 407 481 2289

Street

Orlando FL 32806

E-mail danpeterson@proprights.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information

Representing Coalition for Property Rights

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-22-14
Meeting Date

Topic Springs

Bill Number SB 1576 *(if applicable)*

Name Amy Datz

Amendment Barcode *(if applicable)*

Job Title Retired Environmental Scientist

Address 1130 Crestview Ave.
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 322 7599

E-mail AmalieDatz@mac.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Environmental Caucus of FL.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Springs Protection Bill Number 1576 *(if applicable)*

Name Debbie Harrison Rumberger Amendment Barcode *(if applicable)*

Job Title Legislative Liaison

Address 540 Beverly Court Phone 850-228-2545

Street

Tallahassee, FL 32301 E-mail IWVFAdvocacy@gmail.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Springs

Bill Number 1576 *(if applicable)*

Name Leticia Adams

Amendment Barcode *(if applicable)*

Job Title Senior Policy Director

Address *Street*

Phone

City *State* *Zip*

E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 22, 2014
Meeting Date

Topic Springs

Bill Number 1576 *(if applicable)*

Name Janet Bowman

Amendment Barcode *(if applicable)*

Job Title Director of Legislative Policy & Strategics

Address 625 N Adams St
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Speaking: ☑ For ☐ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic SPRINGS

Bill Number 1576 *(if applicable)*

Name STEPHEN JAMES

Amendment Barcode _____ *(if applicable)*

Job Title _____

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TALLAHASSEE, FL 32301
City *State* *Zip*

Phone 850-922-4300

E-mail _____

Speaking: ☐ For ☒ Against ☐ Information

Representing FLA. ASSOC. OF COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22
Meeting Date

Topic Springs

Bill Number 1576 *(if applicable)*

Name Ryan Matthews

Amendment Barcode *(if applicable)*

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Speaking: ☐ For ☐ Against ☑ Information

Representing FL League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic SPRINGS

Bill Number 1576 *(if applicable)*

Name DAVID CULLEN

Amendment Barcode *(if applicable)*

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Speaking: ☑ For ☐ Against ☐ Information

Representing SIERRA CLUB

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic SPRINGS LEGIS

Bill Number 1576 *(if applicable)*

Name FRANK MATTHEWS

Amendment Barcode *(if applicable)*

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TLH
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Speaking: ☐ For ☒ Against ☐ Information

Representing FLA. WASTEWATER ENV. ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-22-14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

CS/CS/CS

Topic Springs

Bill Number SB 1576 *(if applicable)*

Name Preston Robertson

Amendment Barcode *(if applicable)*

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Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Wildlife Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic _____ Bill Number 1576 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

TOWN OF WHITE SPRINGS

" On the Banks of the Suwannee River "

21 April 2014

Senator David Simmons
406 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Senator Simmons:

Economic Devastation in White Springs due to Excessive Groundwater Withdrawals to the East, Specifically within SJRWMD

I wish to extend my sincere appreciation to you for your leadership on the Springs Protection legislation, and for taking the time on April 9 to meet with me and my colleagues representing the North Florida Water Working Group. My small town of White Springs – Florida's Original Tourist Destination, and my sister municipalities, are experiencing severe economic dislocations due to Floridan Aquifer over-pumping and contamination.

Since 1831 the medicinal spring waters of the White Sulphur Spring were the driving force behind our community's historic role in the development of the State of Florida. Even before our roads were paved, White Springs was populated with world class hotels, eateries, pharmacies, boutiques, hardware stores, bowling alleys, movie theaters and more. White Springs was "THE Destination," the "must stop" on the railroad. Presidents, their staffs and families, were among the dignitaries and celebrities to experience Florida in White Springs. White Springs was the "New York City" of Florida, but now it's the "Dead Canary" of Florida.

Evidence of our plight has been quantified by the SRWMD. I am attaching a map from their study showing how the groundwater basin divide, which is the point at which groundwater moves either east or west, has migrated some 35 miles west. This line is moving west because of excessive groundwater withdrawals to our east. According to the Florida Geological Survey, since the beginning of groundwater pumping in Northeast Florida, the drawdown of the Floridan Aquifer is over 60 feet. The 2010 SRWMD Water Supply Assessment documents a six foot drawdown over the most recent 30 year period. This is not conjecture. This is science.

Senator, water quality and quantity go hand-in-hand. There is little or no benefit to having all of the water we want if it is saturated with contaminants and unfit for use by the public or wildlife in our lakes, rivers and waterways. And, there is little or no benefit to having the cleanest water on the planet if we do not have sufficient quantities to support our public needs and springs don't flow, lakes, rivers and estuaries dry out and wildlife withers and dies. White Springs, as does all of Florida, needs both.

P.O. Drawer D | 10363 Bridge Street | White Springs, FL 32096

Ph. 386.397.2310 | Fax 386.397.1542 | www.whitesprings.org | cityhall@windstream.net

All of Florida depends upon the Floridan Aquifer. It is the World's Greatest Natural Wonder – larger than the Grand Canyon, larger than the Great Barrier Reef, and with more water flowing through it daily than Victoria Falls. It has more springs, sinkholes, solution tubes, underground caverns and rivers than any other geologic formation in the world. All of it depends upon the quantity and quality of water flowing through and from this unique geologic structure. The consequences of not addressing water quantity and quality issues are nothing short of devastating – the reduction in water flow caused our spring to stop flowing and is also the major contributor to the substantial problems we face with water quality. According to research conducted by the Florida Springs Institute, the average flow of SRWMD's 300+ springs has been reduced by over 40 percent. This massive reduction in flow threatens all of the Floridan Aquifer, the region's springs, and the economic vitality of their human communities.

If I, or any member of the North Florida Water Working Group, can assist you in any way with your springs legislation which will re-define the future of the State of Florida, we are at your service.

With appreciation and best wishes,

Dr. Helen B. Miller
Mayor, Town of White Springs
Member, North Florida Water Working Group

cc: Columbia County Commissioner Ron Williams, Chair, NFWWG

Enclosure - 1

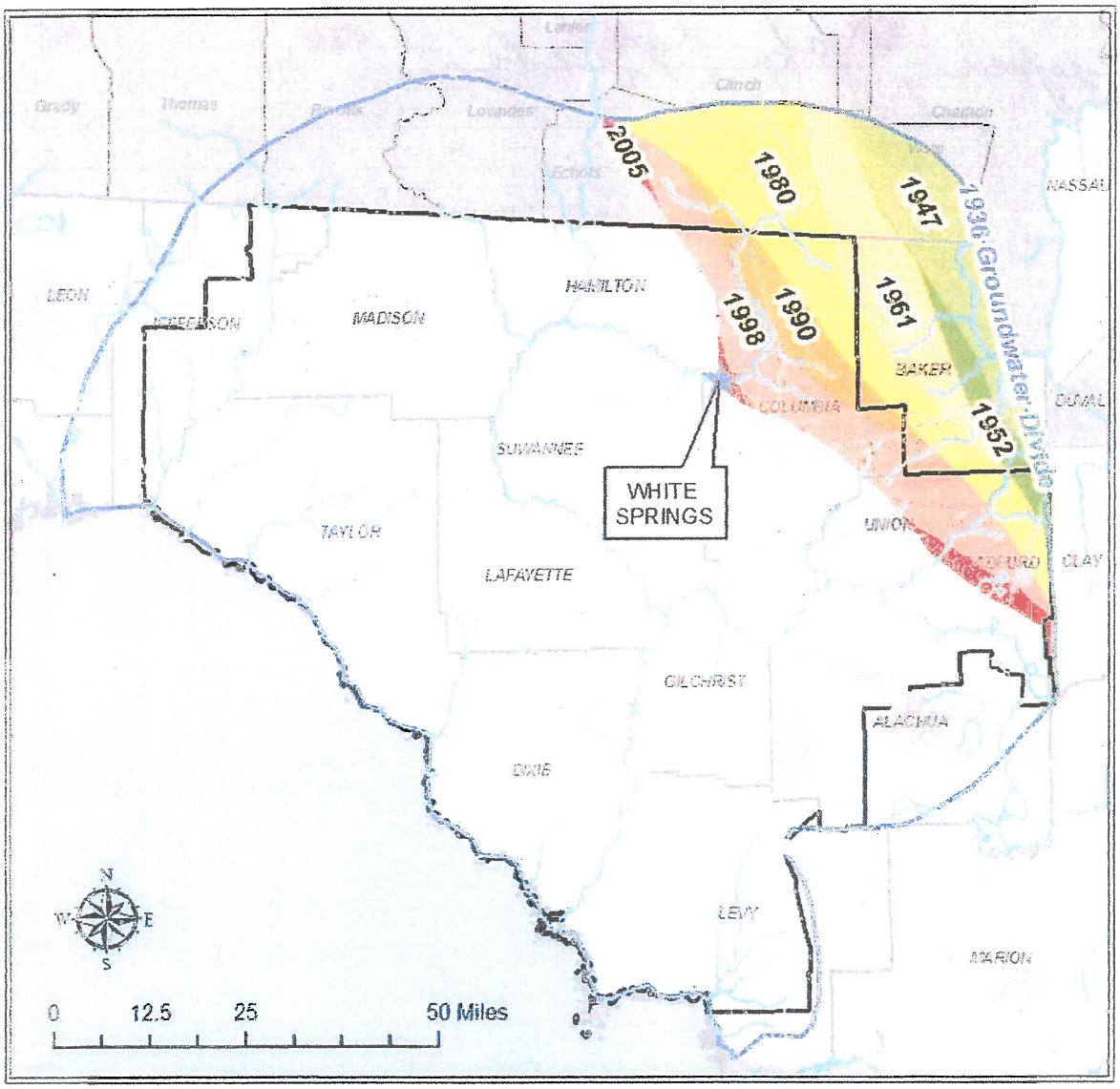
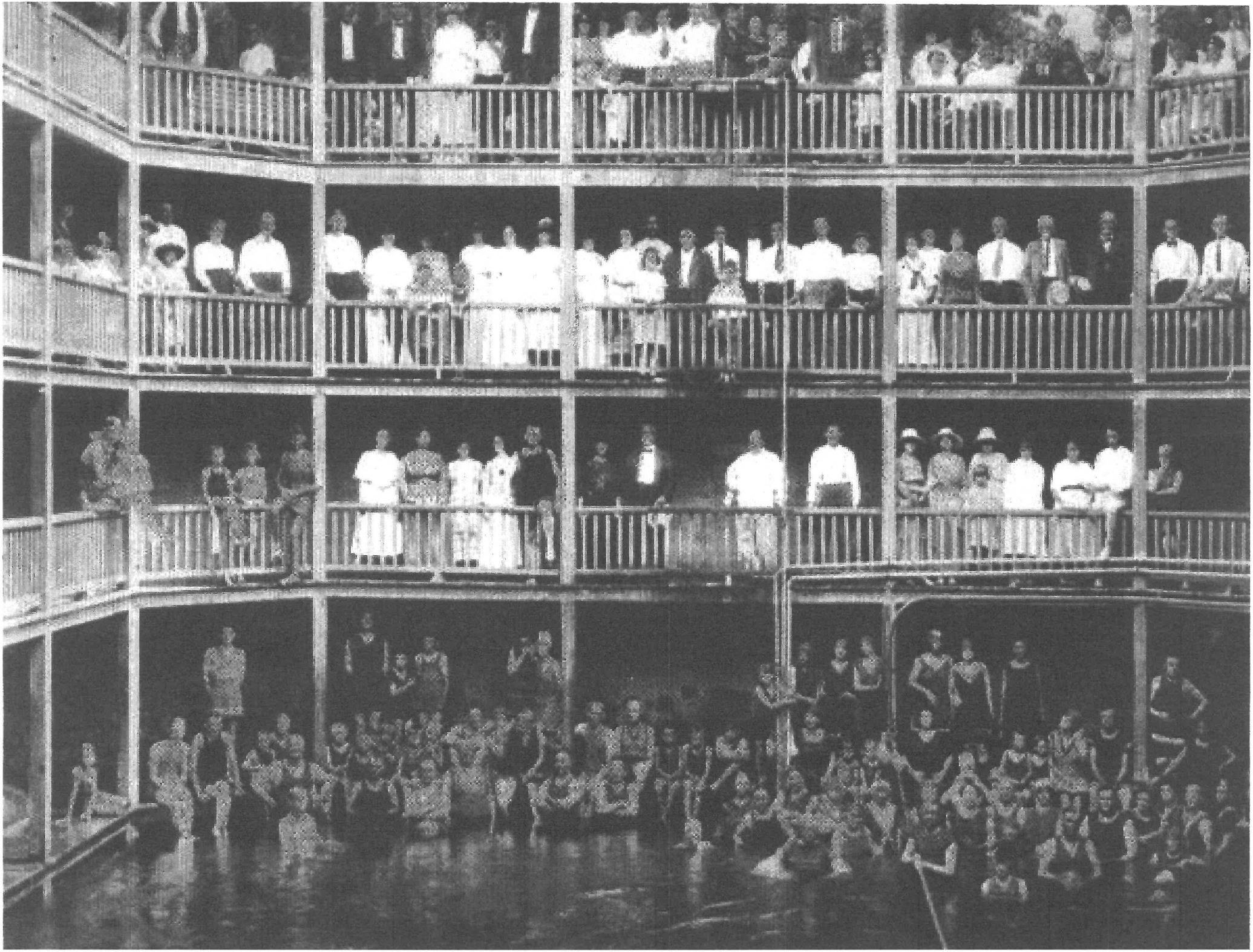


Figure ES-1. Migration of the Groundwater Basin Divide in the Northeastern Portion of the District.

Figure ES-2 illustrates the magnitude of the decline in average potentiometric levels from 1981 to the present that is responsible for a portion of the migration of the groundwater divide depicted in Figure ES-1. The figure shows potentiometric levels for a 28 mile long cross section through the Upper Floridan aquifer based on groundwater levels in three wells from the District's groundwater monitoring network. Average groundwater levels from each well for each five year period between 1981 and 2010 were analyzed for trends. The analysis indicates that the potentiometric surface of the Upper Floridan aquifer across section A-A' has experienced a cumulative drawdown of approximately six feet over the past 29 years. This decline is in



The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1582 (664100)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Dean
SUBJECT:	Rehabilitation of Petroleum Contamination Sites
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Favorable**
2.	Howard	DeLoach	AGG	**Fav/CS**
3.	Howard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1582 revises the legislative intent for the Petroleum Restoration Program in the Department of Environmental Protection (DEP or department), requires competitive procurement for cleanup contracts, and amends contractor qualifications. The bill limits the eligibility funding for the Early Detection Incentive (EDI) Program, deletes obsolete provisions related to the reimbursement program, and repeals sections of statute related to the Petroleum Preapproval Program.

The DEP anticipates that the costs to the state for site rehabilitation will decrease with the implementation of competitive solicitation procedures. In the preapproved advanced cleanup program, lower costs of at least 25 percent are required for applicants participating in a performance-based contract for the cleanup of at least 20 sites. The increase in workload related to contracts and procurement can be handled with existing staff.

The bill takes effect on July 1, 2014.

II. Present Situation:

Petroleum Restoration Program

The Division of Waste Management within the DEP regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.[1] Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.[2]

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for cleanup of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund (IPTF), which is funded by a tax on petroleum products imported or produced in Florida. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the option of conducting the cleanup themselves, and then receive reimbursement from the IPTF, or have the state conduct the cleanup in priority order.[3]

In 1988, the Legislature created the Petroleum Liability Insurance Program (PLIP) to provide third-party liability insurance to qualified program participants. The PLIP provided up to $1 million of liability insurance for each incident of petroleum contamination.[4] The program was revised in 1989 and renamed to the Petroleum Liability Insurance and Restoration Program (PLIRP). The PLIRP allows eligible petroleum facilities to purchase $1 million in pollution liability protection from a state contracted insurer and provided $1 million worth of site restoration coverage through reimbursement or state-funded cleanup.[5]

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline is now waived indefinitely for owners who are unable to pay for the closure of abandoned tanks.[6]

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup of sites to the reimbursement program,[7] which was funded by increasing the excise tax on petroleum and petroleum products.[8] The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the IPTF. By 1996, over 18,000 petroleum sites had been identified as

[1] *See* ch. 83-310, Laws of Fla.
[2] DEP, *Storage Tank Compliance*, http://www.dep.state.fl.us/waste/categories/tanks/ (last visited Mar. 6, 2014).
[3] Chapter 86-159, Laws of Fla.
[4] Chapter 88-331, Laws of Fla.
[5] Chapter 89-188, Laws of Fla.
[6] Chapter 90-98, Laws of Fla.
[7] The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.
[8] Chapter 92-30, Laws of Fla.

contaminated and the program had accumulated $551.5 million in outstanding reimbursement claims.[9]

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.[10]

The Petroleum Preapproval Program (program) was implemented by the Legislature in 1996. The program required state-funded clean up of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense.[11]

The Preapproved Advanced Cleanup (PAC) program was also created in 1996 to allow property owners or responsible parties the opportunity to pay a portion of the cleanup costs in order to bypass the priority ranking list. The PAC program requires applicants to provide at least 25 percent of the total cleanup costs and requires the property owner to prepare limited scope assessments at their expense.[12]

Section 376.30713(4), F.S., authorizes the DEP to enter into PAC contracts for up to $15 million each fiscal year and limits the amount a facility may receive to $5 million per year. A facility includes multiple site facilities such as airports, ports, or terminal facilities.[13] PAC applications are submitted to the DEP twice a year (between May 1 and June 30 and between November 1 and December 31). The applications are ranked based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant that proposes the highest percentage of its share of costs.[14] In 1999, the Legislature amended the Petroleum Preapproval Program to allow the DEP to fund certain source removal activities. The bill addressed new petroleum discharges that occurred at a site with existing contamination and were reported after December 31, 1998. The bill allowed a responsible party to enter into a Site Rehabilitation Agreement with the DEP and to share in the cost and coordination of the cleanup, provided that the responsible party submit an application and a Limited Contamination Assessment Report to the DEP.[15]

The Legislature substantially amended the Petroleum Preapproval Program in 2005 to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;

[9] Comm. on Environmental Preservation and Conservation, the Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).
[10] Chapter 95-2, Laws of Fla.
[11] Chapter 96-277, ss. 18-19, Laws of Fla.
[12] Section 376.30713, F.S.
[13] Section 376.30713(4), F.S.
[14] Section 376.30713(2), F.S
[15] Chapter 99-376, Laws of Fla.

- The DEP to establish a process to uniformly encumber funds appropriated for the underground storage tank program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Department of Transportation projects;
- Funding for limited interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to 10 sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding per facility and for activities that may be funded;
- Limited funding of $1 million per fiscal year for Department of Transportation projects, and $10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions as of June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extension of the life of the Inland Protection Financing Corporation from 2011 to 2025, and require the corporation to issue notes and bonds, and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.[16]

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S., after June 30, 2014.[17] Pursuant to s. 376.30711, F.S., the DEP is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects, but has not done so on a permanent basis.

Pursuant to s. 287.057, F.S., state agencies that competitively solicit contractual services exceeding $35,000 must:

- Make the competitive solicitation available to all vendors;
- Include the time and date for the receipt of bids, proposal, or replies, and of the public opening;
- Include the contractual terms and conditions applicable to the procurement and the criteria used to determine acceptability and merit of the bid;
- Use the invitation to bid process when the agency is able to define the scope of work and establish the specifications of the services needed;
- Use the request for proposal process when the purpose of the services needed can be defined and the agency can identify the deliverables; and
- Use the invitation to negotiate process when the agency must determine the best method for achieving the specific goal and more than one vendor is able to provide the services.

[16] Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.
[17] Chapter 2013-41, s. 29, Laws of Fla.

Contractual services that exceed the $35,000 threshold must be procured through competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

- The agency head determines there is an immediate danger to public health, safety, or welfare; and
- The agency purchases the services from a state procured contract that was contracted by another agency pursuant to s. 287.057(1), F.S.[18]

MyFloridaMarketPlace

The Department of Management Services established a statewide electronic registration and procurement system called MyFloridaMarketPlace. Pursuant to s. 287.057(23), F.S., a one percent transaction fee is charged to all vendors in order to utilize the system.[19]

Funding for the Petroleum Restoration Program

The Fiscal Year 2013-2014 General Appropriations Act (GAA) appropriated $125 million to the DEP for the rehabilitation of eligible petroleum contaminated sites. The GAA directed that up to $50 million be appropriated to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. The remaining $75 million was placed in reserve and was contingent upon submission of a plan for consideration by the Legislative Budget Commission (LBC) detailing how the DEP would improve the effectiveness and efficiency of the Petroleum Restoration Program. Also, no funds could be released after January 1, 2014, unless the DEP adopted rules to implement ss. 376.3071, 376.30711, and 376.30713, Florida Statutes. The DEP's plan was approved by the LBC on September 12, 2013, and rules were adopted on December 27, 2013. The remaining $75 million in appropriation was released in March 2014.[20]

The DEP is currently transitioning the Petroleum Restoration Program from the "preapproved contractor" approach to competitive procurement procedures pursuant to ss. 287.056, 287.057, and 287.059, F.S., and rules 62-771 and 62-772, F.A.C. As of January 31, 2014, there are approximately 17,300 sites or gasoline filling stations eligible for state funding and approximately 7,258 sites have been rehabilitated. Approximately 3,167 sites are currently undergoing some phase of site rehabilitation, and approximately 6,911 sites await rehabilitation. Site rehabilitation is funded based on available budget and the priority score. The score for each site ranges from five to 115, with five representing a very low potential threat to human health and the environment, and 115 representing a substantial potential threat.[21]

As of March 13, 2014, there are 60 approved cleanup contractors and 137 executed contracts. The DEP has:

- Obligated approximately $57.1 million of the Fiscal Year 2013-2014 appropriation of $125 million;

[18] See s. 287.057, F.S.
[19] See Rules 60A-1.030, 60A-1.031, and 60A-1.032, F.A.C.
[20] Chapter 2013-40, Laws of Fla.
[21] DEP, *Senate Bill 1582 Agency Analysis*, 3 (Mar. 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

- Directed assigned rehabilitation work to 149 sites with a total value of $5,041,217, which is included in the total obligated amount of $57.1 million; and
- Selected 13 sites to receive quotes from contractors for a total estimated value of $4,216,075, which is not included in the $57.1 million.[22]

Legislative Ratification of Agency Rules

The Legislature required the DEP to adopt rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S., by December 31, 2013, otherwise the remaining, unreleased funds appropriated for Fiscal Year 2013-2014 could not be released. On May 30, 2013, the DEP published a Notice of Rule Development in the Florida Administrative Register to create Rule 62-772, F.A.C., and amend Rule 62-771, F.A.C. The new rules provide the procedures for the procurement of contractual services for clean up of petroleum contaminated sites and amend the procedures for establishing the priority scoring system for petroleum contaminated sites. The rules were adopted on December 27, 2013.

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds include:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within five years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within five years after implementation of the rule.[23]

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rules 62-772.300 and 62-772.400, F.A.C., and determined the rules triggered a statutory threshold requiring ratification. The SERC for Rule 62-772.300, F.A.C., estimates the cost for contractors to maintain business licensure, safety compliance, workers compensation insurance, comprehensive automobile insurance, and general and professional liability insurance is approximately $15.4 million per year. The cost estimate provided in the SERC is based on 225 contractors. As of March 2014, the number of agency term contractors is 70, decreasing the cost associated with Rule 62-772.300, F.A.C., to approximately $4.8 million per year.[24]

The SERC for Rule 62-772.400, F.A.C., estimates the cost incurred by contractors to assemble and submit bids, responses, replies, and quotes to the DEP as part of the competitive

[22] Email from Pierce Schuessler, Legislative Affairs Director, DEP (Mar. 16, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).
[23] Section 120.541(2)(a)1.-3., F.S.
[24] DEP, *Statement of Estimated Regulatory Cost, Rule 62-772.300, F.A.C.*, 3 (on file with the Senate Committee on Environmental Preservation and Conservation).

procurement procedures and a one percent transaction fee for MyFloridaMarketPlace, to be approximately $41 million per year.[25]

The cost requirements outlined by the DEP in its new rules are already required of and incurred by contractors in order to conduct business pursuant to ss. 376.3071, 376.30711, and 376.30713, F.S.; however, the existing requirements are being restated in rule, thereby requiring ratification by the Legislature.

III. Effect of Proposed Changes:

The bill provides conforming language and makes technical changes to repeal the Petroleum Preapproval Program and requires the DEP to competitively procure contracts for the Petroleum Restoration Program.

Section 1 amends s. 376.3071, F.S., to affirm that the Petroleum Restoration Program be implemented in a manner that reduces costs and improves efficiencies for rehabilitation activities. The bill specifies that the Legislature intends to prioritize the cleanup of sites based on the threat of contamination to water resources and the environment, public health, safety, and welfare, and within the funding limits of the Inland Protection Trust Fund. The bill recognizes that when source removal is feasible and cost effective, it significantly reduces and eliminates the spread of contamination.

The bill specifies contracting and contractor selection requirements. It directs that state-funded cleanup sites are funded pursuant to the provisions of the Petroleum Restoration Program in ss. 376.3071, 376.305(6), 376.3072, and 376.3073, F.S. The bill requires a facility owner to abate the source of discharge for a release that occurred after March 29, 1995, and to notify the DEP if free product is present.

The bill requires the DEP to comply with competitive procurement requirements pursuant to ch. 287, F.S., or adopted rules.

Contractors that perform site assessments and remediation are required to certify to the DEP that they:

- Comply with applicable Occupational Safety and Health Administration regulations;
- Maintain workers compensation insurance for employees as required by the Florida Workers' Compensation Law;
- Maintain comprehensive general liability and comprehensive automobile liability insurance including:
  - Having minimum limits of $1 million per occurrence; and
  - Having $1 million per annual aggregate for personal injury, accidental death, and property damage;
- Maintain professional liability insurance of at least $1 million per occurrence and $1 million annual aggregate; and

[25] DEP, *Statement of Estimated Regulatory Cost, Rule 62-772.400, F.A.C.*, 3 (on file with the Senate Committee on Environmental Preservation and Conservation).

- Have the capacity to perform or directly supervise the majority of the rehabilitation work pursuant to s. 489.113(9), F.S.

The bill requires that the rules implementing this section must:
- Specify that only qualified contractors may submit responses on competitive solicitation;
- Include procedures for the rejection of vendors that do not meet the minimum qualifications; and
- Include requirements for the vendor to maintain its qualifications.

The bill provides procedures for invoicing and payments. Specifically, the bill:
- Requires invoices to be submitted on forms provided by the DEP;
- Requires contractors to provide evidence documenting the contracted services were provided;
- Requires invoices to be paid pursuant to s. 215.422, F.S., if there are sufficient unencumbered funds available;
- Allows a contractor to assign its right to payment to another person after the contractor has submitted an invoice and before payment is made;
- Specifies the assignee must be paid pursuant to s. 215.422, F.S.;
- Requires contractors to submit an invoice to the DEP within 30 days of the DEP's written acceptance of the interim deliverables or approval of the final deliverables;
- Allows the DEP to retain up to 25 percent of the contracted amount or use a performance bond as long as the terms are included in the contract;
- Specifies that the contractor, or the assignee, must make prompt payment to subcontractors and suppliers pursuant to s. 287.0585, F.S.;
- Specifies that the exemption provided in s. 287.0585(2), F.S., does not apply to payments associated with an approved contract;
- Allows the DEP to withhold payment if the validity or accuracy of the contractor's invoices or supporting documents is in question; and
- Does not authorize payment for the cost of contaminated soil treatment or disposal if the soil treatment or disposal does not meet the rules for general permitting, state air emissions standards, monitoring, sampling, and reporting rules as described by the DEP.

The bill specifies the DEP must terminate or suspend a contractor's eligibility for participation in the program if the contractor fails to perform its contractual duties. It also prohibits a site owner or operator, or its designee, from receiving remuneration in cash or in kind, directly or indirectly from a contract performing site cleanup activities. The bill clarifies that any action by the DEP to seek recovery of payments or overpayments to a contractor must be based on the law that existed at the time of payment or overpayment.

The bill deletes references to the preapproval program and obsolete provisions related to the reimbursement program and makes conforming and technical changes.

Section 2 repeals s. 376.30711, F.S., which provided contracting and contractor selection procedures for the preapproval program.

Section 3 amends s. 376.301, F.S., deletes the obsolete definitions of "backlog" and "person responsible for conducting site rehabilitation," which were associated with the reimbursement program.

Sections 4-5 and 7-10 amend ss. 376.302, 376.305, 376.30714, 376.3072, 376.3073, 376.3075, F.S., respectively, to make conforming and technical changes to repeal the reimbursement program and the preapproval program.

Section 6 amends s. 376.30713, F.S., to allow an applicant to participate in the preapproved advanced cleanup program under a performance-based contract for the cleanup of at least 20 sites. The applicant must provide at least 25 percent of the costs of cleanup by paying, demonstrating cost savings to the DEP, or a combination of the two. The percentage of cost savings must be included in the application and compared to the cost of cleanup of the same sites using the current rates provided to the DEP by the agency term contractor. The DEP must determine if the cost savings demonstration is acceptable, which is not subject to ch. 120, F.S. The bill also makes conforming and technical changes to repeal the reimbursement program and the preapproval program.

Section 11 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/SB 1582, the transition from a "preapproved contractor" approach to a competitive procurement system will have a positive and negative fiscal impact on the private sector. There will be costs to contractors associated with the requirements of submitting quotes and materials that meet the requirements of MyFloridaMarketPlace, including the one percent transaction fee. The utilization of competitive solicitation procedures are expected to reduce prices and potential profits. However, contractors that

maintain a positive performance record will be able to generate more work, which could offset the lower profit margins.[26]

Generally, lower costs to rehabilitate sites will lead to greater efficiencies and the ability to clean up sites more cost effectively than in previous years. Individually, these costs may be negligible; however, in the aggregate and over time, the new program could lead to substantial savings.

The expansion of the preapproved advanced cleanup (PAC) program may benefit applicants with at least 20 sites that require cleanup. Conversely, because funding of this program is limited to $15 million each fiscal year, such expansion may exhaust the funds available for applicants with less than 20 sites.

C. Government Sector Impact:

The bill may decrease DEP's cost of site rehabilitation due to the implementation of the competitive solicitation process. Since this process is in the early stage of implementation, the cost savings are indeterminate at this time.[27]

In the PAC program, at least 25 percent in lower costs is required for applicants participating in a performance-based contract for the cleanup of at least 20 sites.

The department anticipates an increase in workload related to contracts and procurement in the Administrative section within the Petroleum Restoration Program. Currently, this section has 12 positions and an annual budget of $886,103, with seven positions that work directly on contracts and procurement. According to the DEP, this is sufficient to handle the increased workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 1674, providing for legislative ratification of Rules 62-772.300 and 62-772.400, F.A.C., which relate to competitive bidding and contractor qualifications for the Petroleum Restoration Program, is pending. Failure to ratify the rules would prohibit the DEP from implementing the program after June 30, 2014.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.3071, 376.301, 376.302, 376.305, 376.30713, 376.30714, 376.3072, 376.3073, and 376.3075.

[26] *Supra* note 18, at 6.
[27] *Id*. DEP, *Senate Bill 1582 Agency Analysis*, 6 (Mar. 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

This bill repeals section 376.30711 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on April 2, 2014:

- Authorizes the DEP to approve performance-based advanced cleanup contracts for at least 20 sites for applicants and requires that they demonstrate a proportional share of at least 25 percent of the cleanup costs;
- Requires competitive solicitations to adhere to the requirements in s. 287.055, F.S., relating to acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

414668

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Before line 24
insert:
Section 1. Subsection (4) of section 287.0595, Florida Statutes, is amended to read:
287.0595 Pollution response action contracts; department rules.—
~~(4) This section does not apply to contracts which must be negotiated under s. 287.055.~~

414668

11
12 ========== T I T L E A M E N D M E N T ==========
13 And the title is amended as follows:
14 Delete line 3
15 and insert:
16 contamination sites; amending s. 287.0595, F.S.;
17 removing the restriction of applicability for certain
18 contracts for pollution response action; amending s.
19 376.3071, F.S.;

935264

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment

Delete lines 621 - 638
and insert:
the date on which ~~that~~ the discharge occurred.
(c)1. The department may perform financial and technical audits in order to verify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayment based on the findings of the audits. The department must begin an audit within 5 years after the date of

935264

payment for costs incurred at a facility, except in cases in which the department alleges specific facts indicating fraud.

2. Upon determination by the department that any portion of costs that have been paid from the fund is disallowed, the department shall provide written notice to the recipient of the payment specifying the allegations of fact that justify the department's proposed action and ordering repayment of disallowed costs within 60 days after receipt of such notice.

3. If the recipient does not make payment to the department within 60 days after receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover the overpayment, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.

4. In addition to the amount of the overpayment, the recipient is liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of the overpayment from the date of the overpayment by the department until the recipient satisfies the department's request for repayment pursuant to this paragraph. The accrual of interest shall be tolled during the pendency of any litigation.

(d) Claims that accrued under former reimbursement or preapproval programs are expressly preserved.

(e) ~~(c)~~ If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party cannot ~~is~~ financially ~~unable to~~ undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best be served by conducting cleanup, the department may enter

935264

into an agreement with the responsible party or property owner whereby the department agrees to conduct site rehabilitation and the responsible party or property owner agrees to pay for the portion of the cleanup costs that are within such party's or owner's financial capabilities as determined by the department, taking into consideration the party's or owner's net worth and the economic impact on the party or owner.

664100

576-03677-14

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to rehabilitation of petroleum contamination sites; amending s. 376.3071, F.S.; revising legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; limiting eligibility for funding under the Early Detection Incentive Program; deleting obsolete provisions relating to reimbursement for certain cleanup expenses; repealing s. 376.30711, F.S., relating to preapproved site rehabilitation; amending s. 376.30713, F.S.; providing that applicants can use a demonstration of a cost savings in meeting the required cost share commitment if bundling multiple sites; amending ss. 376.301, 376.302, 376.305, 376.30714, 376.3072, 376.3073, and 376.3075, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

664100

576-03677-14

(1) FINDINGS.—In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares:

(a) That significant quantities of petroleum and petroleum products are being stored in storage systems in this state, which is a hazardous undertaking.

(b) That spills, leaks, and other discharges from such storage systems have occurred, are occurring, and will continue to occur and that such discharges pose a significant threat to the quality of the groundwaters and inland surface waters of this state.

(c) That, where contamination of the ground or surface water has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made and that such delays result in the continuation and intensification of the threat to the public health, safety, and welfare; in greater damage to water resources and the environment; and in significantly higher costs to contain and remove the contamination.

(d) That adequate financial resources must be readily available to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and cleanup of contamination sites without delay.

(e) That it is necessary to fulfill the intent and purposes of ss. 376.30-376.317~~,~~ and ~~further it is hereby~~ determined to be in the best interest of, and necessary for the protection of the public health, safety, and ~~general~~ welfare of the residents of this state, and therefore a paramount public purpose, to provide for the creation of a nonprofit public benefit corporation as an

instrumentality of the state to assist in financing the functions provided in ss. 376.30-376.317 and to authorize the department to enter into one or more service contracts with such corporation for the purpose ~~provision~~ of financing services related to such functions and to make payments thereunder from the amount on deposit in the Inland Protection Trust Fund, subject to annual appropriation by the Legislature.

(f) That to achieve the purposes established in paragraph (e) and in order to facilitate the expeditious handling and rehabilitation of contamination sites and remedial measures with respect to contamination sites ~~provided hereby~~ without delay, it is in the best interests of the residents of this state to authorize such corporation to issue evidences of indebtedness payable from amounts paid by the department under any such service contract entered into between the department and such corporation.

(g) That the Petroleum Restoration Program must be implemented in a manner that reduces costs and improves the efficiency of rehabilitation activities to reduce the significant backlog of contaminated sites eligible for state-funded rehabilitation and the corresponding threat to water resources, the environment, and the public health, safety, and welfare.

(2) INTENT AND PURPOSE.—

(a) It is the intent of the Legislature to establish the Inland Protection Trust Fund to serve as a repository for funds which will enable the department to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public

health, safety, and welfare and to minimize environmental damage.

(b) It is the intent of the Legislature that the department implement rules and procedures to improve the efficiency of the Petroleum Restoration Program. The department is directed to implement rules and policies to eliminate and reduce duplication of site rehabilitation efforts, paperwork, and documentation, and micromanagement of site rehabilitation tasks.

(c) It is the intent of the Legislature that rehabilitation of contamination sites be conducted with emphasis on first addressing the sites that pose the greatest threat to water resources, the environment, and the public health, safety, and welfare, within the availability of funds in the Inland Protection Trust Fund, recognizing that source removal, wherever it is technologically feasible and cost-effective, significantly reduces contamination or eliminates the spread of contamination and protects water resources, the environment, and the public health, safety, and welfare.

(d) ~~(c)~~ The department is directed to adopt and implement uniform and standardized forms for ~~the requests for preapproval~~ site rehabilitation work and for the submittal of reports to ensure that information is submitted to the department in a concise, standardized uniform format seeking only information that is necessary.

(e) ~~(d)~~ The department is directed to implement computerized and electronic filing capabilities of ~~preapproval requests and~~ submittal of reports in order to expedite submittal of the information and elimination of delay in paperwork. ~~The computerized, electronic filing system shall be implemented no~~

~~later than January 1, 1997.~~

~~(c) The department is directed to adopt uniform scopes of work with templated labor and equipment costs to provide definitive guidance as to the type of work and authorized expenditures that will be allowed for preapproved site rehabilitation tasks.~~

(f) The department is directed to establish guidelines for consideration and acceptance of new and innovative technologies for site rehabilitation work.

(3) CREATION.—There is ~~hereby~~ created the Inland Protection Trust Fund, hereinafter referred to as the "fund," to be administered by the department. This fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this section and s. 376.3073. To this fund shall be credited all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and s. 376.3073 and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against the fund shall be made pursuant to ~~in accordance with the provisions of~~ this section.

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to water resources, the environment, or the public health, safety, or welfare, the department shall obligate moneys available in the fund to provide for:

(a) Prompt investigation and assessment of contamination sites.

(b) Expeditious restoration or replacement of potable water

supplies as provided in s. 376.30(3)(c)1.

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland surface waters, using the most cost-effective alternative that is technologically feasible and reliable, ~~and~~ that provides adequate protection of water resources and the public health, safety, and welfare, and that minimizes environmental damage, pursuant to ~~in accordance with~~ the site selection and cleanup criteria established by the department under subsection (5), except that this paragraph does not ~~nothing herein shall be construed to~~ authorize the department to obligate funds for payment of costs that ~~which~~ may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

(e) Inspection and supervision of activities described in this subsection.

(f) Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection.

(g) Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.

(h) Establishment and implementation of the compliance

verification program as authorized in s. 376.303(1)(a), including contracting with local governments or state agencies to provide for the administration of such program through locally administered programs, to minimize the potential for further contamination sites.

(i) Funding of the provisions of ss. 376.305(6) and 376.3072.

(j) Activities related to removal and replacement of petroleum storage systems, exclusive of costs of any tank, piping, dispensing unit, or related hardware, if soil removal is approved ~~preapproved~~ as a component of site rehabilitation and requires removal of the tank where remediation is conducted under this section ~~s. 376.30711~~ or if such activities were justified in an approved remedial action plan ~~performed pursuant to subsection (12)~~.

~~(k) Activities related to reimbursement application preparation and activities related to reimbursement application examination by a certified public accountant pursuant to subsection (12).~~

(k) ~~(l)~~ Reasonable costs of restoring property as nearly as practicable to the conditions that ~~which~~ existed before ~~prior to~~ activities associated with contamination assessment or remedial action taken under s. 376.303(4).

(l) ~~(m)~~ Repayment of loans to the fund.

(m) ~~(n)~~ Expenditure of sums from the fund to cover ineligible sites or costs as set forth in subsection (13), if the department in its discretion deems it necessary to do so. In such cases, the department may seek recovery and reimbursement of costs in the same manner and pursuant to ~~in accordance with~~

the same procedures ~~as are~~ established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(n) ~~(o)~~ Payment of amounts payable under any service contract entered into by the department pursuant to s. 376.3075, subject to annual appropriation by the Legislature.

(o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s. 376.30711~~ throughout a state fiscal year. The department shall establish a process to uniformly encumber appropriated funds throughout a state fiscal year and shall allow for emergencies and imminent threats to water resources, ~~human health and~~ the environment, and the public health, safety, and welfare, as provided in paragraph (5)(a). This paragraph does not apply to appropriations associated with the free product recovery initiative provided in ~~of~~ paragraph (5)(c) or the ~~preapproved~~ advanced cleanup program provided in ~~of~~ s. 376.30713.

(p) ~~(q)~~ Enforcement of this section and ss. 376.30-376.317 by the Fish and Wildlife Conservation Commission. The department shall disburse moneys to the commission for such purpose.

The Inland Protection Trust Fund may only be used to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) ~~(o)~~ under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before ~~prior to~~ making or providing for other disbursements from the fund. ~~Nothing in~~ This subsection does not

~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are ~~shall be presumed~~ not ~~to be~~ excluded from eligibility pursuant to this section.

(5) SITE SELECTION AND CLEANUP CRITERIA.—

(a) The department shall adopt rules to establish priorities based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

1. The degree to which the public ~~human~~ health, safety, or welfare may be affected by exposure to the contamination;

2. The size of the population or area affected by the contamination;

3. The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and

4. The effect of the contamination on water resources and the environment.

Moneys in the fund shall then be obligated for activities described in paragraphs (4)(a)-(e) at individual sites pursuant

to ~~in accordance with~~ such established criteria. However, ~~nothing in~~ this paragraph does not ~~shall be construed to~~ restrict the department from modifying the priority status of a rehabilitation site where conditions warrant, taking into consideration the actual distance between the contamination site and groundwater or surface water receptors or other factors that affect the risk of exposure to petroleum products' chemicals of concern. The department may use the effective date of a department final order granting eligibility pursuant to subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to establish a prioritization system within a particular priority scoring range.

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program are ~~may be deemed~~ completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of water resources, ~~human health and safety and~~ the environment, and the public health, safety, and welfare in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:

1. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.

2. The appropriate point of compliance with cleanup target levels for petroleum products' chemicals of concern. The point of compliance shall be at the source of the petroleum contamination. However, the department may ~~is authorized to~~ temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may also ~~is authorized~~, pursuant to criteria provided for in this paragraph, ~~to~~ temporarily extend the point of compliance beyond the property boundary with appropriate monitoring~~,~~ if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume and if water resources, ~~provided human health, public safety, and~~ the environment, and the public health, safety, and welfare are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must ~~shall~~ include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

3. The appropriate site-specific cleanup goal. The site-specific cleanup goal shall be that all petroleum contamination sites ultimately achieve the applicable cleanup target levels provided in this paragraph. However, the department may ~~is authorized to~~ allow concentrations of the petroleum products' chemicals of concern to temporarily exceed the applicable

cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if water resources ~~provided human health, public safety~~, ~~and~~ the environment, and the public health, welfare, and safety are adequately protected.

4. The appropriateness of using institutional or engineering controls. Site rehabilitation programs may include the use of institutional or engineering controls to eliminate the potential exposure to petroleum products' chemicals of concern to humans or the environment. Use of such controls must have prior department approval ~~be preapproved by the department,~~ and may ~~institutional controls shall~~ not be acquired with moneys ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional or engineering controls are implemented to control exposure, the removal of such controls must have prior department approval and must be accompanied immediately by the resumption of active cleanup~~,~~ or other approved controls~~,~~ unless cleanup target levels pursuant to this paragraph have been achieved.

5. The additive effects of the petroleum products' chemicals of concern. The synergistic effects of petroleum products' chemicals of concern must ~~shall~~ also be considered when the scientific data becomes available.

6. Individual site characteristics that must ~~which shall~~ include, but not be limited to, the current and projected use of the affected groundwater in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural

attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

7. Applicable state water quality standards.

a. Cleanup target levels for petroleum products' chemicals of concern found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall consider the following, as appropriate, in establishing the applicable minimum criteria: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products' chemicals of concern shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

8. Whether deviation from state water quality standards or from established criteria is appropriate. The department may issue a "No Further Action Order" based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost-effectively implemented within available technologies or engineering and institutional control strategies. Where a state water quality standard is applicable,

a deviation may not result in the application of cleanup target levels more stringent than <u>the</u> ~~said~~ standard. In determining whether it is appropriate to establish alternate cleanup target levels at a site, the department may consider the effectiveness of source removal that has been completed at the site and the practical likelihood of: the use of low yield or poor quality groundwater; the use of groundwater near marine surface water bodies; the current and projected use of the affected groundwater in the vicinity of the site; or the use of groundwater in the immediate vicinity of the storage tank area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source<u>,</u> <u>if water resources</u>~~; provided human health, public safety~~, ~~and~~ the environment<u>, and the public health, safety, and welfare</u> are adequately protected.

9. Appropriate cleanup target levels for soils.

a. In establishing soil cleanup target levels for human exposure to petroleum products' chemicals of concern found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration.

b. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil

target levels established by the department. The leachability goals do not apply ~~shall not be applicable~~ if the department determines, based upon individual site characteristics, that petroleum products' chemicals of concern will not leach into the groundwater at levels which pose a threat to water resources, ~~human health and safety or~~ the environment, or the public health, safety, or welfare.

~~However, nothing in~~ This paragraph does not ~~shall be construed to~~ restrict the department from temporarily postponing completion of any site rehabilitation program for which funds are being expended whenever such postponement is ~~deemed~~ necessary in order to make funds available for rehabilitation of a contamination site with a higher priority status.

(c) The department shall require source removal, if warranted and cost-effective, at each site eligible for restoration funding from the ~~Inland Protection Trust~~ fund.

1. Funding for free product recovery may be provided in advance of the order established by the priority ranking system under paragraph (a) for site cleanup activities. However, a separate prioritization for free product recovery shall be established consistent with paragraph (a). No more than $5 million shall be encumbered from the ~~Inland Protection Trust~~ fund in any fiscal year for free product recovery conducted in advance of the priority order under paragraph (a) established for site cleanup activities.

2. Once free product removal and other source removal identified in this paragraph are completed at a site, and notwithstanding the order established by the priority ranking

system under paragraph (a) for site cleanup activities, the department may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. Further, the department shall determine whether ~~if~~ the reevaluated site qualifies for natural attenuation monitoring, long-term natural attenuation monitoring, or no further action. If additional site rehabilitation is necessary to reach no further action status, the site rehabilitation shall be conducted in the order established by the priority ranking system under paragraph (a). The department shall use ~~utilize~~ natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring where the plume is shrinking or stable and confined to the source property boundaries and the petroleum products' chemicals of concern meet the natural attenuation default concentrations, as defined by department rule. If the plume migrates beyond the source property boundaries, natural attenuation monitoring may be conducted pursuant to ~~in accordance with~~ department rule, or if the site no longer qualifies for natural attenuation monitoring, active remediation may be resumed. For long-term natural attenuation monitoring, if the petroleum products' chemicals of concern increase or are not significantly reduced after 42 months of monitoring, or if the plume migrates beyond the property boundaries, active remediation shall be resumed as necessary. For sites undergoing active remediation, the department shall evaluate ~~template~~ the cost of natural attenuation monitoring ~~pursuant to s. 376.30711~~ to ensure that site mobilizations are performed in a cost-effective manner. Sites that are not eligible for state

restoration funding may transition to long-term natural attenuation monitoring using the criteria in this subparagraph. ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site from pursuing a "No Further Action" order with conditions.

3. The department shall evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and would adequately protect water resources, ~~public health and~~ the environment, and the public health, safety, and welfare. The department shall also evaluate site-specific characteristics that would allow for higher natural attenuation or long-term natural attenuation concentration levels.

4. A local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor. All building permits and any construction, repairs, or renovations performed in conjunction with such permits must comply with the applicable provisions of chapters 489 and 553.

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

(a) Site rehabilitation work on sites that are eligible for state-funded cleanup from the fund pursuant to this section and ss. 376.305(6), 376.3072, and 376.3073 may be funded only pursuant to this section. A facility operator shall abate the source of discharge for a new release that occurred after March 29, 1995. If free product is present, the operator shall notify

the department, and the department may direct the removal of the free product. The department shall grant approval to continue site rehabilitation pursuant to this section.

(b) When contracting for site rehabilitation activities performed under the Petroleum Restoration Program, the department shall comply with competitive procurement requirements provided in chapter 287 or rules adopted under this section or s. 287.0595.

(c) Each contractor performing site assessment and remediation activities for state-funded sites under this section shall certify to the department that the contractor meets all certification and license requirements imposed by law. Each contractor shall certify to the department that the contractor meets the following minimum qualifications:

1. Complies with applicable Occupational Safety and Health Administration regulations.

2. Maintains workers' compensation insurance for employees as required by the Florida Workers' Compensation Law.

3. Maintains comprehensive general liability and comprehensive automobile liability insurance with minimum limits of at least $1 million per occurrence and $1 million annual aggregate to pay claims for damage for personal injury, including accidental death, as well as claims for property damage that may arise from performance of work under the program, which insurance designates the state as an additional insured party.

4. Maintains professional liability insurance of at least $1 million per occurrence and $1 million annual aggregate.

5. Has the capacity to perform or directly supervise the

majority of the rehabilitation work at a site pursuant to s. 489.113(9).

(d) The department rules implementing this section must specify that only qualified vendors may submit responses on a competitive solicitation. The department rules must also include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation and requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

(e) A contractor that performs services pursuant to this subsection may file invoices for payment with the department for the services described in the approved contract. The invoices for payment must be submitted to the department on forms provided by the department, together with evidence documenting that activities were conducted or completed pursuant to the approved contract. If there are sufficient unencumbered funds available in the fund which have been appropriated for expenditure by the Legislature and if all of the terms of the approved contract have been met, invoices for payment must be paid pursuant to s. 215.422. After a contractor has submitted its invoices to the department, and before payment is made, the contractor may assign its right to payment to another person without recourse of the assignee or assignor to the state. In such cases, the assignee must be paid pursuant to s. 215.422. Prior notice of the assignment and assignment information must be made to the department and must be signed and notarized by the assigning party.

(f) The contractor shall submit an invoice to the department within 30 days after the date of the department's

written acceptance of each interim deliverable or written approval of the final deliverable specified in the approved contract.

(g) The department shall make payments based on the terms of an approved contract for site rehabilitation work. The department may, based on its experience and the past performance and concerns regarding a contractor, retain up to 25 percent of the contracted amount or use performance bonds to ensure performance. The amount of retainage and the amount of performance bonds, as well as the terms and conditions for such, must be included in the approved contract.

(h) The contractor or the person to which the contractor has assigned its right to payment pursuant to paragraph (e) shall make prompt payment to subcontractors and suppliers for their costs associated with an approved contract pursuant to s. 287.0585(1).

(i) The exemption under s. 287.0585(2) does not apply to payments associated with an approved contract.

(j) The department may withhold payment if the validity or accuracy of a contractor's invoices or supporting documents is in question.

(k) This section does not authorize payment to a person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described by department rules.

(l) The department shall terminate or suspend a contractor's eligibility for participation in the program if the

contractor fails to perform its contractual duties for site rehabilitation program tasks.

(m) A site owner or operator, or his or her designee, may not receive any remuneration, in cash or in kind, directly or indirectly, from a rehabilitation contractor performing site cleanup activities pursuant to this section.

(7) ~~(6)~~ FUNDING.—The Inland Protection Trust Fund shall be funded as follows:

(a) All excise taxes levied, collected, and credited to the fund in accordance with ~~the provisions of~~ ss. 206.9935(3) and 206.9945(1)(c).

(b) All penalties, judgments, recoveries, reimbursements, and other fees and charges credited to the fund pursuant to ~~in accordance with the provisions of~~ subsection (3).

(8) ~~(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.—

(a) Except as provided in subsection (10) ~~(9)~~ and as otherwise provided by law, the department shall recover to the use of the fund from a person or persons at any time causing or having caused the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund, pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. Sums recovered as a result of damage due to a discharge related to the storage of petroleum or petroleum products or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such

disaster. A ~~Any~~ request for reimbursement to the fund for such costs, if not paid within 30 days after ~~of~~ demand, shall be turned over to the department for collection.

(b) Except as provided in subsection (10) ~~(9)~~ and as otherwise provided by law, it is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup and abatement pursuant to ~~in accordance with the provisions of~~ this section or s. 376.3073, unless the department finds the amount involved too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall begin ~~commence~~ on the last date on which ~~any~~ such sums were expended~~,~~ and not the date on which ~~that~~ the discharge occurred. The department's claim for recovery of payments or overpayments from the fund must be based on the law in existence at the time of the payment or overpayment.

(c) If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party cannot ~~is~~ financially ~~unable to~~ undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best be served by conducting cleanup, the department may enter into an agreement with the responsible party or property owner whereby the department agrees to conduct site rehabilitation and the responsible party or property owner agrees to pay for the portion of the cleanup costs that are within such party's or owner's financial capabilities as determined by the department,

taking into consideration the party's or owner's net worth and the economic impact on the party or owner.

(9) ~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section and s. 376.3073 shall be deposited with the Chief Financial Officer to the credit of the fund and may be invested in such manner as ~~is~~ provided ~~for~~ by law ~~statute~~. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between the ~~this~~ trust fund and the Water Quality Assurance Trust Fund~~,~~ in the discretion of the department.

(10) ~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage early detection, reporting, and cleanup of contamination from leaking petroleum storage systems, the department shall, within the guidelines established in this subsection, conduct an incentive program that provides ~~which shall provide~~ for a 30-month grace period ending on December 31, 1988. ~~Pursuant thereto:~~

(a) The department shall establish reasonable requirements for the written reporting of petroleum contamination incidents and shall distribute forms to registrants under s. 376.303(1)(b) and to other interested parties upon request to be used for such purpose. Until such forms are available for distribution, the department shall take reports of such incidents, however made, but shall notify any person making such a report that a complete written report of the incident will be required by the department at a later time, the form for which will be provided by the department.

(b) When reporting forms become available for distribution, all sites involving incidents of contamination from petroleum storage systems initially reported to the department at any time from midnight on June 30, 1986, to midnight on December 31, 1988, shall be qualified sites if~~, provided that such~~ a complete written report is filed with respect thereto within a reasonable time. Subject to the delays which may occur as a result of the prioritization of sites under paragraph (5)(a) for any qualified site, costs for activities described in paragraphs (4)(a)-(e) shall be absorbed at the expense of the fund, without recourse to reimbursement or recovery, with the following exceptions:

1. ~~The provisions of~~ This subsection does ~~shall~~ not apply to a ~~any~~ site where the department has been denied site access to implement ~~the provisions of~~ this section.

2. ~~The provisions of~~ This subsection does ~~shall~~ not ~~be construed to~~ authorize or require reimbursement from the fund for costs expended before ~~prior to~~ the beginning of the grace period~~, except as provided in subsection (12)~~.

3.a. Upon discovery by the department that the owner or operator of a petroleum storage system has been grossly negligent in the maintenance of such petroleum storage system; has, with willful intent to conceal the existence of a serious discharge, falsified inventory or reconciliation records maintained with respect to the site at which such system is located; or has intentionally damaged such petroleum storage system, the site at which such system is located shall be ineligible for participation in the incentive program and the owner shall be liable for all costs due to discharges from petroleum storage systems at that site, any other provisions of

chapter 86-159, Laws of Florida, to the contrary notwithstanding. For the purposes of this paragraph, willful failure to maintain inventory and reconciliation records, willful failure to make monthly monitoring system checks where such systems are in place, and failure to meet monitoring and retrofitting requirements within the schedules established under chapter 62-761, Florida Administrative Code, or violation of similar rules adopted by the department under this chapter, constitutes ~~shall be construed to be~~ gross negligence in the maintenance of a petroleum storage system.

b. The department shall redetermine the eligibility of petroleum storage systems for which a timely Early Detection Incentive Program ~~EDI~~ application was filed, but which were deemed ineligible by the department, under the following conditions:

(I) The owner or operator, on or before March 31, 1991, shall submit, in writing, notification that the storage system is now in compliance with department rules adopted pursuant to s. 376.303, and which requests the department to reevaluate the storage system eligibility; and

(II) The department verifies the storage system compliance based on a compliance inspection.

~~Provided, however, that~~ A site may be determined eligible by the department for good cause shown, including, but not limited to, demonstration by the owner or operator that to achieve compliance would cause an increase in the potential for the spread of the contamination.

c. Redetermination of eligibility pursuant to sub-

subparagraph b. shall not be available to:

(I) Petroleum storage systems owned or operated by the Federal Government.

(II) Facilities that denied site access to the department.

(III) Facilities where a discharge was intentionally concealed.

(IV) Facilities that were denied eligibility due to:

(A) Absence of contamination, unless any such facility subsequently establishes that contamination did exist at that facility on or before December 31, 1988.

(B) Contamination from substances that were not petroleum or a petroleum product.

(C) Contamination that was not from a petroleum storage system.

d. ~~EDI~~ Applicants who demonstrate compliance for a site pursuant to sub-subparagraph b. are eligible for the Early Detection Incentive Program and site rehabilitation funding pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

If, in order to avoid prolonged delay, the department in its discretion deems it necessary to expend sums from the fund to cover ineligible sites or costs as set forth in this paragraph, the department may do so and seek recovery and reimbursement therefor in the same manner and pursuant to ~~in accordance with~~ the same procedures ~~as are~~ established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(c) A ~~No~~ report of a discharge made to the department by a ~~any~~ person pursuant to ~~in accordance with~~ this subsection~~,~~ or

~~any~~ rules adopted ~~promulgated~~ pursuant to this subsection may not ~~hereto, shall~~ be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(d) ~~The provisions of~~ This subsection does ~~shall~~ not apply to petroleum storage systems owned or operated by the Federal Government.

(11)~~(10)~~ VIOLATIONS; PENALTY.—A ~~It is unlawful for any~~ person may not ~~to~~:

(a) Falsify inventory or reconciliation records maintained in compliance with chapters 62-761 and 62-762, Florida Administrative Code, with willful intent to conceal the existence of a serious leak; or

(b) Intentionally damage a petroleum storage system.

A ~~Any~~ person convicted of such a violation commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12)~~(11)~~ SITE CLEANUP.—

(a) *Voluntary cleanup.*—This section does not prohibit a person from conducting site rehabilitation ~~either~~ through his or her own personnel or through responsible response action contractors or subcontractors when such person is not seeking site rehabilitation funding from the fund. Such voluntary cleanups must meet all applicable environmental standards.

(b) *Low-scored site initiative.*—Notwithstanding subsections (5) and (6) ~~s. 376.30711~~, a ~~any~~ site with a priority ranking score of 29 points or less may voluntarily participate in the low-scored site initiative regardless of~~,~~ whether ~~or not~~ the

site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the responsible party or property owner must affirmatively demonstrate that the following conditions are met:

a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.

b. ~~No~~ Excessively contaminated soil, as defined by department rule, does not exist ~~exists~~ onsite as a result of a release of petroleum products.

c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

e. The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated.

f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls.

2. Upon affirmative demonstration of the conditions under subparagraph 1., the department shall issue a determination of "No Further Action." Such determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to water resources, ~~human health or~~ the environment, or the public health, safety, or welfare. If no

contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of ~~preapproved~~ costs for the low-scored site initiative as follows:

a. A responsible party or property owner may submit an assessment plan designed to affirmatively demonstrate that the site meets the conditions under subparagraph 1. Notwithstanding the priority ranking score of the site, the department may approve ~~preapprove~~ the cost of the assessment ~~pursuant to s. 376.30711~~, including 6 months of groundwater monitoring, not to exceed $30,000 for each site. The department may not pay the costs associated with the establishment of institutional or engineering controls.

b. The assessment work shall be completed no later than 6 months after the department issues its approval.

c. No more than $10 million for the low-scored site initiative may be encumbered from the ~~Inland Protection Trust~~ fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each responsible party or property owner.

d. Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES. Except as provided in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site~~

~~rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.~~

~~(a) *Legislative findings.*—The Legislature finds and declares that rehabilitation of contamination sites should be conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment.~~

~~(b) *Conditions.*—~~

~~1. The owner, operator, or his or her designee of a site~~

~~which is eligible for restoration funding assistance in the EDI, PLRIP, or ATRP programs shall be reimbursed from the Inland Protection Trust Fund of allowable costs at reasonable rates incurred on or after January 1, 1985, for completed program tasks as identified in the department rule promulgated pursuant to paragraph (5)(b), or uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, subject to the conditions in this section. It is unlawful for a site owner or operator, or his or her designee, to receive any remuneration, in cash or in kind, directly or indirectly from the rehabilitation contractor.~~

~~2. Nothing in this subsection shall be construed to authorize reimbursement to any person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described in department rules.~~

~~(c) *Legislative intent*. Due to the value of the potable water of this state, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector, recognizing that source removal, wherever it is technologically feasible and cost-effective, shall be considered the primary initial response to protect public health, safety, and the environment.~~

~~(d) *Amount of reimbursement*. The department shall reimburse actual and reasonable costs for site rehabilitation. The department shall not reimburse interest on the amount of reimbursable costs for any reimbursement application. However,~~

~~nothing herein shall affect the department's authority to pay interest authorized under prior law.~~

~~(e) *Records*. The person responsible for conducting site rehabilitation, or his or her agent, shall keep and preserve suitable records as follows:~~

~~1. Hydrological and other site investigations and assessments; site rehabilitation plans; contracts and contract negotiations; and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving costs actually incurred related to site rehabilitation. Such records shall be made available upon request to agents and employees of the department during regular business hours and at other times upon written request of the department.~~

~~2. In addition, the department may from time to time request submission of such site-specific information as it may require, unless a waiver or variance from such department request is granted pursuant to paragraph (k).~~

~~3. All records of costs actually incurred for cleanup shall be certified by affidavit to the department as being true and correct.~~

~~(f) *Application for reimbursement*.—Any eligible person who performs a site rehabilitation program or performs site rehabilitation program tasks such as preparation of site rehabilitation plans or assessments; product recovery; cleanup of groundwater or inland surface water; soil treatment or removal; or any other tasks identified by department rule developed pursuant to subsection (5), may apply for reimbursement. Such applications for reimbursement must be~~

submitted to the department on forms provided by the department, together with evidence documenting that site rehabilitation program tasks were conducted or completed in accordance with department rule developed pursuant to subsection (5), and other such records or information as the department requires. The reimbursement application and supporting documentation shall be examined by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. A copy of the accountant's report shall be submitted with the reimbursement application. Applications for reimbursement shall not be approved for site rehabilitation program tasks which have not been completed, except for the task of remedial action and except for uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, and this subsection. Applications for remedial action may be submitted semiannually at the discretion of the person responsible for cleanup. After an applicant has filed an application with the department and before payment is made, the applicant may assign the right to payment to any other person, without recourse of the assignee or assignor to the state, without affecting the order in which payment is made. Information necessary to process the application shall be requested from and provided by the assigning applicant. Proper notice of the assignment and assignment information shall be made to the department which notice shall be signed and notarized by the assigning applicant.

(g) *Review.*

1. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund, or to the extent proceeds of debt obligations are available for the payment of

existing reimbursement obligations pursuant to s. 376.3075, the department shall have 60 days to determine if the applicant has provided sufficient information for processing the application and shall request submission of any additional information that the department may require within such 60-day period. If the applicant believes any request for additional information is not authorized, the applicant may request a hearing pursuant to ss. 120.569 and 120.57. Once the department requests additional information, the department may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information.

2. The department shall deny or approve the application for reimbursement within 90 days after receipt of the last item of timely requested additional material, or, if no additional material is requested, within 90 days of the close of the 60-day period described in subparagraph 1., unless the total review period is otherwise extended by written mutual agreement of the applicant and the department.

3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to ss. 120.569 and 120.57.

(h) *Reimbursement.*—Upon approval of an application for reimbursement, reimbursement for reasonable expenditures of a

site rehabilitation program or site rehabilitation program tasks documented therein shall be made in the order in which the department receives completed applications. Effective January 1, 1997, all unpaid reimbursement applications are subject to payment on the following terms: The department shall develop a schedule of the anticipated dates of reimbursement of applications submitted to the department pursuant to this subsection. The schedule shall specify the projected date of payment based on equal monthly payments and projected annual revenue of $100 million. Based on the schedule, the department shall notify all reimbursement applicants of the projected date of payment of their applications. The department shall direct the Inland Protection Financing Corporation to pay applicants the present value of their applications as soon as practicable after approval by the department, subject to the availability of funds within the Inland Protection Financing Corporation. The present value of an application shall be based on the date on which the department anticipates the Inland Protection Financing Corporation will settle the reimbursement application and the schedule's projected date of payment and shall use 3.5 percent as the annual discount rate. The determination of the amount of the claim and the projected date of payment shall be subject to s. 120.57.

(i) *Liberal construction.*—With respect to site rehabilitation initiated prior to July 1, 1986, the provisions of this subsection shall be given such liberal construction by the department as will accomplish the purposes set forth in this subsection. With regard to the keeping of particular records or the giving of certain notice, the department may accept as

compliance action by a person which meets the intent of the requirements set forth in this subsection.

(j) *Reimbursement review contracts.* The department may contract with entities capable of processing or assisting in the review of reimbursement applications. Any purchase of such services shall not be subject to chapter 287.

(k) *Audits.*—

1. The department is authorized to perform financial and technical audits in order to certify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayments based on the findings of these audits. The department must commence any audit within 5 years after the date of reimbursement, except in cases where the department alleges specific facts indicating fraud.

2. Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of disallowed costs within 60 days of notification of the applicant.

3. In the event the applicant does not make payment to the department within 60 days of receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover reimbursement overpayments made to the person responsible for conducting site rehabilitation, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.

4. In addition to the amount of any overpayment, the

applicant shall be liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of overpayment, from the date of overpayment by the department until the applicant satisfies the department's request for repayment pursuant to this paragraph. The calculation of interest shall be tolled during the pendency of any litigation.

5. Financial and technical audits frequently are conducted under this section many years after the site rehabilitation activities were performed and the costs examined in the course of the audit were incurred by the person responsible for site rehabilitation. During the intervening span of years, the department's rule requirements and its related guidance and other nonrule policy directives may have changed significantly. The Legislature finds that it may be appropriate for the department to provide relief to persons subject to such requirements in financial and technical audits conducted pursuant to this section.

a. The department is authorized to grant variances and waivers from the documentation requirements of subparagraph (c)2. and from the requirements of rules applicable in technical and financial audits conducted under this section. Variances and waivers shall be granted when the person responsible for site rehabilitation demonstrates to the department that application of a financial or technical auditing requirement would create a substantial hardship or would violate principles of fairness. For purposes of this subsection, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For

purposes of this subsection, "principles of fairness" are violated when the application of a requirement affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are affected by the requirement or when the requirement is being applied retroactively without due notice to the affected parties.

b. A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify:

(I) The requirement from which a variance or waiver is requested.

(II) The type of action requested.

(III) The specific facts which would justify a waiver or variance.

(IV) The reason or reasons why the requested variance or waiver would serve the purposes of this section.

c. Within 90 days after receipt of a written request for variance or waiver under this subsection, the department shall grant or deny the request. If the request is not granted or denied within 90 days of receipt, the request shall be deemed approved. An order granting or denying the request shall be in writing and shall contain a statement of the relevant facts and reasons supporting the department's action. The department's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Once adopted, model rules promulgated by the Administration Commission under s. 120.542 shall govern the processing of requests under this provision.

~~6. The Chief Financial Officer may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and completeness of audits performed by the department pursuant to this paragraph. The Chief Financial Officer may contract with entities or persons to perform audits pursuant to this subparagraph. The Chief Financial Officer shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Chief Financial Officer alleges specific facts indicating fraud.~~

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement. Eligibility is ~~shall be~~ subject to an annual appropriation from the ~~Inland Protection Trust~~ fund. Additionally, funding for eligible sites is ~~shall be~~ contingent upon annual appropriation in subsequent years. Such continued state funding is ~~shall~~ not ~~be deemed~~ an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, ~~shall be~~ notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the

contrary.

(a)1. The department shall accept any discharge reporting form received before ~~prior to~~ January 1, 1995, as an application for this program, and the facility owner or operator need not reapply.

2. Owners or operators of property contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred before ~~prior to~~ January 1, 1995, with the department. Incidents of petroleum contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred before ~~prior to~~ January 1, 1995. An operator's filed report shall be ~~deemed~~ an application of the owner for all purposes. Sites reported to the department after December 31, 1998, are ~~shall~~ not ~~be~~ eligible for the ~~this~~ program.

(b) Subject to annual appropriation from the ~~Inland Protection Trust~~ fund, sites meeting the criteria of this subsection are eligible for up to $400,000 of site rehabilitation funding assistance in priority order pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before ~~prior to~~ June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before ~~prior to~~

June 1, 2008, regardless of whether ~~or not~~ they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section ~~s. 376.30711~~ until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay ~~At no time shall~~ expenses incurred beyond ~~outside~~ the scope of an approved contract ~~preapproved site rehabilitation program under s. 376.30711 be reimbursable~~.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement with the department ~~and a contractor qualified under s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~ comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner's and operator's net worth in making the

determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot ~~are unable to~~ complete negotiation of the cost-sharing agreement within 120 days after beginning ~~commencing~~ negotiations, the department shall terminate negotiations, and the site shall be ~~deemed~~ ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(d) A ~~No~~ report of a discharge made to the department by a ~~any~~ person pursuant to ~~in accordance with~~ this subsection~~,~~ or any rules adopted pursuant to this subsection may not ~~hereto, shall~~ be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(e) ~~Nothing in~~ This subsection does not ~~shall be construed to~~ preclude the department from pursuing penalties under ~~in accordance with~~ s. 403.141 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

(f) Upon the filing of a discharge reporting form under paragraph (a), ~~neither~~ the department or ~~nor any~~ local government may not ~~shall~~ pursue any judicial or enforcement action to compel rehabilitation of the discharge. This paragraph does ~~shall~~ not prevent any such action with respect to discharges determined ineligible under this subsection or to sites for which rehabilitation funding assistance is available pursuant to subsections ~~in accordance with subsection~~ (5) and (6) ~~s. 376.30711~~.

(g) The following are ~~shall be~~ excluded from participation

in the program:

1. Sites at which the department has been denied reasonable site access to implement ~~the provisions of~~ this section.

2. Sites that were active facilities when owned or operated by the Federal Government.

3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

4. Sites for which ~~The~~ contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program, or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

(14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before ~~Prior to~~ the department enters ~~entering~~ into a service contract with the Inland Protection Financing Corporation which includes payments by the department to support any existing or planned note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness of the corporation pursuant to s. 376.3075, the Legislature, by law, must specifically authorize the department to enter into such a contract. The corporation may issue bonds in an amount not to exceed $104 million, with a term up to 15 years, and annual payments not in excess of $10.4 million. The department may enter into a service contract in conjunction with the issuance of such bonds which provides for

annual payments for debt service payments or other amounts payable with respect to bonds, plus any administrative expenses of the corporation to finance the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317.

Section 2. Section 376.30711, Florida Statutes, is repealed.

Section 3. Section 376.30713, Florida Statutes, is amended to read:

376.30713 ~~Preapproved~~ Advanced cleanup.—

(1) In addition to the legislative findings provided in s. 376.3071 ~~s. 376.30711~~, the Legislature finds and declares:

(a) That the inability to conduct site rehabilitation in advance of a site's priority ranking pursuant to s. 376.3071(5)(a) may substantially impede or prohibit property transactions or the proper completion of public works projects.

(b) While the first priority of the state is to provide for protection of ~~the~~ water resources ~~of the state~~, ~~human health, and~~ the environment, and the public health, safety, and welfare, the viability of commerce is of equal importance to the state.

(c) It is in the public interest and of substantial economic benefit to the state to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of the site's priority ranking, to facilitate property transactions or public works projects.

(d) It is appropriate for a person who is ~~persons~~ responsible for site rehabilitation to share the costs associated with managing and conducting ~~preapproved~~ advanced cleanup, to facilitate the opportunity for ~~preapproved~~ advanced cleanup, and to mitigate the additional costs that will be

incurred by the state in conducting site rehabilitation in advance of the site's priority ranking. Such cost sharing will result in more contaminated sites being cleaned up and greater environmental benefits to the state. ~~The provisions of~~ This section is ~~shall only be~~ available only for sites eligible for restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This section is available for discharges eligible for restoration funding under the petroleum cleanup participation program for the state's cost share of site rehabilitation. Applications must ~~shall~~ include a cost-sharing commitment for this section in addition to the 25-percent-copayment requirement of the petroleum cleanup participation program. This section is not available for any discharge under a petroleum cleanup participation program where the 25-percent-copayment requirement of the petroleum cleanup participation program has been reduced or eliminated pursuant to s. 376.3071(13)(c).

(2) The department may ~~is authorized to~~ approve an application for ~~preapproved~~ advanced cleanup at eligible sites, before ~~prior to~~ funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to ~~in accordance with the provisions of~~ this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies ~~Persons who qualify~~ as an applicant under ~~the provisions of~~ this section ~~shall only include the facility owner or operator or the person otherwise responsible for site rehabilitation~~.

(a) ~~Preapproved~~ Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between

May 1 and June 30 shall be for the fiscal year beginning July 1. An application must ~~shall~~ consist of:

1. A commitment to pay ~~no less than~~ 25 percent or more of the total cleanup cost deemed recoverable under ~~the provisions of~~ this section along with proof of the ability to pay the cost share. An applicant proposing that the department enter into a performance-based contract for the cleanup of at least 20 sites may use the following as its cost share commitment: a commitment to pay; a demonstrated cost savings to the department; or any combination of the two. For applications relying on a demonstration of a cost savings, the applicant, in conjunction with its proposed agency term contractor, shall establish and provide in its application the percentage of cost savings, in the aggregate, that is being provided to the department for cleanup of the sites under its application compared to the cost of cleanup of those same sites using the current rates provided to the department by that proposed agency term contractor. The department shall determine if the cost savings demonstration is acceptable, and such determination is not subject to chapter 120.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

The limited contamination assessment report must ~~shall~~ be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. ~~Any~~ Costs

incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection~~,~~ or any other provision of this section is~~, shall~~ not ~~constitute~~ an entitlement to ~~preapproved~~ advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an ~~a preapproved~~ advanced cleanup contract with the department. The ~~This~~ certification must ~~shall~~ be submitted with the application.

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who ~~that~~ proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that ~~which~~ exceed the funds available to commit to all such proposals during the ~~preapproved~~ advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that ~~which~~ exceed funding availability must ~~shall~~ be so notified by the department and ~~shall be~~ offered the opportunity to raise their individual cost-share commitments, in a period ~~of time~~ specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to ~~in accordance with~~ this paragraph.

(3)(a) Based on the ranking established under paragraph (2)(b) ~~and the funding limitations provided in subsection (4)~~, the department shall begin ~~commence~~ negotiation with such applicants. If the department and the applicant agree on the

course of action, the department may enter into a contract with the applicant. The department may ~~is authorized to~~ negotiate the terms and conditions of the contract.

(b) ~~Preapproved~~ Advanced cleanup must ~~shall~~ be conducted pursuant to s. 376.3071(5)(b) and (6) and rules adopted under ss. 287.0595 and 376.3071 ~~under the provisions of ss. 376.3071(5)(b) and 376.30711~~. If the terms of the ~~preapproved~~ advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.

(c) The department's decision not to enter into an ~~a preapproved~~ advanced cleanup contract with the applicant is ~~shall~~ not ~~be~~ subject to ~~the provisions of~~ chapter 120. If the department cannot ~~is not able to~~ complete negotiation of the course of action and the terms of the contract within 60 days after beginning ~~commencing~~ negotiations, the department shall terminate negotiations with that applicant.

(4) The department may ~~is authorized to~~ enter into contracts for a total of up to $15 million of ~~preapproved~~ advanced cleanup work in each fiscal year. However, a facility or an applicant that bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved ~~preapproved~~ for more than $5 million of cleanup activity in each fiscal year. For the purposes of this section, the term "facility" includes ~~shall include~~, but is not ~~be~~ limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

(5) All funds collected by the department pursuant to this

section shall be deposited into the Inland Protection Trust Fund to be used as provided in this section.

Section 4. Subsections (4) and (30) of section 376.301, Florida Statutes, are amended to read:

376.301 Definitions of terms used in ss. 376.30-376.317, 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and 376.75, unless the context clearly requires otherwise, the term:

~~(4) "Backlog" means reimbursement obligations incurred pursuant to s. 376.3071(12), prior to March 29, 1995, or authorized for reimbursement under the provisions of s. 376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims within the backlog are subject to adjustment, where appropriate.~~

~~(30) "Person responsible for conducting site rehabilitation" means the site owner, operator, or the person designated by the site owner or operator on the reimbursement application. Mortgage holders and trust holders may be eligible to participate in the reimbursement program pursuant to s. 376.3071(12).~~

Section 5. Subsection (5) of section 376.302, Florida Statutes, is amended to read:

376.302 Prohibited acts; penalties.—

(5) Any person who commits fraud in representing his or her ~~their~~ qualifications as a contractor ~~for reimbursement~~ or in submitting a payment invoice ~~reimbursement request~~ pursuant to s. 376.3071 ~~s. 376.3071(12)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (6) of section 376.305, Florida Statutes, is amended to read:

376.305 Removal of prohibited discharges.—

(6) The Legislature created the Abandoned Tank Restoration Program in response to the need to provide financial assistance for cleanup of sites that have abandoned petroleum storage systems. For purposes of this subsection, the term "abandoned petroleum storage system" means a ~~shall mean any~~ petroleum storage system that has not stored petroleum products for consumption, use, or sale since March 1, 1990. The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

1. An application must be submitted to the department by June 30, 1996, certifying that the system has not stored petroleum products for consumption, use, or sale at the facility since March 1, 1990.

2. The owner or operator of the petroleum storage system when it was in service must have ceased conducting business involving consumption, use, or sale of petroleum products at that facility on or before March 1, 1990.

3. The site is not otherwise eligible for the cleanup programs pursuant to s. 376.3071 or s. 376.3072.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to ~~in accordance with~~ department rules before ~~prior to~~ an eligibility determination. However, if the department determines that the owner of the facility cannot ~~is~~ financially ~~unable to~~ comply with the department's petroleum storage system closure requirements and all other eligibility requirements are

met, the petroleum storage system closure requirements shall be waived. The department shall take into consideration the owner's net worth and the economic impact on the owner in making the determination of the owner's financial ability. The June 30, 1996, application deadline shall be waived for owners who cannot ~~are~~ financially ~~unable to~~ comply.

(c) Sites accepted in the program are ~~will be~~ eligible for site rehabilitation funding as provided in s. 376.3071 ~~s. 376.3071(12) or s. 376.30711, as appropriate~~.

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;

2. Sites contaminated by pollutants that are not petroleum products;

3. Sites where the department has been denied site access; or

4. Sites which are owned by a ~~any~~ person who had knowledge of the polluting condition when title was acquired unless the ~~that~~ person acquired title to the site after issuance of a notice of site eligibility by the department.

(e) Participating sites are subject to a deductible as determined by rule, not to exceed $10,000.

~~The provisions of~~ This subsection does ~~do~~ not relieve a ~~any~~ person who has acquired title after ~~subsequent to~~ July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s.

376.308(1)(c).

Section 7. Paragraph (a) of subsection (1) and subsections (3), (4), and (9) of section 376.30714, Florida Statutes, are amended to read:

376.30714 Site rehabilitation agreements.—

(1) In addition to the legislative findings provided in s. 376.3071, the Legislature finds and declares:

(a) The provisions of s. 376.3071(5)(a) ~~ss. 376.3071(5)(a) and 376.30711~~ have delayed cleanup of low-priority sites determined to be eligible for state funding under that section and ss. 376.305~~, 376.3071,~~ and 376.3072.

(3) Free product attributable to a new discharge shall be removed to the extent practicable and pursuant to ~~in accordance with~~ department rules adopted pursuant to s. 376.3071(5) at the expense of the owner, operator, or other responsible party. Free product attributable to existing contamination shall be removed pursuant to ~~in accordance with~~ s. 376.3071(5) and (6)~~, or s. 376.30711(1)(b),~~ and department rules adopted pursuant thereto.

(4) Beginning January 1, 1999, the department may ~~is authorized to~~ negotiate and enter into site rehabilitation agreements with applicants at sites with eligible existing contamination at which a new discharge occurs. The site rehabilitation agreement must ~~shall~~ include, but is not ~~be~~ limited to, allocation of the funding responsibilities of the department and the applicant for cleanup of the qualified site, establishment of a mechanism to guarantee the applicant's commitment to pay its agreed amount of site rehabilitation as set forth in the agreement, and establishment of the priority in which cleanup of the qualified site will occur. Under ~~any~~ such a

negotiated site rehabilitation agreement, the applicant may not ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are attributable to the new discharge. However, the payment of ~~any~~ applicable deductibles, copayments, or other program eligibility requirements under ss. 376.305, 376.3071, and 376.3072 shall continue to apply to the existing contamination and must be accounted for in the negotiated site rehabilitation agreement. The department may ~~is further authorized~~, pursuant to this section, ~~to preapprove or~~ conduct additional assessment activities at the site.

(9) Site rehabilitation conducted at qualified sites shall be conducted pursuant to s. 376.3071(5)(b) and (6) ~~under the provisions of ss. 376.3071(5)(b) and 376.30711~~. If the terms of the agreement are not fulfilled by the applicant, the applicant forfeits the ~~any~~ right to continued funding for ~~any~~ site rehabilitation work under the agreement and is ~~shall be~~ subject to enforcement action by the department or local government to compel cleanup of the new discharge.

Section 8. Subsection (2) of section 376.3072, Florida Statutes, is amended to read:

376.3072 Florida Petroleum Liability and Restoration Insurance Program.—

(2)(a) An ~~Any~~ owner or operator of a petroleum storage system may become an insured in the restoration insurance program at a facility if ~~provided~~:

1. A site at which an incident has occurred is ~~shall be~~ eligible for restoration if the insured is a participant in the third-party liability insurance program or otherwise meets applicable financial responsibility requirements. After July 1,

1993, the insured must also provide the required excess insurance coverage or self-insurance for restoration to achieve the financial responsibility requirements of 40 C.F.R. s. 280.97, subpart H, not covered by paragraph (d).

2. A site that ~~which~~ had a discharge reported before ~~prior to~~ January 1, 1989, for which notice was given pursuant to s. 376.3071(10) ~~s. 376.3071(9) or (12)~~, and that ~~which~~ is ineligible for the third-party liability insurance program solely due to that discharge is ~~shall be~~ eligible for participation in the restoration program for an ~~any~~ incident occurring on or after January 1, 1989, pursuant to ~~in accordance with~~ subsection (3). Restoration funding for an eligible contaminated site will be provided without participation in the third-party liability insurance program until the site is restored as required by the department or until the department determines that the site does not require restoration.

3. Notwithstanding paragraph (b), a site where an application is filed with the department before ~~prior to~~ January 1, 1995, where the owner is a small business under s. 288.703(6), a state community college with less than 2,500 FTE, a religious institution as defined by s. 212.08(7)(m), a charitable institution as defined by s. 212.08(7)(p), or a county or municipality with a population of less than 50,000, is ~~shall be~~ eligible for up to $400,000 of eligible restoration costs, less a deductible of $10,000 for small businesses, eligible community colleges, and religious or charitable institutions, and $30,000 for eligible counties and municipalities, if ~~provided that~~:

a. Except as provided in sub-subparagraph e., the facility

was in compliance with department rules at the time of the discharge.

b. The owner or operator has, upon discovery of a discharge, promptly reported the discharge to the department, and drained and removed the system from service, if necessary.

c. The owner or operator has not intentionally caused or concealed a discharge or disabled leak detection equipment.

d. The owner or operator proceeds to complete initial remedial action as specified ~~defined~~ by department rules.

e. The owner or operator, if required and if it has not already done so, applies for third-party liability coverage for the facility within 30 days after ~~of~~ receipt of an eligibility order issued by the department pursuant to this subparagraph ~~provision~~.

However, the department may consider in-kind services from eligible counties and municipalities in lieu of the $30,000 deductible. The cost of conducting initial remedial action as defined by department rules is ~~shall be~~ an eligible restoration cost pursuant to this subparagraph ~~provision~~.

4.a. By January 1, 1997, facilities at sites with existing contamination must ~~shall be required to~~ have methods of release detection to be eligible for restoration insurance coverage for new discharges subject to department rules for secondary containment. Annual storage system testing, in conjunction with inventory control, shall be considered to be a method of release detection until the later of December 22, 1998, or 10 years after the date of installation or the last upgrade. Other methods of release detection for storage tanks which meet such

requirement are:

(I) Interstitial monitoring of tank and integral piping secondary containment systems;

(II) Automatic tank gauging systems; or

(III) A statistical inventory reconciliation system with a tank test every 3 years.

b. For pressurized integral piping systems, the owner or operator must use:

(I) An automatic in-line leak detector with flow restriction meeting the requirements of department rules used in conjunction with an annual tightness or pressure test; or

(II) An automatic in-line leak detector with electronic flow shut-off meeting the requirements of department rules.

c. For suction integral piping systems, the owner or operator must use:

(I) A single check valve installed directly below the suction pump if~~, provided~~ there are no other valves between the dispenser and the tank; or

(II) An annual tightness test or other approved test.

d. Owners of facilities with existing contamination which ~~that~~ install internal release detection systems pursuant to ~~in accordance with~~ sub-subparagraph a. shall permanently close their external groundwater and vapor monitoring wells pursuant to ~~in accordance with~~ department rules by December 31, 1998. Upon installation of the internal release detection system, such ~~these~~ wells must ~~shall~~ be secured and taken out of service until permanent closure.

e. Facilities with vapor levels of contamination meeting the requirements of or below the concentrations specified in the

performance standards for release detection methods specified in department rules may continue to use vapor monitoring wells for release detection.

f. The department may approve other methods of release detection for storage tanks and integral piping which have at least the same capability to detect a new release as the methods specified in this subparagraph.

(b)1. To be eligible to be certified as an insured facility, for discharges reported after January 1, 1989, the owner or operator must ~~shall~~ file an affidavit upon enrollment in the program. The affidavit must ~~shall~~ state that the owner or operator has read and is familiar with this chapter and the rules relating to petroleum storage systems and petroleum contamination site cleanup adopted pursuant to ss. 376.303 and 376.3071 and that the facility is in compliance with this chapter and applicable rules adopted pursuant to s. 376.303. Thereafter, the facility's annual inspection report shall serve as evidence of the facility's compliance with department rules. The facility's certificate as an insured facility may be revoked only if the insured fails to correct a violation identified in an inspection report before a discharge occurs. The facility's certification may be restored when the violation is corrected as verified by a reinspection.

2. Except as provided in paragraph (a), to be eligible to be certified as an insured facility, the applicant must demonstrate to the department that the applicant has financial responsibility for third-party claims and excess coverage, as required by this section and 40 C.F.R. s. 280.97(h), and that the applicant maintains such insurance during the applicant's

participation as an insured facility.

3. Should a reinspection of the facility be necessary to demonstrate compliance, the insured shall pay an inspection fee not to exceed $500 per facility to be deposited in the Inland Protection Trust Fund.

4. Upon report of a discharge, the department shall issue an order stating that the site is eligible for restoration coverage unless the insured has intentionally caused or concealed a discharge or disabled leak detection equipment, has misrepresented facts in the affidavit filed pursuant to subparagraph 1., or cannot demonstrate that he or she has obtained and maintained the financial responsibility for third-party claims and excess coverage as required in subparagraph 2.

This paragraph does not ~~Nothing contained herein shall~~ prevent the department from assessing civil penalties for noncompliance pursuant to this subsection ~~as provided herein~~.

(c) A lender that has loaned money to a participant in the Florida Petroleum Liability and Restoration Insurance Program and has held a mortgage lien, security interest, or ~~any~~ lien rights on the site primarily to protect the lender's right to convert or liquidate the collateral in satisfaction of the debt secured, or a financial institution that ~~which~~ serves as a trustee for an insured in the program for the purpose of site rehabilitation, is ~~shall be~~ eligible for a state-funded cleanup of the site~~,~~ if the lender forecloses the lien or accepts a deed in lieu of foreclosure on that property and acquires title, and as long as the following has occurred, as applicable:

1. The owner or operator provided the lender with proof

that the facility is eligible for the restoration insurance program at the time of the loan or before the discharge occurred.

2. The financial institution or lender ~~completes site rehabilitation and seeks reimbursement pursuant to s. 376.3071(12) or~~ conducts ~~preapproved~~ site rehabilitation pursuant to s. 376.3071 ~~s. 376.30711, as appropriate~~.

3. The financial institution or lender did not engage in management activities at the site before ~~prior to~~ foreclosure and does not operate the site or otherwise engage in management activities after foreclosure, except to comply with environmental statutes or rules or to prevent, abate, or remediate a discharge.

(d)1. With respect to eligible incidents reported to the department before ~~prior to~~ July 1, 1992, the restoration insurance program shall provide up to $1.2 million of restoration for each incident and shall have an annual aggregate limit of $2 million of restoration per facility.

2. For any site at which a discharge is reported on or after July 1, 1992, and for which restoration coverage is requested, the department shall pay for restoration in accordance with the following schedule:

a. For discharges reported to the department from July 1, 1992, to June 30, 1993, the department shall pay up to $1.2 million of eligible restoration costs, less a $1,000 deductible per incident.

b. For discharges reported to the department from July 1, 1993, to December 31, 1993, the department shall pay up to $1.2 million of eligible restoration costs, less a $5,000 deductible

per incident. However, if, before ~~prior to~~ the date the discharge is reported and by September 1, 1993, the owner or operator can demonstrate financial responsibility in effect in accordance with 40 C.F.R. s. 280.97, subpart H, for coverage under sub-subparagraph c., the deductible will be $500. The $500 deductible shall apply for a period of 1 year from the effective date of a policy or other form of financial responsibility obtained and in effect by September 1, 1993.

c. For discharges reported to the department from January 1, 1994, to December 31, 1996, the department shall pay up to $400,000 of eligible restoration costs, less a deductible of $10,000.

d. For discharges reported to the department from January 1, 1997, to December 31, 1998, the department shall pay up to $300,000 of eligible restoration costs, less a deductible of $10,000.

e. Beginning January 1, 1999, ~~no~~ restoration coverage may not ~~shall~~ be provided.

f. In addition, a supplemental deductible shall be added as follows:

(I) A supplemental deductible of $5,000 if the owner or operator fails to report a suspected release within 1 working day after discovery.

(II) A supplemental deductible of $10,000 if the owner or operator, within 3 days after discovery of an actual new discharge, fails to take steps to test or empty the storage system and complete such activity within 7 days.

(III) A supplemental deductible of $25,000 if the owner or operator, after testing or emptying the storage system, fails to

proceed within 24 hours thereafter to abate the known source of the discharge or to begin free product removal relating to an actual new discharge and fails to complete abatement within 72 hours, although free product recovery may be ongoing.

(e) The following are not eligible to participate in the Petroleum Liability and Restoration Insurance Program:

1. Sites owned or operated by the Federal Government during the time the facility was in operation.

2. Sites where the owner or operator has denied the department reasonable site access.

3. Any third-party claims relating to damages caused by discharges discovered before ~~prior to~~ January 1, 1989.

4. Any incidents discovered before ~~prior to~~ January 1, 1989~~, are not eligible to participate in the restoration insurance program~~. However, this exclusion does ~~shall~~ not ~~be construed to~~ prevent a new incident at the same location from participation in the restoration insurance program if the owner or operator is otherwise eligible. This exclusion does ~~shall~~ not affect eligibility for participation in the Early Detection Incentive ~~EDI~~ Program.

Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before ~~prior to~~ June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they have previously transitioned to nonstate-funded cleanup status,

may continue state-funded cleanup pursuant to s. 376.3071(6) ~~s. 376.30711~~ until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. ~~At no time shall expenses incurred outside the preapproved site rehabilitation program under s. 376.30711 be reimbursable.~~

Section 9. Subsections (1) and (4) of section 376.3073, Florida Statutes, are amended to read:

376.3073 Local programs and state agency programs for control of contamination.—

(1) The department shall, to the greatest extent possible and cost-effective, contract with local governments to provide for the administration of its departmental responsibilities under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6) ~~(l), (n), 376.30711~~, 376.3072, and 376.3077 through locally administered programs. The department may also contract with state agencies to carry out the restoration activities authorized pursuant to ss. 376.305, 376.3071, and 376.3072~~, 376.305, and 376.30711~~. However, ~~no~~ such a contract may not ~~shall~~ be entered into unless the local government or state agency is deemed capable of carrying out such responsibilities to the department's satisfaction.

(4) Under no circumstances shall the cleanup criteria employed in locally administered programs or state agency programs or pursuant to local ordinance be more stringent than the criteria established by the department pursuant to s. 376.3071(5) or (6) ~~s. 376.30711~~.

Section 10. Subsections (4) and (5) of section 376.3075, Florida Statutes, are amended to read:

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376.3075 Inland Protection Financing Corporation.—

(4) The corporation may enter into one or more service contracts with the department to provide services to the department in connection with financing the functions and activities provided in ss. 376.30-376.317. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(o)~~, subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the corporation's administrative costs and expenses after payments as set forth in subsection (5). Each service contract may have a term of up to 20 years. Amounts annually appropriated and applied to make payments under such service contracts may not include any funds derived from penalties or other payments received from any property owner or private party, including payments received under s. 376.3071(7)(b) ~~s. 376.3071(6)(b)~~. In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state, and ~~nor may~~ such obligations are not obligations ~~be construed in any manner as an obligation~~ of the State Board of Administration or entities for which it invests funds, other than the department as provided in this section, but are payable solely from amounts available in the Inland Protection Trust Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, the service contract must expressly include the following statement: "The State of Florida's performance and

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obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(5) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts payable to the corporation by the department under a service contract entered into pursuant to subsection (4) for the purpose of financing the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness may not have a financing term that exceeds 15 years. The corporation may select its financing team and issue its obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of the corporation does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state~~,~~ but is payable from and secured by payments made by the department under the service contract pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(o)~~.

Section 11. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1582
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Dean
SUBJECT:	Rehabilitation of Petroleum Contamination Sites
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Favorable**
2.	Howard	DeLoach	AGG	**Fav/CS**
3.	Howard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1582 revises the legislative intent for the Petroleum Restoration Program in the Department of Environmental Protection (DEP or department), requires competitive procurement for cleanup contracts, and amends contractor qualifications. The bill limits the eligibility funding for the Early Detection Incentive (EDI) Program, deletes obsolete provisions related to the reimbursement program, repeals sections of statute related to the Petroleum Preapproval Program, and allows the DEP to conduct financial and technical audits for the Petroleum Restoration Program.

The DEP anticipates that the costs to the state for site rehabilitation will decrease with the implementation of competitive solicitation procedures. In the preapproved advanced cleanup program, lower costs of at least 25 percent are required for applicants participating in a performance-based contract for the cleanup of at least 20 sites. The increase in workload related to contracts and procurement can be handled with existing staff.

The bill takes effect on July 1, 2014.

II. Present Situation:

Petroleum Restoration Program

The Division of Waste Management within the DEP regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.[1] Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.[2]

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for cleanup of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund (IPTF), which is funded by a tax on petroleum products imported or produced in Florida. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the option of conducting the cleanup themselves, and then receive reimbursement from the IPTF, or have the state conduct the cleanup in priority order.[3]

In 1988, the Legislature created the Petroleum Liability Insurance Program (PLIP) to provide third-party liability insurance to qualified program participants. The PLIP provided up to $1 million of liability insurance for each incident of petroleum contamination.[4] The program was revised in 1989 and renamed to the Petroleum Liability Insurance and Restoration Program (PLIRP). The PLIRP allows eligible petroleum facilities to purchase $1 million in pollution liability protection from a state contracted insurer and provided $1 million worth of site restoration coverage through reimbursement or state-funded cleanup.[5]

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline is now waived indefinitely for owners who are unable to pay for the closure of abandoned tanks.[6]

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup of sites to the reimbursement program,[7] which was funded by increasing the excise tax on petroleum and petroleum products.[8] The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the IPTF. By 1996, over 18,000 petroleum sites had been identified as

[1] *See* ch. 83-310, Laws of Fla.
[2] DEP, *Storage Tank Compliance*, http://www.dep.state.fl.us/waste/categories/tanks/ (last visited Mar. 6, 2014).
[3] Chapter 86-159, Laws of Fla.
[4] Chapter 88-331, Laws of Fla.
[5] Chapter 89-188, Laws of Fla.
[6] Chapter 90-98, Laws of Fla.
[7] The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.
[8] Chapter 92-30, Laws of Fla.

contaminated and the program had accumulated $551.5 million in outstanding reimbursement claims.[9]

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.[10]

The Petroleum Preapproval Program (program) was implemented by the Legislature in 1996. The program required state-funded clean up of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense.[11]

The Preapproved Advanced Cleanup (PAC) program was also created in 1996 to allow property owners or responsible parties the opportunity to pay a portion of the cleanup costs in order to bypass the priority ranking list. The PAC program requires applicants to provide at least 25 percent of the total cleanup costs and requires the property owner to prepare limited scope assessments at their expense.[12]

Section 376.30713(4), F.S., authorizes the DEP to enter into PAC contracts for up to $15 million each fiscal year and limits the amount a facility may receive to $5 million per year. A facility includes multiple site facilities such as airports, ports, or terminal facilities.[13] PAC applications are submitted to the DEP twice a year (between May 1 and June 30 and between November 1 and December 31). The applications are ranked based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant that proposes the highest percentage of its share of costs.[14] In 1999, the Legislature amended the Petroleum Preapproval Program to allow the DEP to fund certain source removal activities. The bill addressed new petroleum discharges that occurred at a site with existing contamination and were reported after December 31, 1998. The bill allowed a responsible party to enter into a Site Rehabilitation Agreement with the DEP and to share in the cost and coordination of the cleanup, provided that the responsible party submit an application and a Limited Contamination Assessment Report to the DEP.[15]

The Legislature substantially amended the Petroleum Preapproval Program in 2005 to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;

[9] Comm. on Environmental Preservation and Conservation, the Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).
[10] Chapter 95-2, Laws of Fla.
[11] Chapter 96-277, ss. 18-19, Laws of Fla.
[12] Section 376.30713, F.S.
[13] Section 376.30713(4), F.S.
[14] Section 376.30713(2), F.S
[15] Chapter 99-376, Laws of Fla.

- The DEP to establish a process to uniformly encumber funds appropriated for the underground storage tank program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Department of Transportation projects;
- Funding for limited interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to 10 sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding per facility and for activities that may be funded;
- Limited funding of $1 million per fiscal year for Department of Transportation projects, and $10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions as of June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extension of the life of the Inland Protection Financing Corporation from 2011 to 2025, and require the corporation to issue notes and bonds, and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.[16]

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S., after June 30, 2014.[17] Pursuant to s. 376.30711, F.S., the DEP is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects, but has not done so on a permanent basis.

Pursuant to s. 287.057, F.S., state agencies that competitively solicit contractual services exceeding $35,000 must:

- Make the competitive solicitation available to all vendors;
- Include the time and date for the receipt of bids, proposal, or replies, and of the public opening;
- Include the contractual terms and conditions applicable to the procurement and the criteria used to determine acceptability and merit of the bid;
- Use the invitation to bid process when the agency is able to define the scope of work and establish the specifications of the services needed;
- Use the request for proposal process when the purpose of the services needed can be defined and the agency can identify the deliverables; and
- Use the invitation to negotiate process when the agency must determine the best method for achieving the specific goal and more than one vendor is able to provide the services.

[16] Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.
[17] Chapter 2013-41, s. 29, Laws of Fla.

Contractual services that exceed the $35,000 threshold must be procured through competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

- The agency head determines there is an immediate danger to public health, safety, or welfare; and
- The agency purchases the services from a state procured contract that was contracted by another agency pursuant to s. 287.057(1), F.S.[18]

MyFloridaMarketPlace

The Department of Management Services established a statewide electronic registration and procurement system called MyFloridaMarketPlace. Pursuant to s. 287.057(23), F.S., a one percent transaction fee is charged to all vendors in order to utilize the system.[19]

Funding for the Petroleum Restoration Program

The Fiscal Year 2013-2014 General Appropriations Act (GAA) appropriated $125 million to the DEP for the rehabilitation of eligible petroleum contaminated sites. The GAA directed that up to $50 million be appropriated to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. The remaining $75 million was placed in reserve and was contingent upon submission of a plan for consideration by the Legislative Budget Commission (LBC) detailing how the DEP would improve the effectiveness and efficiency of the Petroleum Restoration Program. Also, no funds could be released after January 1, 2014, unless the DEP adopted rules to implement ss. 376.3071, 376.30711, and 376.30713, Florida Statutes. The DEP's plan was approved by the LBC on September 12, 2013, and rules were adopted on December 27, 2013. The remaining $75 million in appropriation was released in March 2014.[20]

The DEP is currently transitioning the Petroleum Restoration Program from the "preapproved contractor" approach to competitive procurement procedures pursuant to ss. 287.056, 287.057, and 287.059, F.S., and rules 62-771 and 62-772, F.A.C. As of January 31, 2014, there are approximately 17,300 sites or gasoline filling stations eligible for state funding and approximately 7,258 sites have been rehabilitated. Approximately 3,167 sites are currently undergoing some phase of site rehabilitation, and approximately 6,911 sites await rehabilitation. Site rehabilitation is funded based on available budget and the priority score. The score for each site ranges from five to 115, with five representing a very low potential threat to human health and the environment, and 115 representing a substantial potential threat.[21]

As of March 13, 2014, there are 60 approved cleanup contractors and 137 executed contracts. The DEP has:

- Obligated approximately $57.1 million of the Fiscal Year 2013-2014 appropriation of $125 million;

[18] See s. 287.057, F.S.
[19] See Rules 60A-1.030, 60A-1.031, and 60A-1.032, F.A.C.
[20] Chapter 2013-40, Laws of Fla.
[21] DEP, *Senate Bill 1582 Agency Analysis*, 3 (Mar. 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

- Directed assigned rehabilitation work to 149 sites with a total value of $5,041,217, which is included in the total obligated amount of $57.1 million; and
- Selected 13 sites to receive quotes from contractors for a total estimated value of $4,216,075, which is not included in the $57.1 million.[22]

Legislative Ratification of Agency Rules

The Legislature required the DEP to adopt rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S., by December 31, 2013, otherwise the remaining, unreleased funds appropriated for Fiscal Year 2013-2014 could not be released. On May 30, 2013, the DEP published a Notice of Rule Development in the Florida Administrative Register to create Rule 62-772, F.A.C., and amend Rule 62-771, F.A.C. The new rules provide the procedures for the procurement of contractual services for clean up of petroleum contaminated sites and amend the procedures for establishing the priority scoring system for petroleum contaminated sites. The rules were adopted on December 27, 2013.

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds include:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within five years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within five years after implementation of the rule.[23]

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rules 62-772.300 and 62-772.400, F.A.C., and determined the rules triggered a statutory threshold requiring ratification. The SERC for Rule 62-772.300, F.A.C., estimates the cost for contractors to maintain business licensure, safety compliance, workers compensation insurance, comprehensive automobile insurance, and general and professional liability insurance is approximately $15.4 million per year. The cost estimate provided in the SERC is based on 225 contractors. As of March 2014, the number of agency term contractors is 70, decreasing the cost associated with Rule 62-772.300, F.A.C., to approximately $4.8 million per year.[24]

The SERC for Rule 62-772.400, F.A.C., estimates the cost incurred by contractors to assemble and submit bids, responses, replies, and quotes to the DEP as part of the competitive

[22] Email from Pierce Schuessler, Legislative Affairs Director, DEP (Mar. 16, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).
[23] Section 120.541(2)(a)1.-3., F.S.
[24] DEP, *Statement of Estimated Regulatory Cost, Rule 62-772.300, F.A.C.*, 3 (on file with the Senate Committee on Environmental Preservation and Conservation).

procurement procedures and a one percent transaction fee for MyFloridaMarketPlace, to be approximately $41 million per year.[25]

The cost requirements outlined by the DEP in its new rules are already required of and incurred by contractors in order to conduct business pursuant to ss. 376.3071, 376.30711, and 376.30713, F.S.; however, the existing requirements are being restated in rule, thereby requiring ratification by the Legislature.

III. Effect of Proposed Changes:

The bill provides conforming language and makes technical changes to repeal the Petroleum Preapproval Program and requires the DEP to competitively procure contracts for the Petroleum Restoration Program.

Section 1 amends s. 287.0595, F.S., to allow the DEP to negotiate pollution response action contracts pursuant to s. 287.055, F.S., which is the Consultants Competitive Negotiation Act.

Section 2 amends s. 376.3071, F.S., to affirm that the Petroleum Restoration Program be implemented in a manner that reduces costs and improves efficiencies for rehabilitation activities. The bill specifies that the Legislature intends to prioritize the cleanup of sites based on the threat of contamination to water resources and the environment, public health, safety, and welfare, and within the funding limits of the Inland Protection Trust Fund. The bill recognizes that when source removal is feasible and cost effective, it significantly reduces and eliminates the spread of contamination.

The bill specifies contracting and contractor selection requirements. It directs that state-funded cleanup sites are funded pursuant to the provisions of the Petroleum Restoration Program in ss. 376.3071, 376.305(6), 376.3072, and 376.3073, F.S. The bill requires a facility owner to abate the source of discharge for a release that occurred after March 29, 1995, and to notify the DEP if free product is present.

The bill requires the DEP to comply with competitive procurement requirements pursuant to ch. 287, F.S., or adopted rules.

Contractors that perform site assessments and remediation are required to certify to the DEP that they:

- Comply with applicable Occupational Safety and Health Administration regulations;
- Maintain workers compensation insurance for employees as required by the Florida Workers' Compensation Law;
- Maintain comprehensive general liability and comprehensive automobile liability insurance including:
  - Having minimum limits of $1 million per occurrence; and

[25] DEP, *Statement of Estimated Regulatory Cost, Rule 62-772.400, F.A.C.*, 3 (on file with the Senate Committee on Environmental Preservation and Conservation).

  - Having $1 million per annual aggregate for personal injury, accidental death, and property damage;
- Maintain professional liability insurance of at least $1 million per occurrence and $1 million annual aggregate; and
- Have the capacity to perform or directly supervise the majority of the rehabilitation work pursuant to s. 489.113(9), F.S.

The bill requires that the rules implementing this section must:
- Specify that only qualified contractors may submit responses on competitive solicitation;
- Include procedures for the rejection of vendors that do not meet the minimum qualifications; and
- Include requirements for the vendor to maintain its qualifications.

The bill provides procedures for invoicing and payments. Specifically, the bill:
- Requires invoices to be submitted on forms provided by the DEP;
- Requires contractors to provide evidence documenting the contracted services were provided;
- Requires invoices to be paid pursuant to s. 215.422, F.S., if there are sufficient unencumbered funds available;
- Allows a contractor to assign its right to payment to another person after the contractor has submitted an invoice and before payment is made;
- Specifies the assignee must be paid pursuant to s. 215.422, F.S.;
- Requires contractors to submit an invoice to the DEP within 30 days of the DEP's written acceptance of the interim deliverables or approval of the final deliverables;
- Allows the DEP to retain up to 25 percent of the contracted amount or use a performance bond as long as the terms are included in the contract;
- Specifies that the contractor, or the assignee, must make prompt payment to subcontractors and suppliers pursuant to s. 287.0585, F.S.;
- Specifies that the exemption provided in s. 287.0585(2), F.S., does not apply to payments associated with an approved contract;
- Allows the DEP to withhold payment if the validity or accuracy of the contractor's invoices or supporting documents is in question; and
- Does not authorize payment for the cost of contaminated soil treatment or disposal if the soil treatment or disposal does not meet the rules for general permitting, state air emissions standards, monitoring, sampling, and reporting rules as described by the DEP.

The bill specifies the DEP must terminate or suspend a contractor's eligibility for participation in the program if the contractor fails to perform its contractual duties. It also prohibits a site owner or operator, or its designee, from receiving remuneration in cash or in kind, directly or indirectly from a contract performing site cleanup activities. The bill clarifies that any action by the DEP to seek recovery of payments or overpayments to a contractor must be based on the law that existed at the time of payment or overpayment.

The bill authorizes the DEP to perform financial and technical audits to verify site restoration costs and to ensure compliance with the Petroleum Restoration Program. It authorizes the DEP to receive any overpayment based on the results of the audit. The bill also requires the DEP to

begin an audit within five years after costs have been incurred, unless the DEP alleges facts that indicate fraud.

The bill requires the DEP to provide written notice to the recipient of a payment made from disallowed funds. If the recipient does not make payment to the DEP within 60 days after receipt of the written notice, the DEP must recover the payment in a court of competent jurisdiction, unless the DEP determines the amount is too small or the likelihood of recovery is too uncertain.

The bill specifies that in addition to the overpayment amount, the recipient is liable to the DEP for interest of one percent per month or the prime rate, whichever is less, of the amount of overpayment. The accrual of interest must be charged during the pendency of any litigation.

The bill specifies that claims accrued under the former reimbursement or preapproval program are expressly preserved.

The bill deletes references to the preapproval program and obsolete provisions related to the reimbursement program and makes conforming and technical changes.

Section 3 repeals s. 376.30711, F.S., which provided contracting and contractor selection procedures for the preapproval program.

Section 4 amends s. 376.301, F.S., deletes the obsolete definitions of "backlog" and "person responsible for conducting site rehabilitation," which were associated with the reimbursement program.

Sections 5 through 6 and 8 through 11 amend ss. 376.302, 376.305, 376.30714, 376.3072, 376.3073, 376.3075, F.S., respectively, to make conforming and technical changes to repeal the reimbursement program and the preapproval program.

Section 7 amends s. 376.30713, F.S., to allow an applicant to participate in the preapproved advanced cleanup program under a performance-based contract for the cleanup of at least 20 sites. The applicant must provide at least 25 percent of the costs of cleanup by paying, demonstrating cost savings to the DEP, or a combination of the two. The percentage of cost savings must be included in the application and compared to the cost of cleanup of the same sites using the current rates provided to the DEP by the agency term contractor. The DEP must determine if the cost savings demonstration is acceptable, which is not subject to ch. 120, F.S. The bill also makes conforming and technical changes to repeal the reimbursement program and the preapproval program.

Section 12 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1582, the transition from a "preapproved contractor" approach to a competitive procurement system will have a positive and negative fiscal impact on the private sector. There will be costs to contractors associated with the requirements of submitting quotes and materials that meet the requirements of MyFloridaMarketPlace, including the one percent transaction fee. The utilization of competitive solicitation procedures are expected to reduce prices and potential profits. However, contractors that maintain a positive performance record will be able to generate more work, which could offset the lower profit margins.[26]

Generally, lower costs to rehabilitate sites will lead to greater efficiencies and the ability to clean up sites more cost effectively than in previous years. Individually, these costs may be negligible; however, in the aggregate and over time, the new program could lead to substantial savings.

The expansion of the preapproved advanced cleanup (PAC) program may benefit applicants with at least 20 sites that require cleanup. Conversely, because funding of this program is limited to $15 million each fiscal year, such expansion may exhaust the funds available for applicants with less than 20 sites.

C. Government Sector Impact:

The bill may decrease DEP's cost of site rehabilitation due to the implementation of the competitive solicitation process. Since this process is in the early stage of implementation, the cost savings are indeterminate at this time.[27]

In the PAC program, at least 25 percent in lower costs is required for applicants participating in a performance-based contract for the cleanup of at least 20 sites.

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[26] *Supra* note 18, at 6.

[27] *Id*. DEP, *Senate Bill 1582 Agency Analysis*, 6 (Mar. 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

The department anticipates an increase in workload related to contracts and procurement in the Administrative section within the Petroleum Restoration Program. Currently, this section has 12 positions and an annual budget of $886,103, with seven positions that work directly on contracts and procurement. According to the DEP, this is sufficient to handle the increased workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 1674, providing for legislative ratification of Rules 62-772.300 and 62-772.400, F.A.C., which relate to competitive bidding and contractor qualifications for the Petroleum Restoration Program, is pending. Failure to ratify the rules would prohibit the DEP from implementing the program after June 30, 2014.

It is unclear in lines 638-639 of the bill if there is a timeframe associated with the DEP's abilities to initiate an audit to recover costs in the case of fraud.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 287.0595, 376.3071, 376.301, 376.302, 376.305, 376.30713, 376.30714, 376.3072, 376.3073, and 376.3075.

This bill repeals section 376.30711 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 22, 2014:

- Allows the DEP to negotiate pollution response action contracts pursuant to s. 287.055, F.S., which is the Consultants Competitive Negotiation Act.
- Authorizes the DEP to perform financial and technical audits to verify site restoration costs and to ensure compliance with s. 376.3071, F.S. The bill provides parameters for the audits and any collection activities that may be necessary.
- Authorizes the DEP to approve performance-based advanced cleanup contracts for at least 20 sites for applicants and requires that they demonstrate a proportional share of at least 25 percent of the cleanup costs;

- Requires competitive solicitations to adhere to the requirements in s. 287.055, F.S., relating to acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Dean

5-00511A-14 20141582__

A bill to be entitled

An act relating to rehabilitation of petroleum contamination sites; amending s. 376.3071, F.S.; revising legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; limiting eligibility for funding under the Early Detection Incentive Program; deleting obsolete provisions relating to reimbursement for certain cleanup expenses; repealing s. 376.30711, F.S., relating to preapproved site rehabilitation; amending ss. 376.301, 376.302, 376.305, 376.30713, 376.30714, 376.3072, 376.3073, and 376.3075, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(1) FINDINGS.—In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares:

(a) That significant quantities of petroleum and petroleum products are being stored in storage systems in this state, which is a hazardous undertaking.

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(b) That spills, leaks, and other discharges from such storage systems have occurred, are occurring, and will continue to occur and that such discharges pose a significant threat to the quality of the groundwaters and inland surface waters of this state.

(c) That, where contamination of the ground or surface water has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made and that such delays result in the continuation and intensification of the threat to the public health, safety, and welfare; in greater damage to water resources and the environment; and in significantly higher costs to contain and remove the contamination.

(d) That adequate financial resources must be readily available to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and cleanup of contamination sites without delay.

(e) That it is necessary to fulfill the intent and purposes of ss. 376.30-376.317~~,~~ and ~~further it is hereby~~ determined to be in the best interest of, and necessary for the protection of the public health, safety, and ~~general~~ welfare of the residents of this state, and therefore a paramount public purpose, to provide for the creation of a nonprofit public benefit corporation as an instrumentality of the state to assist in financing the functions provided in ss. 376.30-376.317 and to authorize the department to enter into one or more service contracts with such corporation for the purpose ~~provision~~ of financing services related to such functions and to make payments thereunder from

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the amount on deposit in the Inland Protection Trust Fund, subject to annual appropriation by the Legislature.

(f) That to achieve the purposes established in paragraph (e) and in order to facilitate the expeditious handling and rehabilitation of contamination sites and remedial measures with respect to contamination sites ~~provided hereby~~ without delay, it is in the best interests of the residents of this state to authorize such corporation to issue evidences of indebtedness payable from amounts paid by the department under any such service contract entered into between the department and such corporation.

(g) That the Petroleum Restoration Program must be implemented in a manner that reduces costs and improves the efficiency of rehabilitation activities to reduce the significant backlog of contaminated sites eligible for state-funded rehabilitation and the corresponding threat to water resources, the environment, and the public health, safety, and welfare.

(2) INTENT AND PURPOSE.—

(a) It is the intent of the Legislature to establish the Inland Protection Trust Fund to serve as a repository for funds which will enable the department to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public health, safety, and welfare and to minimize environmental damage.

(b) It is the intent of the Legislature that the department implement rules and procedures to improve the efficiency of the Petroleum Restoration Program. The department is directed to

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implement rules and policies to eliminate and reduce duplication of site rehabilitation efforts, paperwork, and documentation, and micromanagement of site rehabilitation tasks.

(c) It is the intent of the Legislature that rehabilitation of contamination sites be conducted with emphasis on first addressing the sites that pose the greatest threat to water resources, the environment, and the public health, safety, and welfare, within the availability of funds in the Inland Protection Trust Fund, recognizing that source removal, wherever it is technologically feasible and cost-effective, significantly reduces contamination or eliminates the spread of contamination and protects water resources, the environment, and the public health, safety, and welfare.

(d) ~~(c)~~ The department is directed to adopt and implement uniform and standardized forms for ~~the requests for preapproval~~ site rehabilitation work and for the submittal of reports to ensure that information is submitted to the department in a concise, standardized uniform format seeking only information that is necessary.

(e) ~~(d)~~ The department is directed to implement computerized and electronic filing capabilities of ~~preapproval requests and~~ submittal of reports in order to expedite submittal of the information and elimination of delay in paperwork. ~~The computerized, electronic filing system shall be implemented no later than January 1, 1997.~~

~~(e) The department is directed to adopt uniform scopes of work with templated labor and equipment costs to provide definitive guidance as to the type of work and authorized expenditures that will be allowed for preapproved site~~

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~~rehabilitation tasks.~~

(f) The department is directed to establish guidelines for consideration and acceptance of new and innovative technologies for site rehabilitation work.

(3) CREATION.—There is ~~hereby~~ created the Inland Protection Trust Fund, hereinafter referred to as the "fund," to be administered by the department. This fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this section and s. 376.3073. To this fund shall be credited all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and s. 376.3073 and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against the fund shall be made pursuant to ~~in accordance with the provisions of~~ this section.

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to water resources, the environment, or the public health, safety, or welfare, the department shall obligate moneys available in the fund to provide for:

(a) Prompt investigation and assessment of contamination sites.

(b) Expeditious restoration or replacement of potable water supplies as provided in s. 376.30(3)(c)1.

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland surface waters, using the most cost-effective alternative that is technologically feasible and reliable, ~~and~~ that provides

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adequate protection of water resources and the public health, safety, and welfare, and that minimizes environmental damage, pursuant to ~~in accordance with~~ the site selection and cleanup criteria established by the department under subsection (5), except that this paragraph does not ~~nothing herein shall be construed to~~ authorize the department to obligate funds for payment of costs that ~~which~~ may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

(e) Inspection and supervision of activities described in this subsection.

(f) Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection.

(g) Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.

(h) Establishment and implementation of the compliance verification program as authorized in s. 376.303(1)(a), including contracting with local governments or state agencies to provide for the administration of such program through locally administered programs, to minimize the potential for further contamination sites.

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(i) Funding of the provisions of ss. 376.305(6) and 376.3072.

(j) Activities related to removal and replacement of petroleum storage systems, exclusive of costs of any tank, piping, dispensing unit, or related hardware, if soil removal is approved ~~preapproved~~ as a component of site rehabilitation and requires removal of the tank where remediation is conducted under this section ~~s. 376.30711~~ or if such activities were justified in an approved remedial action plan ~~performed pursuant to subsection (12)~~.

~~(k) Activities related to reimbursement application preparation and activities related to reimbursement application examination by a certified public accountant pursuant to subsection (12).~~

(k) ~~(l)~~ Reasonable costs of restoring property as nearly as practicable to the conditions that ~~which~~ existed before ~~prior to~~ activities associated with contamination assessment or remedial action taken under s. 376.303(4).

(l) ~~(m)~~ Repayment of loans to the fund.

(m) ~~(n)~~ Expenditure of sums from the fund to cover ineligible sites or costs as set forth in subsection (13), if the department in its discretion deems it necessary to do so. In such cases, the department may seek recovery and reimbursement of costs in the same manner and pursuant to ~~in accordance with~~ the same procedures ~~as are~~ established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(n) ~~(o)~~ Payment of amounts payable under any service contract entered into by the department pursuant to s. 376.3075,

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subject to annual appropriation by the Legislature.

(o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s. 376.30711~~ throughout a state fiscal year. The department shall establish a process to uniformly encumber appropriated funds throughout a state fiscal year and shall allow for emergencies and imminent threats to water resources, ~~human health and~~ the environment, and the public health, safety, and welfare, as provided in paragraph (5)(a). This paragraph does not apply to appropriations associated with the free product recovery initiative provided in ~~of~~ paragraph (5)(c) or the ~~preapproved~~ advanced cleanup program provided in ~~of~~ s. 376.30713.

(p) ~~(q)~~ Enforcement of this section and ss. 376.30-376.317 by the Fish and Wildlife Conservation Commission. The department shall disburse moneys to the commission for such purpose.

The Inland Protection Trust Fund may only be used to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) ~~(o)~~ under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before ~~prior to~~ making or providing for other disbursements from the fund. ~~Nothing in~~ This subsection does not ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of

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chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are ~~shall be presumed~~ not ~~to be~~ excluded from eligibility pursuant to this section.

(5) SITE SELECTION AND CLEANUP CRITERIA.—

(a) The department shall adopt rules to establish priorities based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

1. The degree to which the public ~~human~~ health, safety, or welfare may be affected by exposure to the contamination;

2. The size of the population or area affected by the contamination;

3. The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and

4. The effect of the contamination on water resources and the environment.

Moneys in the fund shall then be obligated for activities described in paragraphs (4)(a)-(e) at individual sites pursuant to ~~in accordance with~~ such established criteria. However, ~~nothing in~~ this paragraph does not ~~shall be construed to~~ restrict the department from modifying the priority status of a rehabilitation site where conditions warrant, taking into consideration the actual distance between the contamination site

and groundwater or surface water receptors or other factors that affect the risk of exposure to petroleum products' chemicals of concern. The department may use the effective date of a department final order granting eligibility pursuant to subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to establish a prioritization system within a particular priority scoring range.

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program are ~~may be deemed~~ completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of water resources, ~~human health and safety and~~ the environment, and the public health, safety, and welfare in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:

1. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.

2. The appropriate point of compliance with cleanup target levels for petroleum products' chemicals of concern. The point

of compliance shall be at the source of the petroleum contamination. However, the department may ~~is authorized to~~ temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may also ~~is authorized~~, pursuant to criteria provided for in this paragraph, ~~to~~ temporarily extend the point of compliance beyond the property boundary with appropriate monitoring~~,~~ if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume and if water resources, ~~provided human health, public safety, and~~ the environment, and the public health, safety, and welfare are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must ~~shall~~ include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

3. The appropriate site-specific cleanup goal. The site-specific cleanup goal shall be that all petroleum contamination sites ultimately achieve the applicable cleanup target levels provided in this paragraph. However, the department may ~~is authorized to~~ allow concentrations of the petroleum products' chemicals of concern to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if water resources ~~provided human health, public safety~~, ~~and~~ the environment, and the public health, welfare, and safety are adequately protected.

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4. The appropriateness of using institutional or engineering controls. Site rehabilitation programs may include the use of institutional or engineering controls to eliminate the potential exposure to petroleum products' chemicals of concern to humans or the environment. Use of such controls must have prior department approval ~~be preapproved by the department,~~ and may ~~institutional controls shall~~ not be acquired with moneys ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional or engineering controls are implemented to control exposure, the removal of such controls must have prior department approval and must be accompanied immediately by the resumption of active cleanup~~,~~ or other approved controls~~,~~ unless cleanup target levels pursuant to this paragraph have been achieved.

5. The additive effects of the petroleum products' chemicals of concern. The synergistic effects of petroleum products' chemicals of concern must ~~shall~~ also be considered when the scientific data becomes available.

6. Individual site characteristics that must ~~which shall~~ include, but not be limited to, the current and projected use of the affected groundwater in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

7. Applicable state water quality standards.

a. Cleanup target levels for petroleum products' chemicals

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of concern found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall consider the following, as appropriate, in establishing the applicable minimum criteria: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products' chemicals of concern shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

8. Whether deviation from state water quality standards or from established criteria is appropriate. The department may issue a "No Further Action Order" based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost-effectively implemented within available technologies or engineering and institutional control strategies. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the ~~said~~ standard. In determining whether it is appropriate to establish alternate cleanup target levels at a site, the department may consider the effectiveness of source removal that has been completed at the site and the

practical likelihood of: the use of low yield or poor quality groundwater; the use of groundwater near marine surface water bodies; the current and projected use of the affected groundwater in the vicinity of the site; or the use of groundwater in the immediate vicinity of the storage tank area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, if water resources~~; provided human health, public safety~~, ~~and~~ the environment, and the public health, safety, and welfare are adequately protected.

9. Appropriate cleanup target levels for soils.

a. In establishing soil cleanup target levels for human exposure to petroleum products' chemicals of concern found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration.

b. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals do not apply ~~shall not be applicable~~ if the department determines, based upon individual site characteristics, that petroleum products' chemicals of concern will not leach into the groundwater at levels which pose a threat to water resources,

~~human health and safety or~~ the environment, or the public health, safety, or welfare.

~~However, nothing in~~ This paragraph does not ~~shall be construed to~~ restrict the department from temporarily postponing completion of any site rehabilitation program for which funds are being expended whenever such postponement is ~~deemed~~ necessary in order to make funds available for rehabilitation of a contamination site with a higher priority status.

(c) The department shall require source removal, if warranted and cost-effective, at each site eligible for restoration funding from the ~~Inland Protection Trust~~ fund.

1. Funding for free product recovery may be provided in advance of the order established by the priority ranking system under paragraph (a) for site cleanup activities. However, a separate prioritization for free product recovery shall be established consistent with paragraph (a). No more than $5 million shall be encumbered from the ~~Inland Protection Trust~~ fund in any fiscal year for free product recovery conducted in advance of the priority order under paragraph (a) established for site cleanup activities.

2. Once free product removal and other source removal identified in this paragraph are completed at a site, and notwithstanding the order established by the priority ranking system under paragraph (a) for site cleanup activities, the department may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. Further, the department shall determine whether ~~if~~ the reevaluated site qualifies for natural attenuation monitoring, long-term natural

attenuation monitoring, or no further action. If additional site rehabilitation is necessary to reach no further action status, the site rehabilitation shall be conducted in the order established by the priority ranking system under paragraph (a). The department shall use ~~utilize~~ natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring where the plume is shrinking or stable and confined to the source property boundaries and the petroleum products' chemicals of concern meet the natural attenuation default concentrations, as defined by department rule. If the plume migrates beyond the source property boundaries, natural attenuation monitoring may be conducted pursuant to ~~in accordance with~~ department rule, or if the site no longer qualifies for natural attenuation monitoring, active remediation may be resumed. For long-term natural attenuation monitoring, if the petroleum products' chemicals of concern increase or are not significantly reduced after 42 months of monitoring, or if the plume migrates beyond the property boundaries, active remediation shall be resumed as necessary. For sites undergoing active remediation, the department shall evaluate ~~template~~ the cost of natural attenuation monitoring pursuant to s. 376.30711 to ensure that site mobilizations are performed in a cost-effective manner. Sites that are not eligible for state restoration funding may transition to long-term natural attenuation monitoring using the criteria in this subparagraph. ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site from pursuing a "No Further Action" order with conditions.

3. The department shall evaluate whether higher natural

attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and would adequately protect water resources, ~~public health and~~ the environment, and the public health, safety, and welfare. The department shall also evaluate site-specific characteristics that would allow for higher natural attenuation or long-term natural attenuation concentration levels.

4. A local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor. All building permits and any construction, repairs, or renovations performed in conjunction with such permits must comply with the applicable provisions of chapters 489 and 553.

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

(a) Site rehabilitation work on sites that are eligible for state-funded cleanup from the fund pursuant to this section and ss. 376.305(6), 376.3072, and 376.3073 may be funded only pursuant to this section. A facility operator shall abate the source of discharge for a new release that occurred after March 29, 1995. If free product is present, the operator shall notify the department, and the department may direct the removal of the free product. The department shall grant approval to continue site rehabilitation pursuant to this section.

(b) When contracting for site rehabilitation activities performed under the Petroleum Restoration Program, the

department shall comply with competitive procurement requirements provided in chapter 287 or rules adopted under this section or s. 287.0595. A competitive solicitation issued pursuant to this section is not subject to s. 287.055.

(c) Each contractor performing site assessment and remediation activities for state-funded sites under this section shall certify to the department that the contractor meets all certification and license requirements imposed by law. Each contractor shall certify to the department that the contractor meets the following minimum qualifications:

1. Complies with applicable Occupational Safety and Health Administration regulations.

2. Maintains workers' compensation insurance for employees as required by the Florida Workers' Compensation Law.

3. Maintains comprehensive general liability and comprehensive automobile liability insurance with minimum limits of at least $1 million per occurrence and $1 million annual aggregate to pay claims for damage for personal injury, including accidental death, as well as claims for property damage that may arise from performance of work under the program, which insurance designates the state as an additional insured party.

4. Maintains professional liability insurance of at least $1 million per occurrence and $1 million annual aggregate.

5. Has the capacity to perform or directly supervise the majority of the rehabilitation work at a site pursuant to s. 489.113(9).

(d) The department rules implementing this section must specify that only qualified vendors may submit responses on a

competitive solicitation. The department rules must also include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation and requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

(e) A contractor that performs services pursuant to this subsection may file invoices for payment with the department for the services described in the approved contract. The invoices for payment must be submitted to the department on forms provided by the department, together with evidence documenting that activities were conducted or completed pursuant to the approved contract. If there are sufficient unencumbered funds available in the fund which have been appropriated for expenditure by the Legislature and if all of the terms of the approved contract have been met, invoices for payment must be paid pursuant to s. 215.422. After a contractor has submitted its invoices to the department, and before payment is made, the contractor may assign its right to payment to another person without recourse of the assignee or assignor to the state. In such cases, the assignee must be paid pursuant to s. 215.422. Prior notice of the assignment and assignment information must be made to the department and must be signed and notarized by the assigning party.

(f) The contractor shall submit an invoice to the department within 30 days after the date of the department's written acceptance of each interim deliverable or written approval of the final deliverable specified in the approved contract.

(g) The department shall make payments based on the terms

of an approved contract for site rehabilitation work. The department may, based on its experience and the past performance and concerns regarding a contractor, retain up to 25 percent of the contracted amount or use performance bonds to ensure performance. The amount of retainage and the amount of performance bonds, as well as the terms and conditions for such, must be included in the approved contract.

(h) The contractor or the person to which the contractor has assigned its right to payment pursuant to paragraph (e) shall make prompt payment to subcontractors and suppliers for their costs associated with an approved contract pursuant to s. 287.0585(1).

(i) The exemption under s. 287.0585(2) does not apply to payments associated with an approved contract.

(j) The department may withhold payment if the validity or accuracy of a contractor's invoices or supporting documents is in question.

(k) This section does not authorize payment to a person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described by department rules.

(l) The department shall terminate or suspend a contractor's eligibility for participation in the program if the contractor fails to perform its contractual duties for site rehabilitation program tasks.

(m) A site owner or operator, or his or her designee, may not receive any remuneration, in cash or in kind, directly or

indirectly, from a rehabilitation contractor performing site cleanup activities pursuant to this section.

(7)~~(6)~~ FUNDING.—The Inland Protection Trust Fund shall be funded as follows:

(a) All excise taxes levied, collected, and credited to the fund in accordance with ~~the provisions of~~ ss. 206.9935(3) and 206.9945(1)(c).

(b) All penalties, judgments, recoveries, reimbursements, and other fees and charges credited to the fund pursuant to ~~in accordance with the provisions of~~ subsection (3).

(8)~~(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.—

(a) Except as provided in subsection (10) ~~(9)~~ and as otherwise provided by law, the department shall recover to the use of the fund from a person or persons at any time causing or having caused the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund, pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. Sums recovered as a result of damage due to a discharge related to the storage of petroleum or petroleum products or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such disaster. A ~~Any~~ request for reimbursement to the fund for such costs, if not paid within 30 days after ~~of~~ demand, shall be turned over to the department for collection.

(b) Except as provided in subsection (10) ~~(9)~~ and as

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otherwise provided by law, it is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup and abatement pursuant to ~~in accordance with the provisions of~~ this section or s. 376.3073, unless the department finds the amount involved too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall begin ~~commence~~ on the last date on which ~~any~~ such sums were expended~~,~~ and not the date on which ~~that~~ the discharge occurred. The department's claim for recovery of payments or overpayments from the fund must be based on the law in existence at the time of the payment or overpayment.

(c) If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party cannot ~~is~~ financially ~~unable to~~ undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best be served by conducting cleanup, the department may enter into an agreement with the responsible party or property owner whereby the department agrees to conduct site rehabilitation and the responsible party or property owner agrees to pay for the portion of the cleanup costs that are within such party's or owner's financial capabilities as determined by the department, taking into consideration the party's or owner's net worth and the economic impact on the party or owner.

(9)~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are not needed currently to meet the obligations of the department

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in the exercise of its responsibilities under this section and s. 376.3073 shall be deposited with the Chief Financial Officer to the credit of the fund and may be invested in such manner as ~~is~~ provided ~~for~~ by law ~~statute~~. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between the ~~this~~ trust fund and the Water Quality Assurance Trust Fund~~,~~ in the discretion of the department.

(10)~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage early detection, reporting, and cleanup of contamination from leaking petroleum storage systems, the department shall, within the guidelines established in this subsection, conduct an incentive program that provides ~~which shall provide~~ for a 30-month grace period ending on December 31, 1988. ~~Pursuant thereto:~~

(a) The department shall establish reasonable requirements for the written reporting of petroleum contamination incidents and shall distribute forms to registrants under s. 376.303(1)(b) and to other interested parties upon request to be used for such purpose. Until such forms are available for distribution, the department shall take reports of such incidents, however made, but shall notify any person making such a report that a complete written report of the incident will be required by the department at a later time, the form for which will be provided by the department.

(b) When reporting forms become available for distribution, all sites involving incidents of contamination from petroleum storage systems initially reported to the department at any time from midnight on June 30, 1986, to midnight on December 31,

1988, shall be qualified sites if~~, provided that such~~ a complete written report is filed with respect thereto within a reasonable time. Subject to the delays which may occur as a result of the prioritization of sites under paragraph (5)(a) for any qualified site, costs for activities described in paragraphs (4)(a)-(e) shall be absorbed at the expense of the fund, without recourse to reimbursement or recovery, with the following exceptions:

1. ~~The provisions of~~ This subsection does ~~shall~~ not apply to a ~~any~~ site where the department has been denied site access to implement ~~the provisions of~~ this section.

2. ~~The provisions of~~ This subsection does ~~shall~~ not ~~be construed to~~ authorize or require reimbursement from the fund for costs expended before ~~prior to~~ the beginning of the grace period~~, except as provided in subsection (12)~~.

3.a. Upon discovery by the department that the owner or operator of a petroleum storage system has been grossly negligent in the maintenance of such petroleum storage system; has, with willful intent to conceal the existence of a serious discharge, falsified inventory or reconciliation records maintained with respect to the site at which such system is located; or has intentionally damaged such petroleum storage system, the site at which such system is located shall be ineligible for participation in the incentive program and the owner shall be liable for all costs due to discharges from petroleum storage systems at that site, any other provisions of chapter 86-159, Laws of Florida, to the contrary notwithstanding. For the purposes of this paragraph, willful failure to maintain inventory and reconciliation records, willful failure to make monthly monitoring system checks where

such systems are in place, and failure to meet monitoring and retrofitting requirements within the schedules established under chapter 62-761, Florida Administrative Code, or violation of similar rules adopted by the department under this chapter, constitutes ~~shall be construed to be~~ gross negligence in the maintenance of a petroleum storage system.

b. The department shall redetermine the eligibility of petroleum storage systems for which a timely Early Detection Incentive Program ~~EDI~~ application was filed, but which were deemed ineligible by the department, under the following conditions:

(I) The owner or operator, on or before March 31, 1991, shall submit, in writing, notification that the storage system is now in compliance with department rules adopted pursuant to s. 376.303, and which requests the department to reevaluate the storage system eligibility; and

(II) The department verifies the storage system compliance based on a compliance inspection.

~~Provided, however, that~~ A site may be determined eligible by the department for good cause shown, including, but not limited to, demonstration by the owner or operator that to achieve compliance would cause an increase in the potential for the spread of the contamination.

c. Redetermination of eligibility pursuant to sub-subparagraph b. shall not be available to:

(I) Petroleum storage systems owned or operated by the Federal Government.

(II) Facilities that denied site access to the department.

(III) Facilities where a discharge was intentionally concealed.

(IV) Facilities that were denied eligibility due to:

(A) Absence of contamination, unless any such facility subsequently establishes that contamination did exist at that facility on or before December 31, 1988.

(B) Contamination from substances that were not petroleum or a petroleum product.

(C) Contamination that was not from a petroleum storage system.

d. ~~EDI~~ Applicants who demonstrate compliance for a site pursuant to sub-subparagraph b. are eligible for the Early Detection Incentive Program and site rehabilitation funding pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

If, in order to avoid prolonged delay, the department in its discretion deems it necessary to expend sums from the fund to cover ineligible sites or costs as set forth in this paragraph, the department may do so and seek recovery and reimbursement therefor in the same manner and pursuant to ~~in accordance with~~ the same procedures ~~as are~~ established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(c) A ~~No~~ report of a discharge made to the department by a ~~any~~ person pursuant to ~~in accordance with~~ this subsection~~,~~ or ~~any~~ rules adopted ~~promulgated~~ pursuant to this subsection may not ~~hereto, shall~~ be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(d) ~~The provisions of~~ This subsection does ~~shall~~ not apply to petroleum storage systems owned or operated by the Federal Government.

(11)~~(10)~~ VIOLATIONS; PENALTY.—A ~~It is unlawful for any~~ person may not ~~to~~:

(a) Falsify inventory or reconciliation records maintained in compliance with chapters 62-761 and 62-762, Florida Administrative Code, with willful intent to conceal the existence of a serious leak; or

(b) Intentionally damage a petroleum storage system.

A ~~Any~~ person convicted of such a violation commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12)~~(11)~~ SITE CLEANUP.—

(a) *Voluntary cleanup.*—This section does not prohibit a person from conducting site rehabilitation ~~either~~ through his or her own personnel or through responsible response action contractors or subcontractors when such person is not seeking site rehabilitation funding from the fund. Such voluntary cleanups must meet all applicable environmental standards.

(b) *Low-scored site initiative.*—Notwithstanding subsections (5) and (6) ~~s. 376.30711~~, a ~~any~~ site with a priority ranking score of 29 points or less may voluntarily participate in the low-scored site initiative regardless of~~,~~ whether ~~or not~~ the site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the responsible party or property owner must affirmatively demonstrate that the following conditions are met:

a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.

b. ~~No~~ Excessively contaminated soil, as defined by department rule, does not exist ~~exists~~ onsite as a result of a release of petroleum products.

c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

e. The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated.

f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls.

2. Upon affirmative demonstration of the conditions under subparagraph 1., the department shall issue a determination of "No Further Action." Such determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to water resources, ~~human health or~~ the environment, or the public health, safety, or welfare. If no contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of ~~preapproved~~ costs for the low-scored site

initiative as follows:

a. A responsible party or property owner may submit an assessment plan designed to affirmatively demonstrate that the site meets the conditions under subparagraph 1. Notwithstanding the priority ranking score of the site, the department may approve ~~preapprove~~ the cost of the assessment ~~pursuant to s. 376.30711~~, including 6 months of groundwater monitoring, not to exceed $30,000 for each site. The department may not pay the costs associated with the establishment of institutional or engineering controls.

b. The assessment work shall be completed no later than 6 months after the department issues its approval.

c. No more than $10 million for the low-scored site initiative may be encumbered from the ~~Inland Protection Trust~~ fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each responsible party or property owner.

d. Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as provided in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek~~

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~~reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.~~

~~(a) *Legislative findings.*—The Legislature finds and declares that rehabilitation of contamination sites should be conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment.~~

~~(b) *Conditions.*—~~

~~1. The owner, operator, or his or her designee of a site which is eligible for restoration funding assistance in the EDI, PLRIP, or ATRP programs shall be reimbursed from the Inland Protection Trust Fund of allowable costs at reasonable rates incurred on or after January 1, 1985, for completed program~~

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~~tasks as identified in the department rule promulgated pursuant to paragraph (5)(b), or uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, subject to the conditions in this section. It is unlawful for a site owner or operator, or his or her designee, to receive any remuneration, in cash or in kind, directly or indirectly from the rehabilitation contractor.~~

~~2. Nothing in this subsection shall be construed to authorize reimbursement to any person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described in department rules.~~

~~(c) *Legislative intent.*—Due to the value of the potable water of this state, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector, recognizing that source removal, wherever it is technologically feasible and cost-effective, shall be considered the primary initial response to protect public health, safety, and the environment.~~

~~(d) *Amount of reimbursement.*—The department shall reimburse actual and reasonable costs for site rehabilitation. The department shall not reimburse interest on the amount of reimbursable costs for any reimbursement application. However, nothing herein shall affect the department's authority to pay interest authorized under prior law.~~

~~(e) *Records.* The person responsible for conducting site rehabilitation, or his or her agent, shall keep and preserve~~

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~~suitable records as follows:~~

~~1. Hydrological and other site investigations and assessments; site rehabilitation plans; contracts and contract negotiations; and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving costs actually incurred related to site rehabilitation. Such records shall be made available upon request to agents and employees of the department during regular business hours and at other times upon written request of the department.~~

~~2. In addition, the department may from time to time request submission of such site-specific information as it may require, unless a waiver or variance from such department request is granted pursuant to paragraph (k).~~

~~3. All records of costs actually incurred for cleanup shall be certified by affidavit to the department as being true and correct.~~

~~(f) *Application for reimbursement.*—Any eligible person who performs a site rehabilitation program or performs site rehabilitation program tasks such as preparation of site rehabilitation plans or assessments; product recovery; cleanup of groundwater or inland surface water; soil treatment or removal; or any other tasks identified by department rule developed pursuant to subsection (5), may apply for reimbursement. Such applications for reimbursement must be submitted to the department on forms provided by the department, together with evidence documenting that site rehabilitation program tasks were conducted or completed in accordance with department rule developed pursuant to subsection (5), and other~~

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~~such records or information as the department requires. The reimbursement application and supporting documentation shall be examined by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. A copy of the accountant's report shall be submitted with the reimbursement application. Applications for reimbursement shall not be approved for site rehabilitation program tasks which have not been completed, except for the task of remedial action and except for uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, and this subsection. Applications for remedial action may be submitted semiannually at the discretion of the person responsible for cleanup. After an applicant has filed an application with the department and before payment is made, the applicant may assign the right to payment to any other person, without recourse of the assignee or assignor to the state, without affecting the order in which payment is made. Information necessary to process the application shall be requested from and provided by the assigning applicant. Proper notice of the assignment and assignment information shall be made to the department which notice shall be signed and notarized by the assigning applicant.~~

~~(g) *Review.*—~~

~~1. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund, or to the extent proceeds of debt obligations are available for the payment of existing reimbursement obligations pursuant to s. 376.3075, the department shall have 60 days to determine if the applicant has provided sufficient information for processing the application and shall request submission of any additional information that~~

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~~the department may require within such 60-day period. If the applicant believes any request for additional information is not authorized, the applicant may request a hearing pursuant to ss. 120.569 and 120.57. Once the department requests additional information, the department may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information.~~

~~2. The department shall deny or approve the application for reimbursement within 90 days after receipt of the last item of timely requested additional material, or, if no additional material is requested, within 90 days of the close of the 60-day period described in subparagraph 1., unless the total review period is otherwise extended by written mutual agreement of the applicant and the department.~~

~~3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to ss. 120.569 and 120.57.~~

~~(h) *Reimbursement.*—Upon approval of an application for reimbursement, reimbursement for reasonable expenditures of a site rehabilitation program or site rehabilitation program tasks documented therein shall be made in the order in which the department receives completed applications. Effective January 1, 1997, all unpaid reimbursement applications are subject to~~

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~~payment on the following terms: The department shall develop a schedule of the anticipated dates of reimbursement of applications submitted to the department pursuant to this subsection. The schedule shall specify the projected date of payment based on equal monthly payments and projected annual revenue of $100 million. Based on the schedule, the department shall notify all reimbursement applicants of the projected date of payment of their applications. The department shall direct the Inland Protection Financing Corporation to pay applicants the present value of their applications as soon as practicable after approval by the department, subject to the availability of funds within the Inland Protection Financing Corporation. The present value of an application shall be based on the date on which the department anticipates the Inland Protection Financing Corporation will settle the reimbursement application and the schedule's projected date of payment and shall use 3.5 percent as the annual discount rate. The determination of the amount of the claim and the projected date of payment shall be subject to s. 120.57.~~

~~(i) *Liberal construction.* With respect to site rehabilitation initiated prior to July 1, 1986, the provisions of this subsection shall be given such liberal construction by the department as will accomplish the purposes set forth in this subsection. With regard to the keeping of particular records or the giving of certain notice, the department may accept as compliance action by a person which meets the intent of the requirements set forth in this subsection.~~

~~(j) *Reimbursement review contracts.* The department may contract with entities capable of processing or assisting in the review of reimbursement applications. Any purchase of such services shall not be subject to chapter 287.~~

~~(k) *Audits.*~~

~~1. The department is authorized to perform financial and technical audits in order to certify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayments based on the findings of these audits. The department must commence any audit within 5 years after the date of reimbursement, except in cases where the department alleges specific facts indicating fraud.~~

~~2. Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of disallowed costs within 60 days of notification of the applicant.~~

~~3. In the event the applicant does not make payment to the department within 60 days of receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover reimbursement overpayments made to the person responsible for conducting site rehabilitation, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.~~

~~4. In addition to the amount of any overpayment, the applicant shall be liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of overpayment, from the date of overpayment by the department until the applicant satisfies the department's~~

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~~request for repayment pursuant to this paragraph. The calculation of interest shall be tolled during the pendency of any litigation.~~

~~5. Financial and technical audits frequently are conducted under this section many years after the site rehabilitation activities were performed and the costs examined in the course of the audit were incurred by the person responsible for site rehabilitation. During the intervening span of years, the department's rule requirements and its related guidance and other nonrule policy directives may have changed significantly. The Legislature finds that it may be appropriate for the department to provide relief to persons subject to such requirements in financial and technical audits conducted pursuant to this section.~~

~~a. The department is authorized to grant variances and waivers from the documentation requirements of subparagraph (c)2. and from the requirements of rules applicable in technical and financial audits conducted under this section. Variances and waivers shall be granted when the person responsible for site rehabilitation demonstrates to the department that application of a financial or technical auditing requirement would create a substantial hardship or would violate principles of fairness. For purposes of this subsection, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this subsection, "principles of fairness" are violated when the application of a requirement affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are affected by the requirement or when the requirement is being applied retroactively without due notice to the affected parties.~~

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~~b. A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify:~~

~~(I) The requirement from which a variance or waiver is requested.~~

~~(II) The type of action requested.~~

~~(III) The specific facts which would justify a waiver or variance.~~

~~(IV) The reason or reasons why the requested variance or waiver would serve the purposes of this section.~~

~~c. Within 90 days after receipt of a written request for variance or waiver under this subsection, the department shall grant or deny the request. If the request is not granted or denied within 90 days of receipt, the request shall be deemed approved. An order granting or denying the request shall be in writing and shall contain a statement of the relevant facts and reasons supporting the department's action. The department's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Once adopted, model rules promulgated by the Administration Commission under s. 120.542 shall govern the processing of requests under this provision.~~

~~6. The Chief Financial Officer may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and~~

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~~completeness of audits performed by the department pursuant to this paragraph. The Chief Financial Officer may contract with entities or persons to perform audits pursuant to this subparagraph. The Chief Financial Officer shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Chief Financial Officer alleges specific facts indicating fraud.~~

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement. Eligibility is ~~shall be~~ subject to an annual appropriation from the ~~Inland Protection Trust~~ fund. Additionally, funding for eligible sites is ~~shall be~~ contingent upon annual appropriation in subsequent years. Such continued state funding is ~~shall~~ not ~~be deemed~~ an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, ~~shall be~~ notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(a)1. The department shall accept any discharge reporting form received before ~~prior to~~ January 1, 1995, as an application for this program, and the facility owner or operator need not

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reapply.

2. Owners or operators of property contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred before ~~prior to~~ January 1, 1995, with the department. Incidents of petroleum contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred before ~~prior to~~ January 1, 1995. An operator's filed report shall be ~~deemed~~ an application of the owner for all purposes. Sites reported to the department after December 31, 1998, are ~~shall~~ not ~~be~~ eligible for the ~~this~~ program.

(b) Subject to annual appropriation from the ~~Inland Protection Trust~~ fund, sites meeting the criteria of this subsection are eligible for up to $400,000 of site rehabilitation funding assistance in priority order pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before ~~prior to~~ June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section ~~s. 376.30711~~ until a site rehabilitation completion order is issued or the

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increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay ~~At no time shall~~ expenses incurred beyond ~~outside~~ the scope of an approved contract ~~preapproved site rehabilitation program under s. 376.30711 be reimbursable~~.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement with the department ~~and a contractor qualified under s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~ comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner's and operator's net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot ~~are unable to~~ complete negotiation of the cost-sharing agreement within 120 days after beginning

~~commencing~~ negotiations, the department shall terminate negotiations, and the site shall be ~~deemed~~ ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(d) A ~~No~~ report of a discharge made to the department by a ~~any~~ person pursuant to ~~in accordance with~~ this subsection~~,~~ or any rules adopted pursuant to this subsection may not ~~hereto, shall~~ be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(e) ~~Nothing in~~ This subsection does not ~~shall be construed to~~ preclude the department from pursuing penalties under ~~in accordance with~~ s. 403.141 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

(f) Upon the filing of a discharge reporting form under paragraph (a), ~~neither~~ the department or ~~nor any~~ local government may not ~~shall~~ pursue any judicial or enforcement action to compel rehabilitation of the discharge. This paragraph does ~~shall~~ not prevent any such action with respect to discharges determined ineligible under this subsection or to sites for which rehabilitation funding assistance is available pursuant to subsections ~~in accordance with subsection~~ (5) and (6) ~~s. 376.30711~~.

(g) The following are ~~shall be~~ excluded from participation in the program:

1. Sites at which the department has been denied reasonable site access to implement ~~the provisions of~~ this section.

2. Sites that were active facilities when owned or operated

by the Federal Government.

3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

4. Sites for which ~~The~~ contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program, or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

(14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before ~~Prior to~~ the department enters ~~entering~~ into a service contract with the Inland Protection Financing Corporation which includes payments by the department to support any existing or planned note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness of the corporation pursuant to s. 376.3075, the Legislature, by law, must specifically authorize the department to enter into such a contract. The corporation may issue bonds in an amount not to exceed $104 million, with a term up to 15 years, and annual payments not in excess of $10.4 million. The department may enter into a service contract in conjunction with the issuance of such bonds which provides for annual payments for debt service payments or other amounts payable with respect to bonds, plus any administrative expenses of the corporation to finance the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317.

Section 2. Section 376.30711, Florida Statutes, is repealed.

Section 3. Subsections (4) and (30) of section 376.301, Florida Statutes, are amended to read:

376.301 Definitions of terms used in ss. 376.30-376.317, 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and 376.75, unless the context clearly requires otherwise, the term:

~~(4) "Backlog" means reimbursement obligations incurred pursuant to s. 376.3071(12), prior to March 29, 1995, or authorized for reimbursement under the provisions of s. 376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims within the backlog are subject to adjustment, where appropriate.~~

~~(30) "Person responsible for conducting site rehabilitation" means the site owner, operator, or the person designated by the site owner or operator on the reimbursement application. Mortgage holders and trust holders may be eligible to participate in the reimbursement program pursuant to s. 376.3071(12).~~

Section 4. Subsection (5) of section 376.302, Florida Statutes, is amended to read:

376.302 Prohibited acts; penalties.—

(5) Any person who commits fraud in representing his or her ~~their~~ qualifications as a contractor ~~for reimbursement~~ or in submitting a payment invoice ~~reimbursement request~~ pursuant to s. 376.3071 ~~s. 376.3071(12)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Subsection (6) of section 376.305, Florida Statutes, is amended to read:

376.305 Removal of prohibited discharges.—

(6) The Legislature created the Abandoned Tank Restoration Program in response to the need to provide financial assistance for cleanup of sites that have abandoned petroleum storage systems. For purposes of this subsection, the term "abandoned petroleum storage system" means a ~~shall mean any~~ petroleum storage system that has not stored petroleum products for consumption, use, or sale since March 1, 1990. The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

1. An application must be submitted to the department by June 30, 1996, certifying that the system has not stored petroleum products for consumption, use, or sale at the facility since March 1, 1990.

2. The owner or operator of the petroleum storage system when it was in service must have ceased conducting business involving consumption, use, or sale of petroleum products at that facility on or before March 1, 1990.

3. The site is not otherwise eligible for the cleanup programs pursuant to s. 376.3071 or s. 376.3072.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to ~~in accordance with~~ department rules before ~~prior to~~ an eligibility determination. However, if the department determines that the owner of the facility cannot ~~is~~ financially ~~unable to~~ comply with the department's petroleum storage system closure requirements and all other eligibility requirements are

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met, the petroleum storage system closure requirements shall be waived. The department shall take into consideration the owner's net worth and the economic impact on the owner in making the determination of the owner's financial ability. The June 30, 1996, application deadline shall be waived for owners who cannot ~~are~~ financially ~~unable to~~ comply.

(c) Sites accepted in the program are ~~will be~~ eligible for site rehabilitation funding as provided in s. 376.3071 ~~s. 376.3071(12) or s. 376.30711, as appropriate~~.

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;

2. Sites contaminated by pollutants that are not petroleum products;

3. Sites where the department has been denied site access; or

4. Sites which are owned by a ~~any~~ person who had knowledge of the polluting condition when title was acquired unless the ~~that~~ person acquired title to the site after issuance of a notice of site eligibility by the department.

(e) Participating sites are subject to a deductible as determined by rule, not to exceed $10,000.

~~The provisions of~~ This subsection does ~~do~~ not relieve a ~~any~~ person who has acquired title after ~~subsequent to~~ July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s.

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376.308(1)(c).

Section 6. Section 376.30713, Florida Statutes, is amended to read:

376.30713 ~~Preapproved~~ Advanced cleanup.—

(1) In addition to the legislative findings provided in s. 376.3071 ~~s. 376.30711~~, the Legislature finds and declares:

(a) That the inability to conduct site rehabilitation in advance of a site's priority ranking pursuant to s. 376.3071(5)(a) may substantially impede or prohibit property transactions or the proper completion of public works projects.

(b) While the first priority of the state is to provide for protection of ~~the~~ water resources ~~of the state~~, ~~human health,~~ ~~and~~ the environment, and the public health, safety, and welfare, the viability of commerce is of equal importance to the state.

(c) It is in the public interest and of substantial economic benefit to the state to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of the site's priority ranking, to facilitate property transactions or public works projects.

(d) It is appropriate for a person who is ~~persons~~ responsible for site rehabilitation to share the costs associated with managing and conducting ~~preapproved~~ advanced cleanup, to facilitate the opportunity for ~~preapproved~~ advanced cleanup, and to mitigate the additional costs that will be incurred by the state in conducting site rehabilitation in advance of the site's priority ranking. Such cost sharing will result in more contaminated sites being cleaned up and greater environmental benefits to the state. ~~The provisions of~~ This section is ~~shall only be~~ available only for sites eligible for

restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This section is available for discharges eligible for restoration funding under the petroleum cleanup participation program for the state's cost share of site rehabilitation. Applications must ~~shall~~ include a cost-sharing commitment for this section in addition to the 25-percent-copayment requirement of the petroleum cleanup participation program. This section is not available for any discharge under a petroleum cleanup participation program where the 25-percent-copayment requirement of the petroleum cleanup participation program has been reduced or eliminated pursuant to s. 376.3071(13)(c).

(2) The department may ~~is authorized to~~ approve an application for ~~preapproved~~ advanced cleanup at eligible sites, before ~~prior to~~ funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to ~~in accordance with the provisions of~~ this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies ~~Persons who qualify~~ as an applicant under ~~the provisions of~~ this section ~~shall only include the facility owner or operator or the person otherwise responsible for site rehabilitation~~.

(a) ~~Preapproved~~ Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must ~~shall~~ consist of:

1. A commitment to pay ~~no less than~~ 25 percent or more of the total cleanup cost deemed recoverable under ~~the provisions of~~ this section along with proof of the ability to pay the cost

share.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

The limited contamination assessment report must ~~shall~~ be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. ~~Any~~ Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection~~,~~ or any other provision of this section is~~, shall~~ not ~~constitute~~ an entitlement to ~~preapproved~~ advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an ~~a preapproved~~ advanced cleanup contract with the department. The ~~This~~ certification must ~~shall~~ be submitted with the application.

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who ~~that~~ proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that ~~which~~ exceed the funds available to commit to all such proposals during the ~~preapproved~~ advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical

cost-sharing proposals that ~~which~~ exceed funding availability must ~~shall~~ be so notified by the department and ~~shall be~~ offered the opportunity to raise their individual cost-share commitments, in a period ~~of time~~ specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to ~~in accordance with~~ this paragraph.

(3)(a) Based on the ranking established under paragraph (2)(b) ~~and the funding limitations provided in subsection (4)~~, the department shall begin ~~commence~~ negotiation with such applicants. If the department and the applicant agree on the course of action, the department may enter into a contract with the applicant. The department may ~~is authorized to~~ negotiate the terms and conditions of the contract.

(b) ~~Preapproved~~ Advanced cleanup must ~~shall~~ be conducted pursuant to s. 376.3071(5)(b) and (6) and rules adopted under ss. 287.0595 and 376.3071 ~~under the provisions of ss. 376.3071(5)(b) and 376.30711~~. If the terms of the ~~preapproved~~ advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.

(c) The department's decision not to enter into an ~~a preapproved~~ advanced cleanup contract with the applicant is ~~shall~~ not ~~be~~ subject to ~~the provisions of~~ chapter 120. If the department cannot ~~is not able to~~ complete negotiation of the course of action and the terms of the contract within 60 days after beginning ~~commencing~~ negotiations, the department shall terminate negotiations with that applicant.

(4) The department may ~~is authorized to~~ enter into contracts for a total of up to $15 million of ~~preapproved~~

advanced cleanup work in each fiscal year. However, a facility may not be approved ~~preapproved~~ for more than $5 million of cleanup activity in each fiscal year. For the purposes of this section, the term "facility" includes ~~shall include~~, but is not ~~be~~ limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

(5) All funds collected by the department pursuant to this section shall be deposited into the Inland Protection Trust Fund to be used as provided in this section.

Section 7. Paragraph (a) of subsection (1) and subsections (3), (4), and (9) of section 376.30714, Florida Statutes, are amended to read:

376.30714 Site rehabilitation agreements.—

(1) In addition to the legislative findings provided in s. 376.3071, the Legislature finds and declares:

(a) The provisions of s. 376.3071(5)(a) ~~ss. 376.3071(5)(a) and 376.30711~~ have delayed cleanup of low-priority sites determined to be eligible for state funding under that section and ss. 376.305~~, 376.3071,~~ and 376.3072.

(3) Free product attributable to a new discharge shall be removed to the extent practicable and pursuant to ~~in accordance with~~ department rules adopted pursuant to s. 376.3071(5) at the expense of the owner, operator, or other responsible party. Free product attributable to existing contamination shall be removed pursuant to ~~in accordance with~~ s. 376.3071(5) and (6)~~, or s. 376.30711(1)(b),~~ and department rules adopted pursuant thereto.

(4) Beginning January 1, 1999, the department may ~~is~~

~~authorized to~~ negotiate and enter into site rehabilitation agreements with applicants at sites with eligible existing contamination at which a new discharge occurs. The site rehabilitation agreement must ~~shall~~ include, but is not ~~be~~ limited to, allocation of the funding responsibilities of the department and the applicant for cleanup of the qualified site, establishment of a mechanism to guarantee the applicant's commitment to pay its agreed amount of site rehabilitation as set forth in the agreement, and establishment of the priority in which cleanup of the qualified site will occur. Under ~~any~~ such a negotiated site rehabilitation agreement, the applicant may not ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are attributable to the new discharge. However, the payment of ~~any~~ applicable deductibles, copayments, or other program eligibility requirements under ss. 376.305, 376.3071, and 376.3072 shall continue to apply to the existing contamination and must be accounted for in the negotiated site rehabilitation agreement. The department may ~~is further authorized~~, pursuant to this section, ~~to preapprove or~~ conduct additional assessment activities at the site.

(9) Site rehabilitation conducted at qualified sites shall be conducted pursuant to s. 376.3071(5)(b) and (6) ~~under the provisions of ss. 376.3071(5)(b) and 376.30711~~. If the terms of the agreement are not fulfilled by the applicant, the applicant forfeits the ~~any~~ right to continued funding for ~~any~~ site rehabilitation work under the agreement and is ~~shall be~~ subject to enforcement action by the department or local government to compel cleanup of the new discharge.

Section 8. Subsection (2) of section 376.3072, Florida

Statutes, is amended to read:

376.3072 Florida Petroleum Liability and Restoration Insurance Program.—

(2)(a) An ~~Any~~ owner or operator of a petroleum storage system may become an insured in the restoration insurance program at a facility if ~~provided~~:

1. A site at which an incident has occurred is ~~shall be~~ eligible for restoration if the insured is a participant in the third-party liability insurance program or otherwise meets applicable financial responsibility requirements. After July 1, 1993, the insured must also provide the required excess insurance coverage or self-insurance for restoration to achieve the financial responsibility requirements of 40 C.F.R. s. 280.97, subpart H, not covered by paragraph (d).

2. A site that ~~which~~ had a discharge reported before ~~prior to~~ January 1, 1989, for which notice was given pursuant to s. 376.3071(10) ~~s. 376.3071(9) or (12)~~, and that ~~which~~ is ineligible for the third-party liability insurance program solely due to that discharge is ~~shall be~~ eligible for participation in the restoration program for an ~~any~~ incident occurring on or after January 1, 1989, pursuant to ~~in accordance with~~ subsection (3). Restoration funding for an eligible contaminated site will be provided without participation in the third-party liability insurance program until the site is restored as required by the department or until the department determines that the site does not require restoration.

3. Notwithstanding paragraph (b), a site where an application is filed with the department before ~~prior to~~ January 1, 1995, where the owner is a small business under s.

288.703(6), a state community college with less than 2,500 FTE, a religious institution as defined by s. 212.08(7)(m), a charitable institution as defined by s. 212.08(7)(p), or a county or municipality with a population of less than 50,000, is ~~shall be~~ eligible for up to $400,000 of eligible restoration costs, less a deductible of $10,000 for small businesses, eligible community colleges, and religious or charitable institutions, and $30,000 for eligible counties and municipalities, if ~~provided that~~:

a. Except as provided in sub-subparagraph e., the facility was in compliance with department rules at the time of the discharge.

b. The owner or operator has, upon discovery of a discharge, promptly reported the discharge to the department, and drained and removed the system from service, if necessary.

c. The owner or operator has not intentionally caused or concealed a discharge or disabled leak detection equipment.

d. The owner or operator proceeds to complete initial remedial action as specified ~~defined~~ by department rules.

e. The owner or operator, if required and if it has not already done so, applies for third-party liability coverage for the facility within 30 days after ~~of~~ receipt of an eligibility order issued by the department pursuant to this subparagraph ~~provision~~.

However, the department may consider in-kind services from eligible counties and municipalities in lieu of the $30,000 deductible. The cost of conducting initial remedial action as defined by department rules is ~~shall be~~ an eligible restoration

cost pursuant to this subparagraph ~~provision~~.

4.a. By January 1, 1997, facilities at sites with existing contamination must ~~shall be required to~~ have methods of release detection to be eligible for restoration insurance coverage for new discharges subject to department rules for secondary containment. Annual storage system testing, in conjunction with inventory control, shall be considered to be a method of release detection until the later of December 22, 1998, or 10 years after the date of installation or the last upgrade. Other methods of release detection for storage tanks which meet such requirement are:

(I) Interstitial monitoring of tank and integral piping secondary containment systems;

(II) Automatic tank gauging systems; or

(III) A statistical inventory reconciliation system with a tank test every 3 years.

b. For pressurized integral piping systems, the owner or operator must use:

(I) An automatic in-line leak detector with flow restriction meeting the requirements of department rules used in conjunction with an annual tightness or pressure test; or

(II) An automatic in-line leak detector with electronic flow shut-off meeting the requirements of department rules.

c. For suction integral piping systems, the owner or operator must use:

(I) A single check valve installed directly below the suction pump if~~, provided~~ there are no other valves between the dispenser and the tank; or

(II) An annual tightness test or other approved test.

d. Owners of facilities with existing contamination which ~~that~~ install internal release detection systems pursuant to ~~in accordance with~~ sub-subparagraph a. shall permanently close their external groundwater and vapor monitoring wells pursuant to ~~in accordance with~~ department rules by December 31, 1998. Upon installation of the internal release detection system, such ~~these~~ wells must ~~shall~~ be secured and taken out of service until permanent closure.

e. Facilities with vapor levels of contamination meeting the requirements of or below the concentrations specified in the performance standards for release detection methods specified in department rules may continue to use vapor monitoring wells for release detection.

f. The department may approve other methods of release detection for storage tanks and integral piping which have at least the same capability to detect a new release as the methods specified in this subparagraph.

(b)1. To be eligible to be certified as an insured facility, for discharges reported after January 1, 1989, the owner or operator must ~~shall~~ file an affidavit upon enrollment in the program. The affidavit must ~~shall~~ state that the owner or operator has read and is familiar with this chapter and the rules relating to petroleum storage systems and petroleum contamination site cleanup adopted pursuant to ss. 376.303 and 376.3071 and that the facility is in compliance with this chapter and applicable rules adopted pursuant to s. 376.303. Thereafter, the facility's annual inspection report shall serve as evidence of the facility's compliance with department rules. The facility's certificate as an insured facility may be revoked

only if the insured fails to correct a violation identified in an inspection report before a discharge occurs. The facility's certification may be restored when the violation is corrected as verified by a reinspection.

2. Except as provided in paragraph (a), to be eligible to be certified as an insured facility, the applicant must demonstrate to the department that the applicant has financial responsibility for third-party claims and excess coverage, as required by this section and 40 C.F.R. s. 280.97(h), and that the applicant maintains such insurance during the applicant's participation as an insured facility.

3. Should a reinspection of the facility be necessary to demonstrate compliance, the insured shall pay an inspection fee not to exceed $500 per facility to be deposited in the Inland Protection Trust Fund.

4. Upon report of a discharge, the department shall issue an order stating that the site is eligible for restoration coverage unless the insured has intentionally caused or concealed a discharge or disabled leak detection equipment, has misrepresented facts in the affidavit filed pursuant to subparagraph 1., or cannot demonstrate that he or she has obtained and maintained the financial responsibility for third-party claims and excess coverage as required in subparagraph 2.

This paragraph does not ~~Nothing contained herein shall~~ prevent the department from assessing civil penalties for noncompliance pursuant to this subsection ~~as provided herein~~.

(c) A lender that has loaned money to a participant in the Florida Petroleum Liability and Restoration Insurance Program

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

and has held a mortgage lien, security interest, or ~~any~~ lien rights on the site primarily to protect the lender's right to convert or liquidate the collateral in satisfaction of the debt secured, or a financial institution that ~~which~~ serves as a trustee for an insured in the program for the purpose of site rehabilitation, is ~~shall be~~ eligible for a state-funded cleanup of the site~~,~~ if the lender forecloses the lien or accepts a deed in lieu of foreclosure on that property and acquires title, and as long as the following has occurred, as applicable:

1. The owner or operator provided the lender with proof that the facility is eligible for the restoration insurance program at the time of the loan or before the discharge occurred.

2. The financial institution or lender ~~completes site rehabilitation and seeks reimbursement pursuant to s. 376.3071(12) or~~ conducts ~~preapproved~~ site rehabilitation pursuant to s. 376.3071 ~~s. 376.30711, as appropriate~~.

3. The financial institution or lender did not engage in management activities at the site before ~~prior to~~ foreclosure and does not operate the site or otherwise engage in management activities after foreclosure, except to comply with environmental statutes or rules or to prevent, abate, or remediate a discharge.

(d)1. With respect to eligible incidents reported to the department before ~~prior to~~ July 1, 1992, the restoration insurance program shall provide up to $1.2 million of restoration for each incident and shall have an annual aggregate limit of $2 million of restoration per facility.

2. For any site at which a discharge is reported on or

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after July 1, 1992, and for which restoration coverage is requested, the department shall pay for restoration in accordance with the following schedule:

a. For discharges reported to the department from July 1, 1992, to June 30, 1993, the department shall pay up to $1.2 million of eligible restoration costs, less a $1,000 deductible per incident.

b. For discharges reported to the department from July 1, 1993, to December 31, 1993, the department shall pay up to $1.2 million of eligible restoration costs, less a $5,000 deductible per incident. However, if, before ~~prior to~~ the date the discharge is reported and by September 1, 1993, the owner or operator can demonstrate financial responsibility in effect in accordance with 40 C.F.R. s. 280.97, subpart H, for coverage under sub-subparagraph c., the deductible will be $500. The $500 deductible shall apply for a period of 1 year from the effective date of a policy or other form of financial responsibility obtained and in effect by September 1, 1993.

c. For discharges reported to the department from January 1, 1994, to December 31, 1996, the department shall pay up to $400,000 of eligible restoration costs, less a deductible of $10,000.

d. For discharges reported to the department from January 1, 1997, to December 31, 1998, the department shall pay up to $300,000 of eligible restoration costs, less a deductible of $10,000.

e. Beginning January 1, 1999, ~~no~~ restoration coverage may not ~~shall~~ be provided.

f. In addition, a supplemental deductible shall be added as

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follows:

(I) A supplemental deductible of $5,000 if the owner or operator fails to report a suspected release within 1 working day after discovery.

(II) A supplemental deductible of $10,000 if the owner or operator, within 3 days after discovery of an actual new discharge, fails to take steps to test or empty the storage system and complete such activity within 7 days.

(III) A supplemental deductible of $25,000 if the owner or operator, after testing or emptying the storage system, fails to proceed within 24 hours thereafter to abate the known source of the discharge or to begin free product removal relating to an actual new discharge and fails to complete abatement within 72 hours, although free product recovery may be ongoing.

(e) The following are not eligible to participate in the Petroleum Liability and Restoration Insurance Program:

1. Sites owned or operated by the Federal Government during the time the facility was in operation.

2. Sites where the owner or operator has denied the department reasonable site access.

3. Any third-party claims relating to damages caused by discharges discovered before ~~prior to~~ January 1, 1989.

4. Any incidents discovered before ~~prior to~~ January 1, 1989~~, are not eligible to participate in the restoration insurance program~~. However, this exclusion does ~~shall~~ not ~~be construed to~~ prevent a new incident at the same location from participation in the restoration insurance program if the owner or operator is otherwise eligible. This exclusion does ~~shall~~ not affect eligibility for participation in the Early Detection

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Incentive ~~EDI~~ Program.

Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before ~~prior to~~ June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to s. 376.3071(6) ~~s. 376.30711~~ until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. ~~At no time shall expenses incurred outside the preapproved site rehabilitation program under s. 376.30711 be reimbursable.~~

Section 9. Subsections (1) and (4) of section 376.3073, Florida Statutes, are amended to read:

376.3073 Local programs and state agency programs for control of contamination.—

(1) The department shall, to the greatest extent possible and cost-effective, contract with local governments to provide for the administration of its departmental responsibilities under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6) ~~(l), (n), 376.30711~~, 376.3072, and 376.3077 through locally administered programs. The department may also contract with state agencies to carry out the restoration activities authorized pursuant to ss. 376.305, 376.3071, and 376.3072~~, 376.305, and 376.30711~~. However, ~~no~~ such a contract may not

~~shall~~ be entered into unless the local government or state agency is deemed capable of carrying out such responsibilities to the department's satisfaction.

(4) Under no circumstances shall the cleanup criteria employed in locally administered programs or state agency programs or pursuant to local ordinance be more stringent than the criteria established by the department pursuant to s. 376.3071(5) or (6) ~~s. 376.30711~~.

Section 10. Subsections (4) and (5) of section 376.3075, Florida Statutes, are amended to read:

376.3075 Inland Protection Financing Corporation.—

(4) The corporation may enter into one or more service contracts with the department to provide services to the department in connection with financing the functions and activities provided in ss. 376.30-376.317. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(o)~~, subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the corporation's administrative costs and expenses after payments as set forth in subsection (5). Each service contract may have a term of up to 20 years. Amounts annually appropriated and applied to make payments under such service contracts may not include any funds derived from penalties or other payments received from any property owner or private party, including payments received under s. 376.3071(7)(b) ~~s. 376.3071(6)(b)~~. In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts do not constitute

a general obligation of the state or a pledge of the faith and credit or taxing power of the state, and ~~nor may~~ such obligations are not obligations ~~be construed in any manner as an obligation~~ of the State Board of Administration or entities for which it invests funds, other than the department as provided in this section, but are payable solely from amounts available in the Inland Protection Trust Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, the service contract must expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(5) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts payable to the corporation by the department under a service contract entered into pursuant to subsection (4) for the purpose of financing the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness may not have a financing term that exceeds 15 years. The corporation may select its financing team and issue its obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of the corporation does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state~~,~~ but is payable from and secured by payments made by the department under the service contract pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(o)~~.

Section 11. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

April 8, 2014

The Honorable Joe Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron,

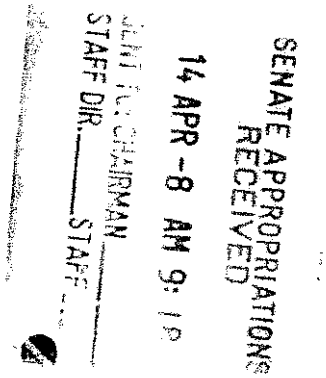
I respectfully request you place Committee Substitute for Senate Bill 1582, relating to Rehabilitation of Petroleum Contamination Sites, on your Appropriations Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Cindy Kynoch, Staff Director



REPLY TO:
❒ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
❒ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
❒ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic _____ Bill Number 1582 *(if applicable)*

Name Jeff Littlejohn Amendment Barcode _____ *(if applicable)*

Job Title Deputy Secretary - Regulatory Programs

Address 3900 Commonwealth Dr Phone 245-2140
Street

Tallahassee FL 32399 E-mail _____
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing DEP

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 1630
INTRODUCER:	Community Affairs Committee; Transportation Committee; Agriculture Committee; and Senator Montford
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Fav/CS**
2.	Price	Eichin	TR	**Fav/CS**
3.	Stearns	Yeatman	CA	**Fav/CS**
4.	Blizzard	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1630 addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). Specifically the bill:

- Reorganizes ch. 570, F.S., the department's general authorizing statute, into five separate parts;
- Standardizes penalty language in the new part V which is cross-referenced in the various statutes enforced by the department;
- Removes obsolete language to ensure accuracy;
- Under certain conditions, allows property owners to file late for an agricultural classification for assessment purposes;
- States that lands classified as agricultural and participating in a dispersed water storage program shall continue to be classified as agricultural;
- Provides private landowners participating in a water storage program with an option to establish a baseline condition determining the extent of wetlands;
- Adds a representative of the department to the Joint Task Force on State Agency Law Enforcement Communications;
- Revises requirements for registration and distribution of discontinued pesticides;
- Updates the department's certification and licensure processes to include applying online;

- Expands the authority of the Florida Forest Service, under certain conditions, to grant leases, permits, privileges, and concessions for the use of state forest lands to include *any lands* leased by or assigned to the Florida Forest Service for management purposes;
- Authorizes the department to impose civil penalties for violations relating to private security, investigative, and repossession services;
- Removes security bond and certificate of deposit requirements for fertilizer license applicants, since the department has sufficient authority to impose fines or to revoke licensure for licensees who do not pay inspection fees;
- Adds additional criteria to determine whether commercial feed is adulterated;
- Simplifies the information required to register as a seed dealer;
- Revises food permit requirements, associated fees, and renewal procedures;
- Exempts manually operated vending stands serviced by the Department of Education's Division of Blind Services from permitting requirements;
- Authorizes the department to close a food facility if it is found to pose an immediate danger or threat to public health, safety, and welfare;
- Authorizes the department to inspect aquaculture facilities and to analyze their food samples;
- Repeals a pilot program and permit for the use of Australian pine trees as windbreaks for citrus groves; and
- Creates new requirements for qualifying as a "non-dealer" in limited sales of dressed poultry.

The bill has an insignificant fiscal impact on state funds.

II. Present Situation:

Chapter 570, F.S., Revision

Chapter 570, F.S., is the primary authorizing chapter for the Department of Agriculture and Consumer Services (department). This chapter establishes the functions, powers, and duties of the department, as well as the Commissioner of Agriculture. Over the years, ch. 570, F.S., has become a general "catch-all" for statutory language that does not clearly fall within another chapter. This bill reorganizes ch. 570, F.S., to provide accuracy and efficiency.

Penalty Consolidation

Currently, penalties are located within specific statutory sections that contain the regulation being enforced. In an effort to be more consistent and consumer friendly, the department has recommended consolidating its fines and penalties into one part of the statute and placing cross-references within the specific subject matter statutes to standardize penalty language.

Property Valuation in Florida

The Florida Constitution requires that all property be assessed at just value (fair market value) for ad valorem tax purposes. However, sections 3, 4, and 6, Article VII of the Constitution, provide for specified assessment limitations, property classifications, and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, the assessed value is determined. The assessed value is then reduced by any applicable exemptions to produce the taxable value.

Agricultural Property Classification

Section 193.461, F.S., provides that each county's property appraiser shall, for assessment purposes on an annual basis, classify all lands within a county as agricultural or nonagricultural. For property to be classified as agricultural land, it must be used "primarily for bona fide agricultural purposes." Agricultural purposes include, but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; apiary; pisciculture, when the land is used principally for the production of tropical fish; aquaculture, including algaculture; sod farming; and all forms of farm products and farm production.

Property appraisers are required to reclassify lands as nonagricultural when they are diverted from an agricultural to a nonagricultural use or no longer utilized for agricultural purposes.

In response to the spread of citrus canker, the 2000 Legislature authorized lands to retain agricultural classification and be assessed at a de minimis value of no more than $50 per acre if the owner took the land out of production due to a state or federal eradication or quarantine program. These lands retain the agricultural classification and de minimis assessment as long as they are not used to produce income or used for a nonagricultural use.

Property owners must submit applications for agricultural classification by March 1 of each year.[1] If a property owner submits an application after March 1, the property owner must petition the value adjustment board and show extenuating circumstances that warrant granting the classification. The property appraiser is not authorized to review late applications.

Agricultural Water Policy

The Office of Agricultural Water Policy was established in 1995, in s. 570.074, F.S. The purpose of the office is to facilitate communications among federal, state, and local agencies, and the agricultural industry on water quantity and quality issues involving agriculture.[2] The bill requires the office to enforce and implement the provisions of ch. 582, F.S., which establishes the soil and water conservation districts. This duty is currently performed by the department's Division of Agricultural Environmental Services.

Water Retention Programs

The Legislature has encouraged and supported development of creative public-private partnerships and programs that facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed. Since 2005, the South Florida Water Management District has been working with agencies, environmental organizations, land owners, and researchers to enhance opportunities for storing excess surface water on private and public lands. Over the years, these efforts have made thousands of acre-feet of water retention and storage available.

[1] Section 193.461(3)(a), F.S.
[2] Florida Dep't of Agric. And Cons. Servs., *Office of Agricultural Water Policy*, http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Water-Policy (last visited April 4, 2014).

Water retention systems serve to control storm water volume before it is discharged to surface waters or floods urban areas. The systems also act to minimize point source and non-point source pollution prior to its entry into streams, natural wetlands, and other receiving waters. These systems vary widely in their pollutant removal capabilities, but can effectively remove a number of contaminants with removal rates as high as 95 and 99 percent for some non-dissolved nutrients and pesticides, respectively.

Eight Florida ranchers participated in a $6 million pilot program run by the South Florida Water Management District called the "Florida Ranchlands Environmental Services Project." The program, which ran from 2006 to 2011, paid ranchers to construct water retention areas on their properties that acted as natural phosphorous filters. In addition to construction costs, the program paid ranchers for annual maintenance and a participation fee for three years. The district also created a $3 million water farming pilot project that paid citrus growers to build systems to store excess water on fallow citrus land before it can flow into estuaries.

Once an agricultural landowner enters into an agreement with a water management district or the Department of Environmental Protection for water storage or water quality improvements on private land, the extent of existing wetlands and other surface waters must be established in the agreement.[3]This "baseline determination" is later needed so that any increase in wetlands or surface water as a result of the project does not subject the landowner to increased regulatory requirements.

As part of Florida's pollution control requirements, the amount of a pollutant that a water body may receive without exceeding water quality standards is established.[4] The Department of Agriculture and Consumer Services is authorized to establish best management practices to reduce agricultural pollutants.[5]

Division of Food Safety

The Division of Food Safety is responsible for assuring a safe, wholesome, and properly represented food supply. This is accomplished through the permitting and inspection of food establishments, inspection of food products, and through specialized laboratory analyses on a variety of food products sold or produced in the state. The division monitors food from the farm gate through processing and distribution to the retail point of purchase.

The division is charged with administration and enforcement of food, poultry, and egg laws, and also provides support in the enforcement of other food safety laws. In addition to regulatory surveillance and enforcement, the division evaluates consumer complaints related to food.[6] The bill will authorize the division to also inspect aquaculture facilities and to analyze food samples from those facilities.

[3] Section 373.4591, F.S.
[4] *See* Section 403.067(6)(a)2., F.S. (describing the total maximum daily load calculation).
[5] Section 403.067(7)(c), F.S.
[6] Florida Dep't of Agric. And Cons. Servs., *Division of Food Safety*, http://www.freshfromflorida.com/Divisions-Offices/Food-Safety (last visited April 4, 2014).

Office of Energy

The Office of Energy is the primary organization for state energy and climate change programs and policies. The office works cooperatively with other state entities, including the Florida Public Service Commission and the Florida Energy Consortium to develop state energy and climate change policies and programs.[7] During the 2011 Legislative Session, the Office of Energy was transferred from the Executive Office of the Governor to the department. However, the Office of Energy was never specifically established in ch. 570, F.S.

Conservation Easements and Agreements

A conservation easement is a perpetual, undivided interest in property that may be created in a variety of ways. Section 570.71(12), F.S., authorizes the department to use funds from the following sources to implement certain conservation easements and agreements:

- State funds;
- Federal funds;
- Other governmental entities;
- Nongovernmental organizations; and
- Private individuals.

The bill specifies that the funds described above can be used for administrative and operating expenses related to appraisals, mapping, title process, personnel, and other real estate expenses.

Pesticide Regulation

The Bureau of Pesticides provides comprehensive pesticide regulatory programs to ensure the protection of public health and the environment. The bureau is responsible for registering pesticide products sold and distributed in Florida. The bureau also conducts scientific reviews to determine whether human health and the environment may be adversely affected when pesticides are used under Florida conditions and in accordance with label directions and applicable regulations.[8]

The Pesticide Registration Section registers federally accepted pesticides that are distributed, sold, or offered for sale in Florida as stipulated in ch. 487, F.S., and ch. 5E-2, Florida Administrative Code. The law requires biennial registration renewal for each pesticide product sold or distributed in Florida.[9]

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[7] Florida Dep't of Agric. And Cons. Servs., *Office of Energy*, http://www.freshfromflorida.com/Divisions-Offices/Energy (last visited April 4, 2014).
[8] Florida Dep't of Agric. And Cons. Servs., *Division of Agricultural Environmental Services*, http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Environmental-Services (last visited April 4, 2014).
[9] Florida Dep't of Agric. And Cons. Servs., *Product Registration Procedures*, http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Environmental-Services/Bureaus-and-Sections2/Bureau-of-Pesticides/Product-Registration-Procedures (last visited April 4, 2014).

Agricultural Fertilizers, Feed, and Seed

The Bureau of Compliance Monitoring registers or licenses more than 3,000 distributors of feed, seed, and fertilizer products in Florida to ensure that their products meet current regulatory standards and label guarantees.[10] The Agricultural Feed, Seed, and Fertilizer Advisory Council is a 15-member statutorily charged stakeholder advisory council to the department that was created in 2012 and convened in 2013. The council advises the department regarding actions to be taken with respect to the regulation and enforcement of agricultural feed, seed, and fertilizer. Stakeholders include the department, the University of Florida's Institute of Food and Agricultural Sciences, and the aquaculture, dairy production, citrus, seed, feed, fertilizer, beef cattle, poultry, field/row crops, and vegetable industries.[11]

Plant Industry

The Division of Plant Industry works to detect, intercept, and control plant and honey bee pests that threaten Florida's native and commercially grown plants and agricultural resources.[12] In 2008, the Legislature established a five-year pilot program to permit the planting of *Casuarina cunninghamiana* (Australian pine trees) as a windbreak for commercial citrus groves growing fresh fruit in Indian River, St. Lucie, and Martin counties.[13] The purpose of the pilot program was to determine if the use of the trees as an agricultural pest and disease windbreak would pose any adverse environmental consequences. The five-year pilot project ended in 2012. A final report was issued that indicated that Australian Pine Trees used as windbreaks did not demonstrate any invasive tendencies.

Florida Forest Service

The Florida Forest Service's mission is to protect and manage the forest resources of the state. Wildfire prevention and suppression are key components of its efforts to protect homeowners from the threat of damage in a natural, fire-dependent environment. In addition to managing over one million acres of state forests for multiple public uses including timber, recreation, and wildlife habitat, the service also provides landowners throughout the state with technical information and grant programs.[14]

Goethe and Withlacoochee State Forests

Section 589.081, F.S., requires the Florida Forest Service to pay 15 percent of the gross receipts from Withlacoochee State Forest and the Goethe State Forest to each fiscally constrained county

[10] Florida Dep't of Agric. And Cons. Servs., *Bureau of Compliance Monitoring*, http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Environmental-Services/Bureaus-and-Sections2/Bureau-of-Compliance-Monitoring (last visited April 4, 2014).
[11] Agric. Feed, Seed, and Fertilizer Advisory Council, *Agricultural Feed, Seed, and Fertilizer Advisory Council*, http://consensus.fsu.edu/AFSFAC/index.html (last visited April 4, 2014).
[12] Florida Dep't of Agric. And Cons. Servs., *Division of Plant Industry*, http://www.freshfromflorida.com/Divisions-Offices/Plant-Industry (last visited April 4, 2014).
[13] Section 581.091(5), F.S.
[14] Florida Dep't of Agric. And Cons. Servs., *Florida Forest Service*, http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service (last visited April 4, 2014).

containing a portion of the forests. The funds must be equally divided between the board of county commissioners and the school board of each fiscally-constrained county.

Classification and Sale of Eggs and Poultry

Section 583.01, F.S., currently defines the term "dealer" to mean any person, firm, or corporation, including a producer, processor, retailer, or wholesaler, that sells, offers for sale, or holds for the purpose of sale 30 dozen or more eggs or its equivalent in any one week, or in excess of 100 pounds of dressed poultry in any one week. Egg and poultry dealers are regulated under this chapter and are required to possess a valid food permit. The bill creates limited sale poultry requirements to benefit operators of small poultry farms by correcting a discrepancy between state and federal law regarding what constitutes a "dealer." For the past several years, the department has been working with small farmers to provide a level of economic and regulatory relief relative to production and sale of limited poultry. This change will establish more realistic numbers for a "non-dealer."

III. Effect of Proposed Changes:

Section 1 amends s. 193.461, F.S., to allow a property owner to file with the property appraiser for an agricultural classification for assessment purposes after the deadline for filing has passed. The application must be filed within 25 days after the property appraiser mails the notices required under s. 194.011(1). The application must demonstrate that the applicant was unable to apply for the classification in a timely manner or otherwise demonstrate extenuating circumstances as judged by the property appraiser.

The bill provides that lands classified as agricultural for assessment purposes and which participate in a dispersed water storage program, pursuant to a contract with the Department of Environmental Protection or a water management district, shall continue to be classified as agricultural lands for the duration of the lands' participation in the program and shall be assessed as nonproductive agricultural lands. Lands diverted to a nonagricultural use shall be assessed under s. 193.011, F.S.

Section 2 amends s. 282.709, F.S., to add a representative of the Department of Agriculture and Consumer Services (department) to the Joint Task Force on State Agency Law Enforcement Communications. This task force advises the Department of Management Services of agency needs relating to the planning, designing, and establishment of the statewide radio communication system.

Section 3 amends s. 373.4591, F.S., to provide that when the department and a private landowner enter into an agreement related to water storage on private agricultural lands and to implement best management practices pursuant to s. 403.067(7)(c), F.S., a baseline condition determining the extent of wetlands and other surface waters may be established at the option and expense of the private landowner. The bill provides procedures to be followed and directs the department to coordinate with the Department of Environmental Protection and water management districts on a process for reviewing such requests by private landowners.

Section 4 transfers and renumbers s. 570.0741, F.S., pertaining to the department's Office of Energy, as s. 377.805, F.S. It also deletes an obsolete web posting date.

Section 5 amends s. 379.361, F.S., to require a person to retake an educational seminar when renewing an Apalachicola Bay oyster harvesting license.

Section 6 amends s. 487.041, F.S., to revise requirements for registration and distribution of discontinued pesticides.

Section 7 amends s. 487.046, F.S., to update methods for filing pesticide applicator license applications.

Section 8 amends s. 487.048, F.S., to update methods for filing pesticide dealer's license applications.

Section 9 amends s. 487.159, F.S., to delete requirements for filing statements claiming damages and injuries from pesticide applications. It updates reporting requirements for pesticide applicators who observe unreasonable adverse effects of restricted-use pesticides.

Section 10 amends s. 487.160, F.S., to revise recordkeeping requirements for licensed private applicators.

Section 11 amends s. 487.2031, F.S., to revise the definition of "Material Safety Data Sheet" to "Safety Data Sheet."

Section 12 amends s. 487.2051, F.S., to revise requirements for pesticide fact sheets and safety data sheets.

Section 13 amends s. 493.6120, F.S., pertaining to private investigative, security, and repossession services. The department is authorized to seek the imposition of certain civil penalties for violations and provides a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 14 transfers and renumbers s. 570.545, F.S., pertaining to unsolicited goods, as s. 501.0113, F.S.

Section 15 amends s. 500.03, F.S., to add a cross-reference to the definition of "food establishment." This will exempt the Department of Education's Division of Blind Services from obtaining permits from the department for vending machines it services at Department of Transportation rest areas.

Section 16 amends s. 500.12, F.S., to revise criteria for certain food permit exemptions. Food establishments and retail food stores are required to obtain a food permit before beginning operation and clarifies that such permits are not transferable. The department is required to adopt a food permit fee schedule by rule and updates terminology (occupational license to business tax certificate).

Section 17 amends s. 500.121, F.S., to conform to changes made by this bill to the Florida Food Safety Act. Specifically, the amended section:

- Clarifies that the fine for violating the provisions of ch. 500, F.S., is an administrative fine to make it consistent with the newly created penalty section of the bill, s. 570.971, F.S.;
- Reduces a fine for mislabeling the country of origin of a food from $10,000 per violation to $5,000;
- Revises the time limit for payment of fines from 15 days to 21 days;
- Provides for permit revocation for failure to pay a fine;
- Authorizes the department to immediately close food establishments that fail to comply with ch. 500, FS., and are deemed a severe and immediate threat to public health;
- Provides a procedure for the department to follow in order to issue a final order to close a food establishment determined to be a severe and immediate threat to public health;
- Provides that a person who defaces or removes a closed-for-operation sign or an owner or operator that resists closure commits a second degree misdemeanor; and
- Authorizes the department to adopt rules to administer this subsection.

Section 18 amends s. 500.147, F.S., to authorize the department to inspect and have free access to any food establishment's food records. This will allow the department to trace food products in the event of a food-borne illness outbreak or to identify an adulterated or misbranded food item.

Section 19 amends s. 500.165, F.S., pertaining to shipments of food items, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 20 amends s. 500.172, F.S., to allow department employees access to food-processing or food storage areas if there has been probable cause of a food safety violation.

Section 21 amends s. 501.019, F.S., pertaining to penalties imposed for violations of health studio laws, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 22 amends s. 501.059, F.S., pertaining to telephone solicitation, to provide cross-references to penalties in the newly created s. 570.971, F.S. The department is authorized to adopt rules to implement this section.

Section 23 amends s. 501.922, F.S., pertaining to violations of the Antifreeze Act of 1978, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 24 transfers and renumbers s. 570.42, F.S., pertaining to the Dairy Technical Council, as s. 502.301, F.S. The new section is amended to make technical changes and to correct a cross-reference.

Section 25 creates part I of ch. 570, F.S., consisting of ss. 570.01 – 570.232, F.S., and entitled "General Provisions."

Section 26 renumbers s. 570.14, F.S., pertaining to the official seal that the department uses in official acts, as s. 570.031, F.S.

Section 27 renumbers s. 570.18, F.S., pertaining to the authority of the department to organize its work and to create maximum efficiency, as s. 570.041, F.S.

Section 28 renumbers s. 570.16, F.S., pertaining to penalties for interfering with department employees in the performance of their duties, as s. 570.051, F.S.

Section 29 amends s. 570.07, F.S., pertaining to the duties and responsibilities of the department, to correct a cross-reference.

Section 30 renumbers s. 570.17, F.S., pertaining to responsibilities between the department and the University of Florida's extension service and experiment stations, as s. 570.081, F.S.

Section 31 renumbers s. 570.531, F.S., pertaining to the Market Improvements Working Capital Trust Fund, as s. 570.209, F.S.

Section 32 amends s. 570.23, F.S., pertaining to the State Agricultural Advisory Council, to correct a cross-reference and to delete an obsolete date.

Section 33 renumbers s. 570.0705, F.S., pertaining to advisory committees, as s. 570.232, F.S.

Section 34 creates part II of ch. 570, F.S., consisting of ss. 570.30 – 570.693, F.S., and entitled "Program Services."

Section 35 amends s. 570.36, F.S., to change "laboratories" to "laboratory" since there is currently only one.

Section 36 amends s. 570.44, F.S., to delete a reference to the Pesticide Review Council which was abolished in 2013. The responsibilities over the soil and water conservation districts are removed from the Division of Agricultural Environmental Services, as Section 61 of the bill directs the Office of Agricultural Water Policy to enforce and implement the provisions of ch. 582, F.S., and any rules relating to soil and water conservation.

Section 37 amends s. 570.45, F.S., to delete a cross-reference. This amendment removes the duties of overseeing soil and water conservation districts from the director of the Division of Agricultural Environmental Services.

Section 38 amends s. 570.451, F.S., to correct a cross-reference and establish that the meetings, powers and duties, procedures, and recordkeeping of the Agricultural Feed, Seed, and Fertilizer Advisory Council be kept pursuant to s. 570.232, F.S.

Section 39 amends s. 570.50, F.S., to add aquaculture products to the list of items the Division of Food Safety may inspect and analyze. Enforcement authority for aquaculture regulations is provided.

Section 40 amends s. 570.51, F.S., to add ch. 597, F.S., (aquaculture) to the chapters that the Division of Food Safety has the authority to enforce.

Section 41 amends s. 570.543, F.S., to remove a reference to s. 570.0705, F.S., and establish that the meetings, powers, duties, procedures, and recordkeeping of the Florida Consumers' Council must be performed pursuant to s. 570.232, F.S.

Section 42 renumbers s. 570.073, F.S., pertaining to the Office of Agricultural Law Enforcement, as s. 570.65, F.S.

Section 43 renumbers s. 570.074, pertaining to the Office of Agricultural Water Policy, as s. 570.66, F.S. The bill directs the office to provide oversight of the soil and water conservation districts, provisions of ch. 582, F.S., and rules relating to soil and water conservation.

Section 44 creates s. 570.67, F.S., establishing the Office of Energy within the department. The bill requires the Office of Energy to be under the supervision of a senior manager, appointed by the Commissioner of Agriculture, and provides for duties of the office.

Section 45 renumbers s. 570.951, F.S., pertaining to the Florida Agriculture Center and Horse Park, as s. 570.681, F.S.

Section 46 renumbers s. 570.952, F.S., pertaining to the Florida Agriculture Center and Horse Park Authority, as s. 570.685, F.S. The new section is amended to correct cross-references and to remove obsolete dates.

Section 47 renumbers s. 570.953, F.S., pertaining to confidentiality of donors to the Agriculture Center and Horse Park Authority, as s. 570.686, F.S.

Section 48 renumbers s. 570.902, F.S., pertaining to definitions for the purpose of the department's direct-support organizations, as s. 570.69, F.S. The new section is amended to correct cross-references.

Section 49 renumbers s. 570.903, F.S., pertaining to direct-support organizations, as s. 570.691, F.S.

Section 50 renumbers s. 570.901, F.S., pertaining to the Florida Agricultural Museum, as s. 570.692, F.S.

Section 51 renumbers s. 570.91, F.S., pertaining to the Florida Agriculture in the Classroom program, as s. 570.693, F.S.

Section 52 creates part III of ch. 570, F.S., consisting of ss. 570.70 – 570.89, F.S., and entitled "Agricultural Development."

Section 53 amends s. 570.71, F.S., to remove an obsolete date for the initiation of the conservation easements and agreements program. Funds are directed to be deposited into the Conservation and Recreation Lands Program Trust Fund and used for all related real estate costs, including administrative and operating expenses related to appraisals, mapping, title process, personnel, and other real estate-related expenses.

Section 54 transfers and renumbers s. 570.241, F.S., pertaining to the Agricultural Economic Development Act, as s. 570.73, F.S.

Section 55 renumbers s. 570.242, F.S., pertaining to definitions relating to the Agricultural Economic Development Act, as s. 570.74, F.S. The new section is amended to delete the terms "Commissioner" and "Department."

Section 56 renumbers s. 570.243, F.S., pertaining to the department's Agricultural Economic Development Program, as s. 570.75, F.S.

Section 57 renumbers s. 570.244, F.S., pertaining to the powers and duties of the department, as s. 570.76, F.S.

Section 58 renumbers s. 570.245, F.S., pertaining to the department's interaction with other economic development agencies and groups, as s. 570.77, F.S.

Section 59 renumbers s. 570.246, F.S., pertaining to funds appropriated to agricultural economic development, as s. 570.78, F.S.

Section 60 renumbers s. 570.247, F.S., pertaining to promulgation of rules to implement the agricultural economic development program, as s. 570.79, F.S. The new section is amended to remove an obsolete date.

Section 61 renumbers s. 570.248, F.S., pertaining to the Agricultural Economic Development Project Review Committee, as s. 570.81, F.S.

Section 62 renumbers s. 570.249, F.S., pertaining to Agricultural Economic Development Program disaster loans, grants, and aid, as s. 570.82, F.S.

Section 63 renumbers s. 570.9135, F.S., pertaining to the Beef Market Development Act, as s. 570.83, F.S. The new section is amended to correct cross-references.

Section 64 renumbers s. 570.954, F.S., pertaining to the farm-to-fuel initiative, as s. 570.841, F.S.

Section 65 renumbers s. 570.96, F.S., pertaining to agritourism, as s. 570.85, F.S.

Section 66 renumbers s. 570.961, F.S., pertaining to definitions clarifying agritourism, as s. 570.86, F.S. The new section is amended to correct a cross-reference.

Section 67 renumbers s. 570.962, F.S., pertaining to the impact of agritourism activities on land classification for purposes of ad valorem taxation, as s. 570.87, F.S.

Section 68 renumbers s. 570.963, F.S., pertaining to liability for agritourism operators, as s. 570.88, F.S. The new section is amended to correct a cross-reference.

Section 69 renumbers s. 570.964, F.S., pertaining to notice requirements and the notice language that must be posted and given to patrons when engaging in agritourism activities, as s.570.89, F.S. Technical revisions are made to the new section.

Section 70 creates part IV of ch. 570, F.S., consisting of ss. 570.916 – 570.94, F.S., and entitled "Agricultural Water Policy."

Section 71 renumbers s. 570.075, F.S., pertaining to water supply agreements with landowners in rural areas, as s. 570.916, F.S.

Section 72 renumbers s. 570.076, F.S., pertaining to the department's Environmental Stewardship Certification Program, as s. 570.921, F.S. The new section corrects a cross-reference.

Section 73 renumbers s. 570.085, F.S., pertaining to the department's agricultural water conservation program and agricultural water supply planning, as s. 570.93, F.S.

Section 74 renumbers s. 570.087, F.S., pertaining to best management practices for wildlife, as s. 570.94, F.S.

Section 75 creates part V of ch. 570, F.S., consisting of s. 570.971, F.S., and entitled "Penalties."

Section 76 creates s. 570.971, F.S., to establish levels of administrative and civil penalties for violations of department regulations. The bill provides applicability and authorizes the department to adopt rules.

Section 77 amends s. 576.021, F.S., to revise procedures for filing applications to distribute fertilizer. The change would allow for online certification and licensure.

Section 78 amends s. 576.031, F.S., to reduce the number of labels from five to two which registrants would have to provide a purchaser in order to distribute bulk fertilizer.

Section 79 amends s. 576.041, F.S., to delete a requirement that fertilizer license applicants provide surety bonds or certificates of deposit to ensure payment of inspection fees.

Section 80 amends s. 576.051, F.S., to revise the period of time a fertilizer sample must be retained from 90 days to 60 days.

Section 81 amends s. 576.061, F.S., pertaining to plant nutrient investigational allowances, deficiencies, and penalties, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 82 amends s. 576.071, F.S., to revise criteria for determining the commercial value of fertilizer nutrients. This change allows the department to utilize additional data sources, such as surveys of the Florida fertilizer industry, to obtain commercial values.

Section 83 amends s. 576.087, F.S., to revise antisiphon requirements for irrigation systems in response to constant changes in technology of these devices.

Section 84 amends s. 576.101, F.S., to remove the probationary status of fertilizer licensees whose fertilizer samples fail to meet minimum performance level requirements.

Section 85 amends s. 578.08, F.S., to revise application requirements and registration requirements for the sale of feed. It allows registrants to apply online or by paper application. It also adds categories in the fees section for businesses that sell the least amount of seed to make the registration process easier and to entice more small businesses to register with the department.

Section 86 amends s. 580.036, F.S., to re-insert a reference to the Commercial Feed Technical Council which a statutory revisers bill mistakenly removed in the 2013 Session.

Section 87 amends s. 580.041, F.S., to provide the option for online license applications for distributors of commercial feed and feedstuff.

Section 88 amends s. 580.071, F.S., to revise criteria for adulteration of commercial feed and feedstuff to include national standards established by the Association of American Feed Control Officials. This will make the definition of adulteration more consistent with national standards.

Section 89 amends s. 581.091, F.S., to delete a program for Australian pines used as windbreaks in citrus groves. The five-year pilot project ended in 2012 and a final report was issued.

Section 90 amends s. 581.131, F.S., to revise the timeframe from 60 days to 30 days before the annual renewal date in which the department must provide notices for registration renewal to nurserymen, stock dealers, agents, or plant brokers. This will bring the notice of need to renew into alignment with standards for billing used in the private sector.

Section 91 amends s. 583.01, F.S., to revise the definition of "dealer" to create limited sale poultry requirements. This change will make state law closer to federal law for a "non-dealer."

Section 92 transfers and renumbers s. 570.38, F.S., pertaining to the Animal Industry Technical Council, as s. 585.008, F.S. The new section is amended to make technical changes and to correct a cross-reference.

Section 93 amends s. 589.08, F.S., to clarify the distribution of 15 percent of the gross receipts received by the Florida Forest Service from Goethe State Forest to fiscally constrained counties. The bill removes reference to Withlacoochee State Forest as it is not located in a fiscal constrained county.

Section 94 amends s. 589.011, F.S., to provide conditions under which the Florida Forest Service is authorized to grant the use of certain lands. Criteria is provided for the Florida Forest Service to determine certain fees, rentals, and charges.

Section 95 amends s. 589.20, F.S., to authorize the Florida Forest Service to cooperate with water management districts, municipalities, and other governmental entities in the designation and dedication of lands suitable for forestry purposes.

Section 96 amends s. 590.02, F.S., to rename the Florida Center for Wildfire and Forest Resources Management Training as the Withlacoochee Training Center.

Section 97 amends s. 590.125, F.S., to clarify requirements for non-certified burning and smoldering.

Section 98 transfers and renumbers s. 570.0725, F.S., pertaining to food recovery, as s. 595.420, F.S.

Section 99 amends s. 597.003, F.S., to authorize the department to provide training as necessary to lessees of certain lands.

Section 100 amends s. 597.004, F.S., to require an applicant for an aquaculture certificate to submit a certificate of training, if required.

Section 101 amends s. 597.020, F.S., to authorize the department to adopt training requirements for shellfish processors, by rule. The bill provides a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 102 transfers and renumbers s. 570.481, F.S., pertaining to fruit and vegetable inspection fees and penalties, as s. 603.011, F.S.

Section 103 transfers and renumbers s. 570.55, F.S., pertaining to the Florida Tropical or Subtropical Fruit and Vegetables Sales Law, as s. 603.211, F.S.

Section 104 amends s. 604.16, F.S., to provide an exemption from the provisions of ss. 604.15– 604.34, F.S., for a dealer in agricultural products to the extent that the dealer purchases agricultural products from a producer owned by the exact same person as the dealer, owned solely by the dealer, or who solely owns the dealer. The dealer is not exempt from the recordkeeping requirements of s. 604.22(2), F.S.

Section 105 amends s. 604.22, F.S., pertaining to penalties for dealers in agricultural products, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 106 repeals the following sections:

> Section 487.172, F.S., requires an educational program for organotin anti-fouling paints. It is obsolete since these products are now restricted-use pesticides, which are rarely used, and education is covered in the certification process.
>
> Section 500.301, F.S., pertains to standards of enrichment for grain products. The department has adopted provisions in the code of federal regulations by reference in rule, making it obsolete and duplicative.

Section 500.302, F.S., clarifies what constitutes an unlawful retail sale of a grain product. The department has adopted provisions in the code of federal regulations by reference in rule, making it obsolete and duplicative.

Section 500.303, F.S., requires the department to establish by rule a state standard for each grain product. The department has adopted provisions in the code of federal regulations by reference in rule, making it obsolete and duplicative.

Section 500.304, F.S., provides for enforcement of provisions found in ss. 500.301-500.306, F.S. The department has adopted provisions in the code of federal regulations by reference in rule, making it obsolete and duplicative.

Section 500.305, F.S., provides the department with the authority to inspect, take samples and investigate grain products for compliance with ss. 500.301-500.306, F.S. The department has adopted provisions in the code of federal regulations by reference in rule, making it obsolete and duplicative.

Section 500.306, F.S., provides penalties for violations of ss. 500.301-500.306, F.S., which Section 36 of the bill repeals.

Section 500.601, F.S., regulates the retail sale of meat. The department no longer carries out this function, as it falls under the jurisdiction of the United States Department of Agriculture.

Section 570.345, F.S., pertains to the Interstate Pest Control Compact. With the dissolution of the compact in 2013, the statutory authority in this section is obsolete.

Section 570.542, F.S., creates the short title of the Florida Consumer's Council and is not necessary.

Section 570.72, F.S., is a redundant definition of "department."

Section 570.92, F.S., pertains to the department's equestrian educational sports program which is an inactive program.

Section 589.081, F.S., details the payment of 15 percent of gross receipts received by the Florida Forest Service from the Goethe and Withlacoochee State Forests to the fiscally constrained counties within these forests. This statutory distribution has been moved to s. 589.08, F.S., in Section 92 of the bill.

Section 590.091, F.S., pertains to the designation of railroad rights-of-way as wildfire hazard areas. It is no longer needed due to underground pipelines and communications lines that run along railroad tracks.

Section 107 amends s. 193.461, F.S., pertaining to assessments of agricultural lands, to make grammatical changes and to correct a cross-reference.

Section 108 amends s. 253.74, F.S., pertaining to certain aquaculture violations, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 109 amends s. 288.1175, F.S., pertaining to an agriculture education and promotion facility, to correct a cross-reference.

Section 110 amends s. 320.08058, F.S., pertaining to Florida agricultural license plates, to correct cross-references.

Section 111 amends s. 373.621, F.S., pertaining to water conservation, to correct a cross-reference.

Section 112 amends s. 373.709, F.S., pertaining to regional water supply planning, to correct a cross-reference.

Section 113 amends s. 381.0072, F.S., pertaining to food service protection, to correct a cross-reference.

Section 114 amends s. 388.46, pertaining to the Florida Coordinating Council on Mosquito Control, to remove an obsolete reference to the Pesticide Review Council.

Section 115 amends s. 472.0351, F.S., pertaining to land surveyors and mappers, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 116 amends s. 472.036, F.S., pertaining to unlicensed practice of professional surveying and mapping, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 117 amends s. 482.161, F.S., pertaining to pest control, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 118 amends s. 482.165, F.S., pertaining to unlicensed practice of pest control, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 119 amends s. 482.243, F.S., pertaining to the Pest Control Enforcement Advisory Council, to correct a cross-reference.

Section 120 amends s. 487.047, F.S., to revise provisions for filing pesticide applicator license applications to allow for on-line certification and licensure.

Section 121 amends s. 487.091, F.S., pertaining to penalties relating to pesticide regulation and safety, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 122 amends s. 487.175, F.S., pertaining to violations of pesticide application, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 123 amends s. 493.6118, F.S., pertaining to administrative fines for offenses by private investigative, security, and repossession services, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 124 amends s. 496.420, F.S., pertaining to the solicitation of persons for donations, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 125 amends s. 500.70, F.S., pertaining to tomato food safety standards, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 126 amends s. 501.612, F.S., pertaining to commercial telephone sellers or salespersons, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 127 amends s. 501.619, F.S., pertaining to consumer protection, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 128 amends s. 502.231, F.S., pertaining to penalties for violations of regulatory laws governing the production, processing, and distribution of milk, milk products, frozen desserts, and frozen dessert mix. It provides cross-references to penalties in the newly created s. 570.971, F.S.

Section 129 amends s. 507.09, F.S., pertaining to household moving services, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 130 amends s. 507.10, F.S., pertaining to civil penalties and remedies for violations concerning household moving services, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 131 amends s. 509.032, F.S., pertaining to the department's duties during the inspection of food service establishments, to correct cross-references.

Section 132 amends s. 525.16, F.S., pertaining to penalties for gasoline and oil inspection violations, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 133 amends s. 526.311, F.S., pertaining to penalties for violations in the sale of liquid fuels, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 134 amends s. 526.55, F.S., pertaining to penalties for violations in the sale of brake fluid, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 135 amends s. 527.13, F.S., pertaining to penalties for violations in the sale of liquefied petroleum gas, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 136 amends s. 531.50, F.S., pertaining to penalties for violations of the Weights and Measures Act of 1971, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 137 amends s. 534.52, F.S., pertaining to penalties for violations of livestock market laws, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 138 amends s. 539.001, F.S., pertaining to penalties for violations of the Florida Pawnbroking Act, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 139 amends s. 559.921, F.S., pertaining to penalties for violations of the Florida Motor Vehicle Repair Act, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 140 amends s. 559.9355, pertaining to administrative remedies for violations of the Florida Sellers of Travel Act, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 141 amends s. 559.936, F.S., pertaining to civil penalties for violations of the Florida Sellers of Travel Act, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 142 amends s. 571.11, F.S., pertaining to seal of quality for eggs and poultry, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 143 amends s. 571.28, F.S., pertaining to the Florida Agricultural Promotional Campaign Advisory Council, to correct a cross-reference.

Section 144 amends s. 571.29, F.S., pertaining to unlawful use of logos of the Florida Agricultural Promotional Campaign, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 145 amends s. 578.181, F.S., pertaining to notice of infected plants and their destruction, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 146 amends s. 580.121, F.S., pertaining to penalties for violations of commercial feed and feedstuff laws, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 147 amends s. 581.141, F.S, pertaining to violations regarding certificates of registration or plant industry inspections, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 148 amends s. 581.186, F.S., pertaining to the Endangered Plant Advisory Council, to correct a cross-reference.

Section 149 amends s. 581.211, F.S., pertaining to penalties for violations of plant industry laws, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 150 amends s. 582.06, F.S., pertaining to the Soil and Water Conservation Council, to correct a cross-reference.

Section 151 amends s. 585.007, F.S., pertaining to violations of rules or laws governing the animal industry, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 152 amends s. 586.15, F.S., pertaining to violations of honey certification and honey bees, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 153 amends s. 586.161, pertaining to the Honeybee Technical Council, to correct a cross-reference.

Section 154 amends s. 590.14, F.S., pertaining to violations of forest protection, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 155 amends s. 595.701, F.S., pertaining to the Healthy Schools for Healthy Lives Council, to correct a cross-reference.

Section 156 amends s. 597.0041, F.S., pertaining to violations of prohibited acts relating to aquaculture, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 157 amends s. 599.002, F.S., pertaining to the Viticulture Advisory Council, to correct a cross-reference.

Section 158 amends s. 601.67, F.S., pertaining to disciplinary actions against citrus fruit dealers, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 159 amends s. 604.30, F.S., pertaining to violations of general agricultural laws, to provide cross-references to penalties in the newly created s. 570.971, F.S.

Section 160 amends s. 616.242, F.S., pertaining to violations of safety standards for amusement rides at public fairs and expositions, to provide a cross-reference to penalties in the newly created s. 570.971, F.S.

Section 161 provides that this act shall take effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/CS/SB 1630 establishes two new lower fee categories for distributors of small amounts of seed ($10 per year for annual sales under $500 and $25 per year for annual sales under $1,000). This will reduce fees paid by approximately 200 seed dealers.

The bill does not increase, and in some cases decreases, fines currently in law.

B. Private Sector Impact:

The bill will have a positive fiscal impact on the private sector by providing on-line registration for pesticide and fertilizer licenses, eliminating certain bond requirements, simplifying the regulatory process for Australian pines for wind breaks, and lowering registration fees for distributors of small amounts of seed. Additionally, the bill increases the number of dressed birds a small farm can sell weekly, potentially increasing revenues for the farm.

C. Government Sector Impact:

The provisions in the bill will have an insignificant impact on state revenues. The department estimates a reduction of $13,725 in the General Inspection Trust Fund related to reduced registration fees for seed dealers.

The bill repeals a pilot program related to the use of Australian pine trees and authorizes use of the trees as a windbreak for citrus groves with a valid permit. The department does not anticipate a significant increase in permits issued.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 193.461, 253.74, 282.709, 288.1175, 320.08058, 373.4591, 373.621, 379.361, 373.709, 381.0072, 388.46, 472.0351, 472.036, 482.161, 482.165, 482.243, 487.041, 487.046, 487.047, 487.048, 487.091, 487.159, 487.160, 487.175, 487.2031, 487.2051, 493.6118, 493.6120, 496.420, 500.03, 500.12, 500.121, 500.147, 500.165, 500.172, 500.70, 501.019, 501.059, 501.612, 501.619, 507.09, 501.922, 507.10, 509.032, 525.16, 526.311, 526.55, 527.13, 531.50, 534.52, 539.001, 559.921, 559.9355, 559.936, 570.42, 570.14, 570.07, 570.23, 570.242, 570.36, 570.38, 570.44, 570.45, 570.451, 570.50, 570.51, 570.543, 570.074, 570.952, 570.902, 570.71, 570.247, 570.9135, 570.961, 570.963, 570.076, 571.11, 571.28, 571.29, 576.021, 576.031, 576.041, 576.051,

576.061, 576.071, 576.087, 576.101, 578.08, 578.181, 580.036, 580.041, 580.071, 580.091, 580.121, 581.091, 581.131, 581.141, 581.186, 581.211, 582.06, 583.01, 585.007, 586.15, 586.161, 589.08, 589.011, 589.20, 590.02, 590.125, 590.14, 595.701, 597.003, 597.004, 597.0041, 597.020, 599.002, 601.67, 604.16, 604.22, 604.30, and 616.242.

This bill transfers and renumbers the following sections of the Florida Statutes: 507.545, 570.0741, 570.17, 570.531, 570.0725, 570.241, 570.481, and 570.55.

This bill renumbers the following sections of the Florida Statutes: 570.16, 570.18, 570.0705, 570.073, 570.17, 570.951, 570.953, 570.901, 570.903, 570.91, 570.243, 570.244, 570.245, 570.246, 570.248, 570.249, 570.954, 570.96, 570.962, 570.964, 570.075, 570.085, and 570.087.

This bill creates the following sections of the Florida Statutes: parts I, II, III, IV, and V of ch. 570, 570.67, and 570.971.

This bill repeals the following sections of the Florida Statutes: 487.172, 500.301, 500.302, 500.303, 500.304, 500.305, 500.306, 500.601, 570.345, 570.542, 570.72, 570.92, 589.081, and 590.091.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Community Affairs on April 8, 2014:
Amends s. 193.461, F.S., to:

- Allow a property owner to file with the property appraiser for an agricultural classification after the deadline has passed under certain conditions.
- State that lands classified for assessment purposes as agricultural and which participate in a dispersed water storage program shall continue to be classified as agricultural lands under certain conditions. Lands under a dispersed water storage program diverted to a nonagricultural use shall be assessed under s. 193.011, F.S.

Amends s. 373.4591, F.S., to:

- Provide that when the department and a private landowner enter into an agreement related to water storage on private agricultural lands and to implement best management practices pursuant to s. 403.067(7)(c), F.S., a baseline condition determining the extent of wetlands and other surface waters may be established at the option and expense of the private landowner.
- Direct the department to submit the landowner's proposed baseline condition documentation to the lead agency for review and approval.
- Direct the department to coordinate with the Department of Environmental Protection and the water management district on a process for reviewing such requests.

CS/CS by Transportation on March 26, 2014:

- Removes from the bill language providing that certain acts relating to livery services are unfair or deceptive regulatory acts or practices.

- Removes from the bill language limiting the liability of lessees of certain Florida Forest Service lands and providing such lessees owe no duty of care to keep the leased area safe for entry or use by others.

CS by Agriculture on March 17, 2014:

- Makes technical and organizational changes.
- Provides that it is an unfair or deceptive regulatory act or practice for a special district to restrict the right of the public to freely bargain for lawful livery transit services, to create classifications within each type of livery service, or to fix or approve zones, rates, or fares for such classifications, which apply differently to individuals and businesses that compete with each other to provide similar services.
- Authorizes the department to adopt by rule training requirements for shellfish processors.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

476562

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2014	.	
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The Committee on Appropriations (Latvala and Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 2421 and 2422

insert:

Section 106. Section 828.35, Florida Statutes, is created to read:

828.35 Humane treatment of racehorses.—

(1)(a) In order to ensure the humane treatment and welfare of horses racing in this state and notwithstanding any other law to the contrary, the Division of Pari-mutuel Wagering, in

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consultation with the Department of Agriculture and Consumer Services and the designated state laboratory, shall adopt rules establishing the conditions of use and maximum concentrations of drugs, medications, and naturally occurring substances identified in the most recent Controlled Therapeutic Medication Schedule adopted by the Association of Racing Commissioners International, Inc. (ARCI) on or before April 30, 2014. Controlled therapeutic medications include only the specific medications and concentrations authorized in biological samples that have been approved by ARCI as controlled therapeutic medications. The division shall initiate rulemaking to consider the adoption of any subsequent amendments to the Controlled Therapeutic Medication Schedule, penalties, or laboratory-screening limits adopted by ARCI within 180 days after the adoption of any such amendments. The division shall adopt laboratory-screening limits approved by ARCI for drugs and medications that are not included as controlled therapeutic medications. The division rules must include a classification system for medications and drugs and a corresponding penalty schedule for violations, which must incorporate the Uniform Classification Guidelines for Foreign Substances, revised December 2013, as adopted by ARCI. The rules must specify those drugs considered prohibited substances, whose presence in a sample in prescribed concentrations may result in administrative sanction by the division.

(b) After consultation with the department and the state laboratory, the division shall, notwithstanding s. 550.2415, designate the appropriate biological specimens by which the administration of medications, drugs, and naturally occurring

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substances are monitored and the testing methodologies for screening and confirmation.

(c) The rules must include conditions for the humane use of furosemide to treat exercise-induced pulmonary hemorrhage. Notwithstanding any other law, furosemide is the only medication that may be administered within 24 hours of the officially scheduled post time of a race, but it may not be administered within 4 hours before the officially scheduled post time.

(2) The division shall implement a split-sample procedure for testing racehorses to ensure their humane treatment. Upon collection, each urine and blood sample shall be split into a primary sample and a secondary (split) sample in accordance with rules adopted by the division. The division shall transfer custody of the primary sample to the state laboratory, with custody of the split sample remaining with the division except as provided in this subsection. Unless otherwise recommended by the department, serum is the testing medium for phenylbutazone in horses.

(a) The division shall notify the owner or trainer, the stewards, the department, and the horsemen's association of all drug test results. In the event of a positive test result, and upon request by the affected trainer or owner of the horse from which the sample was obtained, the division shall send the split sample to an approved independent laboratory for analysis. The division shall establish standards and rules for uniform enforcement and maintain a list of at least five approved independent laboratories for an owner or trainer to select from in the event of a positive test result.

1. If the laboratory's findings are not confirmed by the

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independent laboratory, further administrative or disciplinary action under this section may not be pursued. The division may adopt rules identifying substances that diminish in a blood or urine sample due to passage of time and that must be taken into account in applying this section.

2. If the independent laboratory confirms the positive result, the division shall inform the department and may seek administrative sanctions pursuant to chapter 120 against the violator within 180 days after laboratory confirmation which, in addition to license suspension or revocation, may include the imposition of a fine against the violator in an amount not to exceed the purse or sweepstakes earned by the horse in the race at issue or $10,000, whichever is greater. Upon receiving the report, the department may forward the report to the appropriate law enforcement agency for investigation of potential violations of s. 828.12. For the purpose of this subsection, the division shall in good faith attempt to obtain a sufficient quantity of the test fluid to allow both a primary test and a secondary test. If there is an insufficient quantity of the split sample for confirmation of the division laboratory's positive result, the division may not take further action on the matter against the owner or trainer and any resulting license suspension must be immediately lifted.

(b) The division shall require its laboratory and the independent laboratories to annually participate in an externally administered quality assurance program designed to assess testing proficiency in the detection and appropriate quantification of medications, drugs, and naturally occurring substances that may be administered to racing horses. The

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administrator of the quality assurance program shall report its results and findings to the division and the department.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 281

and insert:

products; creating s. 828.35, F.S.; requiring the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation to adopt rules; providing procedures for testing certain animals for medications or drugs; requiring the division's laboratory and certain independent laboratories to participate annually in a quality assurance program; requiring the administrator of the quality assurance program to report its results and findings to the division and the Department of Agriculture and Consumer Services; repealing s. 487.172, F.S., relating to an

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/23/2014	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment to Amendment (476562) (with directory and title amendments)

After line 99
insert:

(3)(a) In order to monitor the humane treatment of racing greyhounds, each licensed greyhound track shall maintain records regarding injuries incurred by racing greyhounds while they are racing in this state, including injuries incurred in schooling races. The records must include:

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1. The greyhound's registered name, right and left ear tattoo numbers, and, if applicable, the microchip manufacturer and number.

2. The name, business address, and telephone number of the greyhound owner and trainer and the kennel operator.

3. The color, weight, and sex of the greyhound.

4. The location where the injury occurred.

5. If the injury occurred while the greyhound was racing, the racetrack where the injury occurred and the distance, grade, race, and post position of the greyhound when the injury occurred.

6. The weather conditions, time, and track condition when the injury occurred.

7. The specific type and bodily location of the injury, the cause of the injury, and the estimated recovery time from the injury.

(b) All injury records shall be completed and signed under oath or affirmation under penalty of perjury by the racetrack veterinarian, whose signature must be witnessed by a designated representative of the Department of Agriculture and Consumer Services or the Division of Pari-mutuel Wagering.

(c) Injury records created and maintained under this subsection shall be filed monthly with the Department of Agriculture and Consumer Services with an inspector designated by the department. Injury records shall also be maintained by the track for a period of 7 years and shall be made readily available for inspection and copying by the public upon oral or written request.

(d) A person who knowingly makes a false statement on an

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injury record is subject to a fine not to exceed $1,500. A person who commits a second or subsequent violation of this paragraph is subject to a fine of at least $3,000.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 5 - 7

and insert:

Section 106. Section 828.35, Florida Statutes, is created to read:

828.35 Humane treatment of racing animals.—

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

Delete line 115

and insert:

Agriculture and Consumer Services; requiring the division to maintain records of greyhounds injured while racing; providing for the content of such records; providing fines for making false statements on an injury record; repealing s.

By the Committees on Community Affairs; Transportation; and Agriculture; and Senator Montford

578-04054-14 20141630c3

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 193.461, F.S.; authorizing a property appraiser to grant an agricultural classification after the application deadline upon a showing of extenuating circumstances; providing that participation in certain dispersed water storage programs does not change a land's agricultural classification for assessment purposes; amending s. 282.709, F.S.; adding a representative to the Joint Task Force on State Agency Law Enforcement Communications, to be appointed by the Commissioner of Agriculture; amending s. 373.4591, F.S.; authorizing agricultural landowners to establish baseline wetland and surface water conditions before implementing certain best management practice implementation agreements; requiring establishment of a process for review of proposed baseline condition determinations; transferring, renumbering, and amending s. 570.0741, F.S., relating to the energy efficiency and conservation clearinghouse; deleting an obsolete provision; amending s. 379.361, F.S.; requiring a person to retake an educational seminar when renewing an Apalachicola Bay oyster harvesting license; amending s. 487.041, F.S.; requiring a registrant to continue the registration of a brand of pesticide that continues to remain on retailers' shelves in this state under certain circumstances; amending ss. 487.046 and 487.048, F.S.; authorizing applications

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578-04054-14 20141630c3

for certain licenses to be submitted through the department's website; amending s. 487.159, F.S.; deleting the requirements for filing statements claiming damages and injuries from pesticide application; amending s. 487.160, F.S.; requiring all licensed private applicators to keep the same records as licensed public applicators and licensed commercial applicators with respect to the application of restricted pesticides; amending s. 487.2031, F.S.; revising the term "material safety data sheet"; amending s. 487.2051, F.S.; revising requirements for pesticide fact sheets and safety data sheets; amending s. 493.6120, F.S.; authorizing the department to impose certain civil penalties for violations relating to private security, investigative, and repossession services; transferring and renumbering s. 570.545, F.S., relating to unsolicited goods; amending s. 500.03, F.S.; revising the definition of the term "food establishment"; amending s. 500.12, F.S.; revising the exemption from permit requirements for minor food outlets; requiring an establishment to apply for and receive a permit prior to the commencement of operations; requiring the department to adopt a schedule of fees to be paid by each food establishment and retail food store; providing that food permits are not transferable; updating terminology; amending s. 500.121, F.S.; authorizing the department to order the immediate closure of certain establishments upon determination that the

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establishment presents a severe and immediate threat to the public health, safety, and welfare; specifying the procedure the department must use in ordering immediate closure; conforming provisions to changes made by the act; providing criminal penalties; authorizing the department to adopt rules; amending s. 500.147, F.S.; authorizing the department to inspect food records to facilitate tracing of food products in certain circumstances; amending s. 500.165, F.S.; revising the administrative fine amount for violating provisions relating to transporting shipments of food items; amending s. 500.172, F.S.; authorizing the department to issue and enforce a stop-sale, stop-use, removal, or hold order for certain food-processing or food storage areas; amending s. 501.019, F.S.; revising the administrative fine amount for violations relating to health studios; amending s. 501.059, F.S.; authorizing the department to adopt rules; conforming provisions to changes made by the act; amending s. 501.922, F.S.; revising the administrative fine amount for certain violations relating to the "Antifreeze Act"; transferring, renumbering, and amending s. 570.42, F.S., relating to the Dairy Industry Technical Council; conforming a cross-reference; creating part I of ch. 570, F.S., entitled "General Provisions"; renumbering and amending s. 570.14, F.S., relating to the seal of the department; restricting the seal of the department from being used without written approval by the department; renumbering ss. 570.18 and

570.16, F.S., relating to organization of departmental work and the interference with department employees, respectively; amending s. 570.07, F.S.; conforming a cross-reference; transferring and renumbering ss. 570.17 and 570.531, F.S., relating to the regulatory work of the state relating to the protection of agricultural interests and the Market Improvements Working Capital Trust Fund, respectively; amending s. 570.23, F.S.; conforming a cross-reference; renumbering s. 570.0705, F.S., relating to advisory committees; creating part II of ch. 570, F.S., entitled "Program Services"; amending s. 570.36, F.S.; making a technical change; amending s. 570.44, F.S.; revising the duties of the Division of Agricultural Environmental Services; amending s. 570.45, F.S.; conforming provisions to changes made by the act; amending s. 570.451, F.S.; conforming a cross-reference; amending ss. 570.50 and 570.51, F.S.; conforming provisions to changes made by the act; amending s. 570.543, F.S.; conforming a cross-reference; renumbering s. 570.073, F.S., relating to the Office of Agricultural Law Enforcement; renumbering and amending s. 570.074, F.S.; requiring the Office of Agricultural and Water Policy to enforce and implement ch. 582, F.S., and rules relating to soil and water conservation; creating s. 570.67, F.S.; codifying the creation of the Office of Energy; providing for management and specifying duties; renumbering s. 570.951, F.S., relating to the Florida

Agriculture Center and Horse Park; renumbering and amending s. 570.952, F.S., relating to the Florida Agricultural Center and Horse Park Authority; conforming provisions to changes made by the act; deleting obsolete provisions; renumbering s. 570.953, F.S., relating to the identity of donors to the Florida Agriculture Center and Horse Park Authority; renumbering and amending s. 570.902, F.S., relating to definitions; conforming provisions to changes made by the act; renumbering ss. 570.903, 570.901, and 570.91, F.S., relating to direct-support organizations, the Florida Agricultural Museum, and Florida agriculture in the classroom, respectively; creating part III of ch. 570, F.S., entitled "Agricultural Development"; amending s. 570.71, F.S.; authorizing the department to use certain funds for administrative and operating expenses related to appraisals, mapping, title process, personnel, and other real estate expenses; renumbering s. 570.241, F.S., relating to the Agricultural Economic Development Act; renumbering and amending s. 570.242, F.S., relating to the Agricultural Economic Development Act; removing the definition of the terms "commissioner" and "department"; renumbering ss. 570.243, 570.244, 570.245, and 570.246, F.S., relating to the Agricultural Economic Development Program, the powers of the department, interaction with other economic development agencies and groups, and agricultural economic development funding, respectively;

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renumbering and amending s. 570.247, F.S., relating to certain department rules; deleting obsolete provisions; renumbering ss. 570.248 and 570.249, F.S., relating to the Agricultural Economic Development and Project Review Committee and disaster loans and grants and aid, respectively; renumbering and amending s. 570.9135, F.S., relating to the Beef Market Development Act; conforming cross-references; making technical changes; renumbering ss. 570.954 and 570.96, F.S., relating to the farm-to-fuel initiative and agritourism, respectively; renumbering and amending s. 570.961, F.S., relating to definitions; conforming cross-references; renumbering s. 570.962, F.S., relating to agritourism participation impact on land classification; renumbering and amending s. 570.963, F.S., relating to liability; conforming a cross-reference; renumbering and amending s. 570.964, F.S., relating to posting and notification requirements for agritourism operators; conforming provisions to changes made by the act; creating part IV of ch. 570, F.S., entitled "Agricultural Water Policy"; renumbering s. 570.075, F.S., relating to water supply agreements; renumbering and amending s. 570.076, F.S., relating to Environmental Stewardship Certification; conforming a cross-reference; renumbering ss. 570.085 and 570.087, F.S., relating to agricultural water conservation and agricultural water supply planning and best management practices for wildlife, respectively; creating part V of ch. 570, F.S.,

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entitled "Penalties"; creating s. 570.971, F.S.; providing administrative fines and civil penalties; authorizing the department to refuse to issue or renew a license, permit, authorization, certificate, or registration under certain circumstances; authorizing the department to adopt rules; amending s. 576.021, F.S.; updating terminology; authorizing applications for registration for specialty fertilizers to be submitted using the department's website; making technical changes; amending s. 576.031, F.S.; revising labeling requirements for distribution of fertilizer in bulk; amending s. 576.041, F.S.; removing surety bond and certificate of deposit requirements for fertilizer license applicants; amending s. 576.051, F.S.; extending the period of retention for an official check sample; amending s. 576.061, F.S.; deleting the penalty imposed when it is determined by the department that a fertilizer has been distributed without being licensed or registered, or without labeling; conforming provisions to changes made by the act; making technical changes; amending s. 576.071, F.S.; requiring the department to survey the fertilizer industry of this state to determine the commercial value used in assessing penalties for a deficiency; amending s. 576.087, F.S.; deleting certain requirements relating to antisiphon devices; amending s. 576.101, F.S.; deleting the department's authorization to place a licensee on probationary status under certain circumstances; amending s.

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578.08, F.S.; deleting the requirement that the application for registration as a seed dealer include the name and location of each place of business at which the seed is sold, distributed, offered, exposed, or handled for sale; requiring the application to be made by submitting a form prescribed by department rule or using the department's website; establishing a registration fee for receipts of certain amounts; amending s. 580.036, F.S.; requiring that standards for the sale, use, and distribution of commercial feed or feedstuff, if adopted, be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council; amending s. 580.041, F.S.; removing the requirement that the master registration form for each distributor of commercial feed identify the manufacturer's or guarantor's name and place of business and the location of each manufacturing facility; revising the requirement that the department must mail a copy of the master registration in order to signify that the administrative requirements have been met; amending s. 580.071, F.S.; providing additional factors that would make a commercial feed or feedstuff be deemed adulterated; amending s. 581.091, F.S.; deleting the definition of the term "commercial citrus grove"; deleting provisions relating to special permits authorizing a person to plant Casuarina cunninghamiana as part of a pilot program; eliminating a requirement that the department develop and implement a monitoring protocol to

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determine invasiveness of Casuarina cunninghamiana; amending s. 581.131, F.S.; revising the time in which the department must provide certain notice and certificate renewal forms; amending s. 583.01, F.S.; redefining the term "dealer"; transferring, renumbering, and amending s. 570.38, F.S., relating to the Animal Industry Technical Council; conforming a cross-reference; amending s. 589.08, F.S.; requiring the Florida Forest Service to pay a certain percentage of the gross receipts from the Goethe State Forest to each fiscally constrained county; requiring such funds to be equally divided between the board of county commissioners and the school board; amending s. 589.011, F.S.; providing conditions under which the Florida Forest Service is authorized to grant use of certain lands; providing criteria by which the Florida Forest Service determines certain fees, rentals, and charges; amending s. 589.20, F.S.; authorizing the Florida Forest Service to cooperate with water management districts, municipalities, and other governmental entities; amending s. 590.02, F.S.; renaming the Florida Center for Wildfire and Forest Resources Management Training as the Withlacoochee Training Center; making technical changes; amending s. 590.125, F.S.; providing that new authorization is not required for smoldering that occurs within the authorized burn area unless new ignitions are conducted by certain persons; providing that monitoring the smoldering activity of a burn does not

require an additional authorization; transferring and renumbering s. 570.0725, F.S., relating to food recovery; amending s. 597.003, F.S.; amending the powers and duties of the department to include providing training as necessary to lessees of certain lands for aquaculture use; amending s. 597.004, F.S.; requiring an applicant for an aquaculture certificate to submit a certificate of training if required; amending s. 597.020, F.S.; authorizing the department to adopt training requirements for shellfish processors by rule; transferring and renumbering ss. 570.481 and 570.55, F.S., relating to food recovery, fruit and vegetable inspection fees, and identification of sellers or handlers of tropical or subtropical fruit and vegetables, respectively; amending s. 604.16, F.S.; providing an exemption for certain dealers in agricultural products from certain requirements; amending s. 604.22, F.S.; revising certain penalties for dealers in agricultural products; repealing s. 487.172, F.S., relating to an educational program for organotin compounds in antifouling paints; repealing ss. 500.301, 500.302, 500.303, 500.304, 500.305, and 500.306, F.S., relating to the standards of enrichment, sales, enforcement, and inspection of certain grain products; repealing s. 500.601, F.S., relating to the retail sale of meat; repealing s. 570.345, F.S., relating to the Pest Control Compact; repealing s. 570.542, F.S., relating to the Florida Consumer Services Act; repealing s.

570.72, F.S., relating to a definition; repealing s. 570.92, F.S., relating to an equestrian educational sports program; repealing s. 589.081, F.S., relating to the Withlacoochee State Forest and Goethe State Forest; repealing s. 590.091, F.S., relating to the designation of railroad rights-of-way as wildfire hazard areas; amending ss. 193.461, 253.74, 288.1175, 320.08058, 373.621, 373.709, 381.0072, 388.46, 472.0351, 472.036, 482.161, 482.165, 482.243, 487.047, 487.091, 487.175, 493.6118, 496.420, 500.70, 501.612, 501.619, 502.231, 507.09, 507.10, 509.032, 525.16, 526.311, 526.55, 527.13, 531.50, 534.52, 539.001, 559.921, 559.9355, 559.936, 571.11, 571.28, 571.29, 578.181, 580.121, 581.141, 581.186, 581.211, 582.06, 585.007, 586.15, 586.161, 590.14, 595.701, 597.0041, 599.002, 601.67, 604.30, and 616.242, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) and subsection (7) of section 193.461, Florida Statutes, are amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(3)(a) ~~No~~ Lands may not ~~shall~~ be classified as agricultural lands unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying such lands, may require the taxpayer or the taxpayer's representative to

furnish the property appraiser such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose. Failure to make timely application by March 1 shall constitute a waiver for 1 year of the privilege herein granted for agricultural assessment. However, an applicant who is qualified to receive an agricultural classification who fails to file an application by March 1 must ~~may~~ file an application for the classification with the property appraiser within 25 days after the property appraiser mails the notices required under s. 194.011(1). Upon receipt of sufficient evidence, as determined by the property appraiser, demonstrating that the applicant was unable to apply for the classification in a timely manner or otherwise demonstrating extenuating circumstances judged by the property appraiser to warrant granting the classification, the property appraiser may grant the classification. If the applicant fails to produce sufficient evidence demonstrating that the applicant was unable to apply for the classification in a timely manner or otherwise demonstrating extenuating circumstances as judged by the property appraiser, the applicant ~~and~~ may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the classification be granted. The petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding ~~the provisions of~~ s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the classification and demonstrates particular extenuating

circumstances judged by the ~~property appraiser or the~~ value adjustment board to warrant granting the classification, ~~the property appraiser or~~ the value adjustment board may grant the classification for the current year. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department. The lessee of property may make original application or reapply using the short form if the lease, or an affidavit executed by the owner, provides that the lessee is empowered to make application for the agricultural classification on behalf of the owner and a copy of the lease or affidavit accompanies the application. A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for classification of property within the county after an initial application is made and the classification granted by the property appraiser. Such waiver may be revoked by a majority vote of the governing body of the county.

(7)(a) Lands classified for assessment purposes as agricultural lands which are taken out of production by a ~~any~~ state or federal eradication or quarantine program shall continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs which are converted to fallow~~,~~ or otherwise nonincome-producing uses shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to ~~no more than~~ $50 per acre, on a single year assessment methodology; however, lands converted to other income-producing agricultural

uses permissible under such programs shall be assessed pursuant to this section. Land under a mandated eradication or quarantine program which is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(b) Lands classified for assessment purposes as agricultural lands which participate in a dispersed water storage program pursuant to a contract with the Department of Environmental Protection or a water management district which requires flooding of land shall continue to be classified as agricultural lands for the duration of the inclusion of the lands in such program or successor programs and shall be assessed as nonproductive agricultural lands. Land under a dispersed water storage program which is diverted to a nonagricultural use shall be assessed under s. 193.011.

Section 2. Paragraph (a) of subsection (2) of section 282.709, Florida Statutes, is amended to read:

282.709 State agency law enforcement radio system and interoperability network.—

(2) The Joint Task Force on State Agency Law Enforcement Communications is created adjunct to the department to advise the department of member-agency needs relating to the planning, designing, and establishment of the statewide communication system.

(a) The Joint Task Force on State Agency Law Enforcement Communications shall consist of the following members:

1. A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who shall be appointed by the secretary of the department.

2. A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who shall be appointed by the executive director of the department.

3. A representative of the Department of Law Enforcement who shall be appointed by the executive director of the department.

4. A representative of the Fish and Wildlife Conservation Commission who shall be appointed by the executive director of the commission.

5. A representative of the Department of Corrections who shall be appointed by the secretary of the department.

6. A representative of the Division of State Fire Marshal of the Department of Financial Services who shall be appointed by the State Fire Marshal.

7. A representative of the Department of Transportation who shall be appointed by the secretary of the department.

8. A representative of the Department of Agriculture and Consumer Services who shall be appointed by the Commissioner of Agriculture.

Section 3. Section 373.4591, Florida Statutes, is amended to read:

373.4591 Improvements on private agricultural lands.—The Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural lands. When an agreement is entered into between a water management district or the department and a private landowner to establish such a partnership, a baseline condition determining the extent of wetlands and other surface waters on

the property shall be established and documented in the agreement before improvements are constructed. When an agreement is entered into between the Department of Agriculture and Consumer Services and a private landowner to implement best management practices pursuant to s. 403.067(7)(c), a baseline condition determining the extent of wetlands and other surface waters on the property may be established at the option and expense of the private landowner and documented in the agreement before improvements are constructed. The Department of Agriculture and Consumer Services shall submit the landowner's proposed baseline condition documentation to the lead agency for review and approval, and the agency shall make every effort to complete the review within 45 days. The Department of Agriculture and Consumer Services, the department, and the water management districts shall coordinate on a process for reviewing such requests. The determination of a ~~for the~~ baseline condition shall be conducted using the methods set forth in the rules adopted pursuant to s. 373.421. The baseline condition documented in an ~~the~~ agreement shall be considered the extent of wetlands and other surface waters on the property for the purpose of regulation under this chapter for the duration of the agreement and after its expiration.

Section 4. Section 570.0741, Florida Statutes, is transferred, renumbered as section 377.805, Florida Statutes, and amended to read:

377.805 ~~570.0741~~ Energy efficiency and conservation clearinghouse.—The Office of Energy within the Department of Agriculture and Consumer Services, in consultation with the Public Service Commission, the Florida Building Commission, and

the Florida Energy Systems Consortium, shall develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures. The Department of Agriculture and Consumer Services shall post the information on its website ~~by July 1, 2013~~.

Section 5. Paragraph (e) of subsection (5) of section 379.361, Florida Statutes, is amended to read:

379.361 Licenses.—

(5) APALACHICOLA BAY OYSTER HARVESTING LICENSE.—

(e) Each person who applies for an Apalachicola Bay oyster harvesting license shall~~, before receiving the license for the first time,~~ attend an educational seminar of not more than 16 hours length, developed and conducted jointly by the Department of Environmental Protection's Apalachicola National Estuarine Research Reserve, the Division of Law Enforcement of the Fish and Wildlife Conservation Commission, and the Department of Agriculture and Consumer Services' Apalachicola District Shellfish Environmental Assessment Laboratory. The seminar shall address, among other things, oyster biology, conservation of the Apalachicola Bay, sanitary care of oysters, small business management, and water safety. The seminar shall be offered five times per year, and each person attending shall receive a certificate of participation to present when obtaining an Apalachicola Bay oyster harvesting license. ~~The educational seminar is not required for renewal of an Apalachicola Bay oyster harvesting license.~~

Section 6. Paragraph (d) of subsection (3) of section 487.041, Florida Statutes, is amended to read:

487.041 Registration.—

(3) The department, in addition to its other duties under this section, has the power to:

(d) Require a registrant to continue the registration of a brand of pesticide that remains on retailers' shelves in the state unless the department receives the registrant's written notification that it is discontinuing the distribution of the brand of pesticide and the registrant then maintains the registration of that brand for a minimum of 2 years. The discontinued brand of pesticide may remain on retailers' shelves without further registration if the brand of pesticide is not distributed by the registrant in the state during or after the minimum 2-year period ~~who discontinues the distribution of a brand of pesticide in this state to continue the registration of the brand of the pesticide for a minimum of 2 years or until no more remains on retailers' shelves if such continued registration or sale is not specifically prohibited by the department or the United States Environmental Protection Agency~~.

Section 7. Subsection (1) of section 487.046, Florida Statutes, is amended to read:

487.046 Application; licensure.—

(1) An application for a license shall be filed with ~~made in writing to~~ the department by using ~~on~~ a form prescribed ~~furnished~~ by the department or by using the department's website. Each application shall contain information regarding the applicant's qualifications, proposed operations, and license classification or subclassifications, as prescribed by rule.

Section 8. Subsection (1) of section 487.048, Florida Statutes, is amended to read:

487.048 Dealer's license; records.—

(1) Each person holding or offering for sale, selling, or distributing restricted-use pesticides must ~~shall~~ obtain a dealer's license from the department. An application for a ~~the~~ license shall be filed with the department by using ~~made on~~ a form prescribed by the department or by using the department's website. The license must be obtained before entering into business or transferring ownership of a business. The department may require examination or other proof of competency of individuals to whom licenses are issued or of individuals employed by persons to whom licenses are issued. Demonstration of continued competency may be required for license renewal, as set by rule. The license shall be renewed annually as provided by rule. An annual license fee not exceeding $250 shall be established by rule. However, a user of a restricted-use pesticide may distribute unopened containers of a properly labeled pesticide to another user who is legally entitled to use that restricted-use pesticide without obtaining a pesticide dealer's license. The exclusive purpose of distribution of the restricted-use pesticide is to keep it from becoming a hazardous waste as defined in s. 403.703(13).

Section 9. Section 487.159, Florida Statutes, is amended to read:

487.159 Damage or injury to property, animal, or person; mandatory report of damage or injury~~; time for filing; failure to file~~.—

~~(1) The person claiming damage or injury to property, animal, or human beings from application of a pesticide shall file with the department a written statement claiming damages, on a form prescribed by the department, within 48 hours after~~

~~the damage or injury becomes apparent. The statement shall contain, but shall not be limited to, the name of the person responsible for the application of the pesticide, the name of the owner or lessee of the land on which the crop is grown and for which the damages are claimed, and the date on which it is alleged that the damages occurred. The department shall investigate the alleged damages and notify all concerned parties of its findings. If the findings reveal a violation of the provisions of this part, the department shall determine an appropriate penalty, as provided in this part. The filing of a statement or the failure to file such a statement need not be alleged in any complaint which might be filed in a court of law, and the failure to file the statement shall not be considered any bar to the maintenance of any criminal or civil action.~~

(1)~~(2)~~ A ~~It is the duty of any~~ licensee shall ~~to~~ report unreasonable adverse effects on the environment or damage to property or injury to human beings, animals, plants, or other property ~~a person~~ as the result of the application of a restricted-use pesticide by the licensee or by an applicator or mixer-loader under the licensee's direct supervision, if and when the licensee has knowledge of such damage or injury. ~~It is also the express intent of this section to require all~~ Physicians shall ~~to~~ report all pesticide-related illnesses or injuries to the nearest county health department, which shall ~~will~~ notify the department so that the department may establish a pesticide incident monitoring system within the Division of Agricultural Environmental Services.

(2)~~(3)~~ When damage or injury to human beings, animals, plants, or other property as the result of the application of a

restricted-use pesticide is alleged ~~to have been done~~, the person claiming such damage or injury ~~claimant~~ shall allow ~~permit~~ the licensee and the licensee's representatives to observe within a reasonable amount of time ~~hours~~ the alleged damage or injury in order that the damage or injury may be examined. The failure of the person claiming such damage or injury ~~claimant~~ to allow ~~permit~~ observation and examination of the alleged damage or injury shall automatically bar the claim against the licensee.

Section 10. Section 487.160, Florida Statutes, is amended to read:

487.160 Records.—Licensed private applicators, ~~supervising 15 or more unlicensed applicators or mixer-loaders and~~ licensed public applicators, and licensed commercial applicators shall maintain records as the department may determine by rule with respect to the application of restricted pesticides, including, but not limited to, the type and quantity of pesticide, method of application, crop treated, and dates and location of application. ~~Other licensed private applicators shall maintain records as the department may determine by rule with respect to the date, type, and quantity of restricted-use pesticides used.~~ Licensees shall keep records for ~~a period of~~ 2 years from the date of the application of the pesticide to which the records refer~~,~~ and ~~shall~~ furnish to the department a copy of the records upon written request by the department.

Section 11. Present subsection (8) of section 487.2031, Florida Statutes, is redesignated as subsection (7), and present subsection (7) of that section is amended to read:

487.2031 Definitions.—For the purposes of this part, the

term:

(8)~~(7)~~ "~~Material~~ Safety data sheet" means written, electronic, or printed material concerning an agricultural pesticide that sets forth the following information:

(a) The chemical name and the common name of the agricultural pesticide.

(b) The hazards or other risks in the use of the agricultural pesticide, including:

1. The potential for fire, explosions, corrosivity, and reactivity.

2. The known acute health effects and chronic health effects of exposure to the agricultural pesticide, including those medical conditions that are generally recognized as being aggravated by exposure to the agricultural pesticide.

3. The primary routes of entry and symptoms of overexposure.

(c) The proper handling practices, necessary personal protective equipment, and other proper or necessary safety precautions in circumstances that involve the use of or exposure to the agricultural pesticide, including appropriate emergency treatment in case of overexposure.

(d) The emergency procedures for spills, fire, disposal, and first aid.

(e) A description of the known specific potential health risks posed by the agricultural pesticide, which is written in lay terms and is intended to alert a ~~any~~ person who reads the information.

(f) The year and month, if available, that the information was compiled and the name, address, and emergency telephone

number of the manufacturer responsible for preparing the information.

Section 12. Section 487.2051, Florida Statutes, is amended to read:

487.2051 Availability of agricultural pesticide information to workers and medical personnel.—

(1) An agricultural employer shall make available agricultural pesticide information concerning any agricultural pesticide to a ~~any~~ worker:

(a) Who enters an agricultural-pesticide-treated area on an agricultural establishment where:

1. An agricultural pesticide has been applied within 30 days of that entry; or

2. A restricted-entry interval has been in effect; or

(b) Who may be exposed to the agricultural pesticide during normal conditions of use or in a foreseeable emergency.

(2) The agricultural pesticide information provided pursuant to subsection (1) must be in the form of a fact sheet or a ~~material~~ safety data sheet. The agricultural employer shall provide a written copy of the information provided pursuant to subsection (1) within 2 working days after a request for the information by a worker or a designated representative. In the case of a pesticide-related medical emergency, the agricultural employer shall provide a written copy of the information promptly upon the request of the worker, the designated representative, or medical personnel treating the worker.

(3) Upon the initial purchase of a product and with the first purchase after the fact sheet or ~~material~~ safety data sheet is updated, the distributor, manufacturer, or importer of

agricultural pesticides shall obtain or develop and provide each direct purchaser of an agricultural pesticide with a fact sheet or ~~material~~ safety data sheet. If the fact sheet or ~~material~~ safety data sheet ~~or fact sheet~~ for the agricultural pesticide is not available when the agricultural pesticide is purchased, the agricultural employer shall take appropriate and timely steps to obtain the fact sheet or ~~material~~ safety data sheet ~~or fact sheet~~ from the distributor, the manufacturer, the department, a federal agency, or another distribution source.

(4) The department shall produce and make available to a trainer a one-page general agricultural pesticide safety sheet. The pesticide safety sheet must be in a language understandable to the worker and must include, but need not be limited to, illustrated instructions on preventing agricultural pesticide exposure and toll-free telephone numbers to the Florida Poison Control Centers. The trainer shall provide the pesticide safety sheet to the worker pursuant to the United States Environmental Protection Agency Worker Protection Standard, 40 C.F.R. s. 170.130.

Section 13. Subsections (3) and (5) of section 493.6120, Florida Statutes, are amended to read:

493.6120 Violations; penalty.—

(3) Except as otherwise provided in this chapter, a person who violates any provision of this chapter except subsection (7) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department may also seek the imposition of a civil penalty in the Class II category pursuant to s. 570.971 upon a withholding of adjudication of guilt or an adjudication of guilt in a criminal case.

(5) A person who violates or disregards a cease and desist order issued by the department commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the department may seek the imposition of a civil penalty in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~.

Section 14. Section 570.545, Florida Statutes, is transferred and renumbered as section 501.0113, Florida Statutes.

Section 15. Paragraph (p) of subsection (1) of section 500.03, Florida Statutes, is amended to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(p) "Food establishment" means a ~~any~~ factory, food outlet, or ~~any~~ other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include any business or activity that is regulated under s. 413.051, s. 500.80, chapter 509, or chapter 601. The term includes tomato packinghouses and repackers but does not include any other establishments that pack fruits and vegetables in their raw or natural states, including those fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled, natural form before they are marketed.

Section 16. Paragraphs (a) and (b) of subsection (1) and subsection (8) of section 500.12, Florida Statutes, are amended to read:

500.12 Food permits; building permits.—

(1)(a) A food permit from the department is required of a

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~~any~~ person who operates a food establishment or retail food store, except:

1. Persons operating minor food outlets~~, including, but not limited to, video stores,~~ that sell food that is commercially prepackaged, not potentially hazardous, and not time or temperature controlled for safety if~~, nonpotentially hazardous candy, chewing gum, soda, or popcorn, provided~~ the shelf space for those items does not exceed 12 total ~~linear~~ feet and no other food is sold by the minor food outlet.

2. Persons subject to continuous, onsite federal or state inspection.

3. Persons selling only legumes in the shell, either parched, roasted, or boiled.

4. Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state. Such bottles must contain a label listing the producer's name and street address, all added ingredients, the net weight or volume of the product, and a statement that reads: "This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services."

(b) Each food establishment and retail food store regulated under this chapter must apply for and receive a food permit before operation begins. An application for a food permit from the department must be accompanied by a fee in an amount determined by department rule. The department shall adopt by rule a schedule of fees, which may not exceed $650, to be paid by each food establishment and retail food store as a condition of issuance or renewal of a food permit. Such fees ~~and~~ shall be used solely for the recovery of costs for the services provided,

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except that the fee accompanying an application for a food permit for operating a bottled water plant may not exceed $1,000 and the fee accompanying an application for a food permit for operating a packaged ice plant may not exceed $250. The fee for operating a bottled water plant or a packaged ice plant shall be set by rule of the department. Food permits are not transferable from one person or physical location to another. Food permits must be renewed annually on or before January 1. If an application for renewal of a food permit is not received by the department within 30 days after its due date, a late fee~~, in an amount~~ not exceeding $100~~,~~ must be paid in addition to the food permit fee before the department may issue the food permit. The moneys collected shall be deposited in the General Inspection Trust Fund.

(8) A ~~Any~~ person who~~, after October 1, 2000,~~ applies for or renews a local business tax certificate ~~occupational license~~ to engage in business as a food establishment or retail food store must exhibit a current food permit or an active letter of exemption from the department before the local business tax certificate ~~occupational license~~ may be issued or renewed.

Section 17. Subsections (1) through (3) of section 500.121, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

500.121 Disciplinary procedures.—

(1) In addition to the suspension procedures provided in s. 500.12, if applicable, the department may impose an administrative fine in the Class II category pursuant to s. 570.971 ~~a fine not to exceed $5,000~~ against any retail food store, food establishment, or cottage food operation that

violates this chapter, which fine, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund. The department may revoke or suspend the permit of ~~any~~ such retail food store or food establishment if it is satisfied that the retail food store or food establishment has:

(a) Violated ~~any of the provisions of~~ this chapter.

(b) Violated, or aided or abetted in the violation of, any law of this state or department rule relating ~~governing or applicable~~ to retail food stores or food establishments ~~or any lawful rules of the department~~.

(c) Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme, or device whereby another ~~any other~~ person, lawfully relying upon the word, representation, or conduct of a retail food store or food establishment, acts to her or his injury or damage.

(d) Committed any act or conduct of the same or different character than that enumerated which constitutes fraudulent or dishonest dealing.

(2) A ~~Any~~ manufacturer, processor, packer, or distributor who misrepresents or mislabels the country of origin of any food may, in addition to any penalty provided in this chapter, be subject to an additional administrative fine in the Class II category pursuant to s. 570.971 for each ~~of up to $10,000 per~~ violation.

(3) An ~~Any~~ administrative order made and entered by the department imposing a fine pursuant to this section shall specify the amount of the fine and the time limit for payment thereof, not exceeding 21 ~~15~~ days, and, upon failure of the permitholder to pay the fine within that time, the permit is

subject to suspension or revocation.

(7) The department may determine that a food establishment regulated under this chapter requires immediate closure when the food establishment fails to comply with this chapter or rules adopted under this chapter and presents an imminent threat to the public health, safety, and welfare. The department may accept inspection results from other state and local building officials and other regulatory agencies as justification for such action. The department shall, upon such a determination, issue an immediate final order to close a food establishment as follows:

(a) The division director or designee shall determine that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.

(b) Upon such determination, the department shall issue an immediate final order directing the owner or operator of the food establishment to cease operation and close the food establishment. The department shall serve the order upon the owner or operator of the food establishment, or agent thereof. The department may attach a closed-for-operation sign to the food establishment while the order remains in place.

(c) The department shall inspect the food establishment within 24 hours after the issuance of the order. Upon a determination that the food establishment has met the applicable requirements to resume operations, the department shall serve a release upon the owner or operator of the food establishment, or agent thereof.

(d) A food establishment ordered by the department to cease operation and close under this section shall remain closed until

released by the department or by a judicial order to reopen.

(e) It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for a person to deface or remove a closed-for-operation sign placed on a food establishment by the department or for the owner or operator of a food establishment to resist closure of the establishment by the department. The department may impose administrative sanctions for violations of this paragraph.

(f) The department may adopt rules to administer this subsection.

Section 18. Subsection (1) of section 500.147, Florida Statutes, is amended to read:

500.147 Inspection of food establishments, food records, and vehicles.—

(1) The department or its duly authorized agent shall have free access at all reasonable hours to a ~~any~~ food establishment, food record, or ~~any~~ vehicle being used to transport or hold food in commerce for the purpose of inspecting such establishment, record, or vehicle to determine whether ~~if any provision of~~ this chapter or any rule adopted under this ~~the~~ chapter is being violated; to secure a sample or a specimen of any food after paying or offering to pay for such sample; to see that all sanitary rules adopted by the department are complied with; to facilitate tracing of food products in the event of a food-borne illness outbreak or the identification of an adulterated or misbranded food item; or to enforce the special-occupancy provisions of the Florida Building Code which apply to food establishments.

Section 19. Subsection (3) of section 500.165, Florida

Statutes, is amended to read:

500.165 Transporting shipments of food items; rules; penalty.—

(3) A ~~Any~~ person who violates subsection (1) or the rules adopted under subsection (2) is subject to an administrative fine in the class III category pursuant to s. 570.971 for each ~~not to exceed $50,000 per~~ violation. In addition, a ~~any~~ person who violates subsection (1) commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 20. Section 500.172, Florida Statutes, is amended to read:

500.172 Embargoing, detaining, destroying of food, ~~or~~ food-processing equipment, food-processing areas, or food storage areas that are ~~is~~ in violation.—

(1) If ~~When~~ the department or its duly authorized agent finds, or has probable cause to believe, that any food article, ~~or~~ food-processing equipment, food-processing area, or food storage area is in violation of this chapter or any rule adopted under this chapter so as to be dangerous, unwholesome, fraudulent, or insanitary within the meaning of this chapter, an agent of the department may issue and enforce a stop-sale, stop-use, removal, or hold order, which ~~order~~ gives notice that such article, ~~or~~ processing equipment, processing area, or storage area is, or is suspected of being, in violation and has been detained or embargoed and ~~which order~~ warns all persons not to remove, use, or dispose of such article, ~~or~~ processing equipment, processing area, or storage area by sale or otherwise until permission for removal, use, or disposal is given by the

department or the court. A ~~It is unlawful for any~~ person may not ~~to~~ remove, use, or dispose of such detained or embargoed article, ~~or~~ processing equipment, processing area, or storage area by sale or otherwise without such permission.

(2) If an article, ~~or~~ processing equipment, processing area, or storage area detained or embargoed under subsection (1) has been found by the department to be in violation of law or rule, the department may, within a reasonable period of time after the issuance of such notice, petition the circuit court, in the jurisdiction of which the article, ~~or~~ processing equipment, processing area, or storage area is detained or embargoed, for an order for condemnation of such article, ~~or~~ processing equipment, processing area, or storage area. When the department has found that an article, ~~or~~ processing equipment, processing area, or storage area so detained or embargoed is not in violation, the department shall rescind the stop-sale, stop-use, removal, or hold order.

(3) If the court finds that the detained or embargoed article, ~~or~~ processing equipment, processing area, or storage area is in violation, such article, ~~or~~ processing equipment, processing area, or storage area shall, after entry of the decree, be destroyed or made sanitary at the expense of the claimant thereof under the supervision of the department, and~~,~~ all court costs, fees, and storage and other proper expenses shall be taxed against the claimant of such article, ~~or~~ processing equipment, processing area, or storage area or her or his agent. However, if the violation can be corrected by proper labeling of the article or sanitizing of the processing equipment, processing area, or storage area, and after such

costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article be so labeled or processed or such processing equipment, processing area, or storage area so sanitized, has been executed, the court may by order direct that such article, ~~or~~ processing equipment, processing area, or storage area be made available ~~delivered~~ to the claimant thereof for such labeling, processing, or sanitizing under the supervision of the department. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article or processing equipment, processing area, or storage area, on representation to the court by the department that the article, ~~or~~ processing equipment, processing area, or storage area is no longer in violation of this chapter and that the expenses of such supervision have been paid.

(4) When the department or any of its authorized agents finds in any room, building, vehicle, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound or contain any filthy, decomposed, or putrid substances, or which may be poisonous or deleterious to health or otherwise unsafe, the same is ~~being hereby~~ declared to be a nuisance, and the department~~,~~ or its authorized agent~~,~~ shall ~~forthwith~~ condemn or destroy the same~~,~~ or in any other manner render the same unsalable as human food.

Section 21. Subsection (3) and paragraph (b) of subsection (4) of section 501.019, Florida Statutes, are amended to read:

501.019 Health studios; penalties.—

(3) The department may institute proceedings in the appropriate circuit court to recover any penalties or damages

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allowed in this section and for injunctive relief to enforce compliance with ss. 501.012-501.019 or any rule or order of the department. The department may seek a civil penalty in the Class II category pursuant to s. 570.971 ~~of up to $5,000~~ for each violation of this section.

(4)

(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. For a violation of s. 501.015 or s. 501.016, imposing an administrative fine in the Class II category pursuant to s. 570.971 for each ~~not to exceed $5,000 per~~ violation.

~~3. For a violation of s. 501.013, s. 501.017, or s. 501.018, imposing an administrative fine not to exceed $500 per violation.~~

3.~~4.~~ Directing that the health studio cease and desist specified activities.

4.~~5.~~ Refusing to register or revoking or suspending a registration.

5.~~6.~~ Placing the registrant on probation for a period of 5 years, subject to such conditions as the department may specify by rule.

Section 22. Subsection (9) of section 501.059, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

501.059 Telephone solicitation.—

(9)(a) The department shall investigate any complaints

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received concerning violations of this section. If, after investigating a ~~any~~ complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall be in the Class III category pursuant to s. 570.971 for each ~~may not exceed $10,000 per~~ violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Legal Affairs Revolving Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(b) The department may, as an alternative to the civil penalties provided in paragraph (a), impose an administrative fine in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000~~ for each act or omission that constitutes a violation of this section. An administrative proceeding that could result in the entry of an order imposing an administrative penalty must be conducted pursuant to ~~in accordance with~~ chapter 120.

(12) The department may adopt rules to implement this section.

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Section 23. Paragraph (a) of subsection (1) of section 501.922, Florida Statutes, is amended to read:

501.922 Violation.—

(1) The department may enter an order imposing one or more of the following penalties against any person who violates ss. 501.91-501.923 or who impedes, obstructs, or hinders the department in performing its duties under those sections:

(a) Imposition of an administrative fine in the Class II category pursuant to s. 570.971 for each ~~of not more than $1,000 per violation for a first-time offender. For a second-time or repeat offender, or any person who willfully and intentionally violates ss. 501.91-501.923, the administrative fine may not exceed $5,000 per~~ violation.

Section 24. Section 570.42, Florida Statutes, is transferred, renumbered as section 502.301, Florida Statutes, and amended to read:

502.301 ~~570.42~~ Dairy Industry Technical Council.—

(1) COMPOSITION.—The Dairy Industry Technical Council is ~~hereby~~ created within ~~in~~ the department and shall be composed of seven members as follows:

(a) Two citizens of the state, one of whom shall be associated with the Agricultural Extension Service of the University of Florida and the other with the College of Agricultural and Life Sciences ~~Agriculture~~ of the University of Florida.

(b) An employee of the Department of Health.

(c) Two dairy farmers who are actively engaged in the production of milk in this state and who earn a major portion of their income from the production of milk. The commissioner shall

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appoint the two members ~~provided for in this paragraph~~ from no fewer than four nor more than six nominees submitted by the recognized statewide organizations representing this group. In the absence of nominations, the commissioner shall appoint other persons qualified under ~~the provisions of~~ this paragraph.

(d) Two distributors of milk. "Distributor" means any milk dealer who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale. The commissioner shall appoint the two members ~~provided for in this paragraph~~ from no fewer than four nor more than six nominees submitted by the recognized statewide organizations representing this group. In the absence of nominations, the commissioner shall appoint other persons qualified under ~~the provisions of~~ this paragraph.

(e) All members shall serve 4-year terms or until their successors are duly qualified and appointed. If a vacancy occurs, it shall be filled for the remainder of the term in the manner of an initial appointment.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Dairy Industry Technical Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 25. Part I of chapter 570, Florida Statutes, consisting of ss. 570.01-570.232, Florida Statues, is created and entitled "General Provisions."

Section 26. Section 570.14, Florida Statutes, is renumbered as section 570.031, Florida Statutes, and amended to read:

570.031 ~~570.14~~ Seal of department.—The department shall

have an official seal which shall be used for the authentication of the orders and proceedings of the department and for such other purposes as the department may prescribe. Use of the seal or any likeness thereof requires written approval of the department.

Section 27. Section 570.18, Florida Statutes, is renumbered as section 570.041, Florida Statutes.

Section 28. Section 570.16, Florida Statutes, is renumbered as section 570.051, Florida Statutes.

Section 29. Subsection (33) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(33) To assist local volunteer and nonprofit organizations in soliciting, collecting, packaging, or delivering surplus fresh fruit and vegetables for distribution pursuant to s. 595.420 ~~in accordance with s. 570.0725~~. The department also may coordinate the development of food recovery programs in the production areas of the state using local volunteer and nonprofit organizations.

Section 30. Section 570.17, Florida Statutes, is renumbered as section 570.081, Florida Statutes.

Section 31. Section 570.531, Florida Statutes, is renumbered as section 570.209, Florida Statutes.

Section 32. Paragraph (d) of subsection (1) and subsection (2) of section 570.23, Florida Statutes, are amended to read:

570.23 State Agricultural Advisory Council.—

(1) COMPOSITION.—The State Agricultural Advisory Council is

hereby created in the department.

(d) ~~On or after January 15, 1988,~~ Alternates shall be appointed for each member and shall serve as alternates for the remainder of the corresponding members' terms. As terms of current members expire, members and their alternates shall be appointed for 4-year terms and shall serve until their successors are duly qualified and appointed. A vacancy shall be filled for the remainder of an unexpired term in the same manner as an initial appointment.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the State Agricultural Advisory Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 33. Section 570.0705, Florida Statutes, is renumbered as section 570.232, Florida Statutes.

Section 34. Part II of chapter 570, Florida Statutes, consisting of ss. 570.30-570.693, Florida Statutes, is created and entitled "Program Services."

Section 35. Subsection (5) of section 570.36, Florida Statutes, is amended to read:

570.36 Division of Animal Industry; powers and duties.—The duties of the Division of Animal Industry include, but are not limited to:

(5) Operating and managing the animal disease diagnostic laboratory ~~laboratories~~ provided for in chapter 585.

Section 36. Subsections (3) and (4) of section 570.44, Florida Statutes, are amended to read:

570.44 Division of Agricultural Environmental Services;

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powers and duties.—The duties of the Division of Agricultural Environmental Services include, but are not limited to:

(3) ~~Supporting the Pesticide Review Council and~~ Reviewing and evaluating technical and scientific data associated with the production, manufacture, storage, transportation, sale, or use of any article or product with respect to any statutory authority ~~which is~~ conferred on the department. The department may ~~is authorized to~~ establish positions within the division for the employment of experts in the fields of toxicology, hydrology, and biology to conduct such reviews and evaluations and may~~. The department is also authorized to~~ establish appropriate clerical support positions to implement the duties and responsibilities of the division.

~~(4) Enforcing and implementing the responsibilities of chapter 582, and the rules relating to soil and water conservation.~~

Section 37. Subsection (2) of section 570.45, Florida Statutes, is amended to read:

570.45 Director; duties.—

(2) The director shall supervise, direct, and coordinate the activities of the division and enforce ~~the provisions of~~ chapters 388, 482, 487, 501, 504, 531, 570, 576, 578, and 580~~, and 582~~ and any other chapter necessary to carry out the responsibilities of the division.

Section 38. Paragraph (d) of subsection (3) of section 570.451, Florida Statutes, is amended to read:

570.451 Agricultural Feed, Seed, and Fertilizer Advisory Council.—

(3)

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(d) The meetings, powers and duties, procedures, and recordkeeping of the council shall be pursuant to s. 570.232 ~~in accordance with the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 39. Subsections (2) and (3) of section 570.50, Florida Statutes, are amended to read:

570.50 Division of Food Safety; powers and duties.—The duties of the Division of Food Safety include, but are not limited to:

(2) Conducting those general inspection activities relating to food and food products being processed, held, or offered for sale in this state and enforcing those provisions of chapters 500, 501, 502, 531, 583, 585, 586, 597, and 601 relating to foods as authorized by the department.

(3) Analyzing samples of foods offered for sale in this state as required under chapters 500, 501, 502, 585, 586, 597, and 601.

Section 40. Subsection (2) of section 570.51, Florida Statutes, is amended to read:

570.51 Director; qualifications; duties.—

(2) The director shall supervise, direct, and coordinate the activities of the division and enforce the provisions of chapters 500, 501, 502, 531, 583, 585, 597, and 601 and any other chapter necessary to carry out the responsibilities of the division.

Section 41. Subsection (2) of section 570.543, Florida Statutes, is amended to read:

570.543 Florida Consumers' Council.—The Florida Consumers' Council in the department is created to advise and assist the

department in carrying out its duties.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Florida Consumers' Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~. The council members or chair may call no more than two meetings.

Section 42. Section 570.073, Florida Statutes, is renumbered as section 570.65, Florida Statutes.

Section 43. Section 570.074, Florida Statutes, is renumbered as section 570.66, Florida Statutes, and amended to read:

570.66 ~~570.074~~ Department of Agriculture and Consumer Services; Water Policy.—The commissioner may create an Office of Agricultural Water Policy under the supervision of a senior manager exempt under s. 110.205 in the Senior Management Service. The commissioner may designate the bureaus and positions in the various organizational divisions of the department that report to the ~~this~~ office relating to any matter over which the department has jurisdiction in matters relating to water policy affecting agriculture, application of such policies, and coordination of such matters with state and federal agencies. The office shall enforce and implement chapter 582 and rules relating to soil and water conservation.

Section 44. Section 570.67, Florida Statutes, is created to read:

570.67 Office of Energy.—The Office of Energy is created within the department. The office shall be under the supervision of a senior manager, appointed by the commissioner, exempt under

s. 110.205 in the Senior Management Service. The duties of the office must include, but are not limited to, administering and enforcing parts II and III of chapter 377, the rules adopted under those parts, and any other duties authorized by the commissioner.

Section 45. Section 570.951, Florida Statutes, is renumbered as section 570.681, Florida Statutes.

Section 46. Section 570.952, Florida Statutes, is renumbered as section 570.685, Florida Statutes, and amended to read:

570.685 ~~570.952~~ Florida Agriculture Center and Horse Park Authority.—

(1) There is created within the Department of Agriculture and Consumer Services the Florida Agriculture Center and Horse Park Authority which shall be governed by this section and s. 570.691 ~~s. 570.903~~.

(2) The authority shall be composed of 21 members appointed by the commissioner.

(a) Initially, the commissioner shall appoint 11 members for 4-year terms and 10 members for 2-year terms. Thereafter, each member shall be appointed for a term of 4 years from the date of appointment, except that a vacancy shall be filled by appointment for the remainder of the term.

(b) A ~~Any~~ member of the authority who fails to attend three consecutive authority meetings without good cause shall be deemed to have resigned from the authority.

~~(c) Terms for members appointed prior to July 1, 2005, shall expire on July 1, 2005.~~

(3) The Florida Agriculture Center and Horse Park Authority

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shall ~~have the power and duty to~~:

(a) Appoint, with approval from the commissioner, an executive director for the Florida Agriculture Center and Horse Park.

(b) Establish rules of procedure for conducting its meetings and approving matters before the authority pursuant to s. 570.691 ~~that are consistent with s. 570.903~~.

(c) Develop, document, and implement strategies for the planning, construction, and operation of the Florida Agriculture Center and Horse Park.

(d) Advise and consult with the commissioner on matters related to the Florida Agriculture Center and Horse Park.

(e) Consider all matters submitted to the authority by the commissioner.

(4) The authority shall meet at least semiannually and elect a chair ~~chairperson~~, a vice chair ~~chairperson~~, and a secretary for 1-year terms.

(a) The authority shall meet at the call of its chair ~~chairperson~~, at the request of a majority of its membership, at the request of the commissioner, or at such times as may be prescribed by its rules of procedure.

(b) The department shall be responsible for providing administrative and staff support services relating to the meetings of the authority and shall provide suitable space in the offices of the department for the meetings and the storage of records of the authority.

(c) In conducting its meetings, the authority shall use accepted rules of procedure. The secretary shall keep a complete record of the proceedings of each meeting, which record shall

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show the names of the members present and the actions taken. These records shall be kept on file with the department, and such records and other documents regarding matters within the jurisdiction of the authority shall be subject to inspection by members of the authority.

Section 47. Section 570.953, Florida Statutes, is renumbered as section 570.686, Florida Statutes.

Section 48. Section 570.902, Florida Statutes, is renumbered as section 570.69, Florida Statutes, and amended to read:

570.69 ~~570.902~~ Definitions~~; ss. 570.902 and 570.903~~.—For the purpose of this section and s. 570.691 ~~s. 570.903~~:

(1) "Designated program" means the departmental program which a direct-support organization has been created to support.

(2) "Direct-support organization" or "organization" means an organization which is a Florida corporation not for profit incorporated under ~~the provisions of~~ chapter 617 and approved by the department to operate for the benefit of a museum or a designated program.

(3) "Museum" means the Florida Agricultural Museum which is designated as the museum for agriculture and rural history of the State of Florida.

Section 49. Section 570.903, Florida Statutes, is renumbered as section 570.691, Florida Statutes.

Section 50. Section 570.901, Florida Statutes, is renumbered as section 570.692, Florida Statutes.

Section 51. Section 570.91, Florida Statutes, is renumbered as section 570.693, Florida Statutes.

Section 52. Part III of chapter 570, Florida Statutes,

consisting of ss. 570.70-570.89, Florida Statutes, is created and entitled "Agricultural Development."

Section 53. Subsections (2) and (12) of section 570.71, Florida Statutes, are amended to read:

570.71 Conservation easements and agreements.—

(2) To achieve the purposes of this section ~~act~~, ~~beginning no sooner than July 1, 2002, and every year thereafter,~~ the department may accept applications for project proposals to ~~that~~:

(a) Purchase conservation easements, as defined in s. 704.06.

(b) Purchase rural-lands-protection easements pursuant to this section ~~act~~.

(c) Fund resource conservation agreements pursuant to this section ~~act~~.

(d) Fund agricultural protection agreements pursuant to this section ~~act~~.

(12) The department may ~~is authorized to~~ use funds from the following sources to implement this section ~~act~~:

(a) State funds;

(b) Federal funds;

(c) Other governmental entities;

(d) Nongovernmental organizations; or

(e) Private individuals.

Any such funds provided shall be deposited into the Conservation and Recreation Lands Program Trust Fund within the Department of Agriculture and Consumer Services and used for the purposes of this section, including administrative and operating expenses

related to appraisals, mapping, title process, personnel, and other real estate-related expenses ~~act~~.

Section 54. Section 570.241, Florida Statutes, is transferred and renumbered as section 570.73, Florida Statutes.

Section 55. Section 570.242, Florida Statutes, is renumbered as section 570.74, and amended to read:

570.74 ~~570.242~~ Definitions relating to Agricultural Economic Development Act.—For purposes of this act, the term ~~following terms shall have the following meanings~~:

(1) "Agriculturally depressed area" means a rural area that ~~which~~ has declining profitability from agricultural enterprises and one or more of the following characteristics:

(a) A stable or declining population.

(b) A stable or declining real per capita income.

(c) A traditional economy based on agriculture or extraction of solid minerals.

(d) A low ad valorem tax base.

(e) A need for agribusiness and leadership training.

(f) Crop losses or economic depression resulting from a natural disaster or socioeconomic conditions or events that ~~which~~ negatively impact a crop.

(2) "Assistance" means financial or nonfinancial assistance issued pursuant to ~~the provisions of~~ this act.

~~(3) "Commissioner" means the Commissioner of Agriculture.~~

~~(4) "Department" means the Department of Agriculture and Consumer Services.~~

(3) ~~(5)~~ "Financial assistance" means the providing of funds to an agribusiness.

(4) ~~(6)~~ "Nonfinancial assistance" means the providing of

personnel to work with an agribusiness to establish an infrastructure, including, but not limited to, the development of an accounting system, management procedures, and a marketing plan. Nonfinancial assistance includes ~~shall also include~~ the providing of equipment.

Section 56. Section 570.243, Florida Statutes, is renumbered as section 570.75, Florida Statutes.

Section 57. Section 570.244, Florida Statutes, is renumbered as section 570.76, Florida Statutes.

Section 58. Section 570.245, Florida Statutes, is renumbered as section 570.77, Florida Statutes.

Section 59. Section 570.246, Florida Statutes, is renumbered as section 570.78, Florida Statutes.

Section 60. Section 570.247, Florida Statutes, is renumbered as section 570.79, Florida Statutes, and amended to read:

570.79 ~~570.247~~ Adoption ~~Promulgation~~ of rules.—~~In conjunction with funds specifically appropriated for the purposes specified in this act,~~ The department shall adopt ~~begin to promulgate~~ rules ~~no later than January 1, 1992, pursuant to s. 120.54,~~ pertaining to:

(1) Formal notification procedures for the availability of assistance, including publication in the Florida Administrative Register pursuant to s. 120.55.

(2) Written evaluation criteria for selecting project proposals to receive assistance. The criteria for eligibility of assistance shall include a written business plan delineating the economic viability of the proposed project, including the financial commitment by project participants and a schedule for

repayment of agricultural economic development funds.

(3) Procedures for repayment of financial assistance by an assisted agribusiness into the General Inspection Trust Fund within the department. Repayment of financial assistance shall be based upon a percentage of future profits until repayment is complete.

(4) Funding procedures for projects eligible for assistance. These procedures shall include the amount of funding, the limits and requirements for the objects of expenditure, and the duration of assistance.

(5) Other subject matter pertaining to the implementation of this act.

Section 61. Section 570.248, Florida Statutes, is renumbered as section 570.81, Florida Statutes.

Section 62. Section 570.249, Florida Statutes, is renumbered as section 570.82, Florida Statutes.

Section 63. Section 570.9135, Florida Statutes, is renumbered as section 570.83, Florida Statutes, and subsection (6) of that section is amended, to read:

570.83 ~~570.9135~~ Beef Market Development Act; definitions; Florida Beef Council, Inc., creation, purposes, governing board, powers, and duties; referendum on assessments imposed on gross receipts from cattle sales; payments to organizations for services; collecting and refunding assessments; vote on continuing the act; council bylaws.—

(6) REFERENDUM ON ASSESSMENTS.—All producers in this state shall have the opportunity to vote in a referendum to determine whether the council shall be authorized to impose an assessment of not more than $1 per head on cattle sold in the state. The

referendum shall pose the question: "Do you approve of an assessment program, up to $1 per head of cattle pursuant to section 570.83 ~~section 570.9135~~, Florida Statutes, to be funded through specific contributions that are mandatory and refundable upon request?"

(a) A referendum held under this section must be conducted by secret ballot at extension offices of the Institute of Food and Agricultural Sciences of the University of Florida or at offices of the United States Department of Agriculture with the cooperation of the department.

(b) Notice of a referendum to be held under this act must be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held.

(c) Additional referenda may be held to authorize the council to increase the assessment to more than $1 per head of cattle. Such referendum shall pose the question: "Do you approve of granting the Florida Beef Council, Inc., authority to increase the per-head-of-cattle assessment pursuant to section 570.83 ~~section 570.9135~~, Florida Statutes, from ...(present rate)... to up to a maximum of ...(proposed rate)... per head?" Referenda may not be held more often than once every 3 years.

(d) Each cattle producer is entitled to only one vote in a referendum held under this section ~~act~~. Proof of identification and cattle ownership must be presented before voting.

(e) A simple majority of those casting ballots determines ~~shall determine~~ any issue that requires a referendum under this section ~~act~~.

Section 64. Section 570.954, Florida Statutes, is

renumbered as section 570.841, Florida Statutes.

Section 65. Section 570.96, Florida Statutes, is renumbered as section 570.85, Florida Statutes.

Section 66. Section 570.961, Florida Statutes, is renumbered as section 570.86, Florida Statutes, and amended to read:

570.86 ~~570.961~~ Definitions.—As used in ss. 570.85-570.89 ~~570.96-570.964~~, the term:

(1) "Agritourism activity" means any agricultural related activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity regardless of whether ~~or not~~ the participant paid to participate in the activity.

(2) "Agritourism operator" means a ~~any~~ person who is engaged in the business of providing one or more agritourism activities, whether for compensation or not for compensation.

(3) "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products, including land used to display plants, animals, farm products, or farm equipment to the public.

(4) "Farm operation" has the same meaning as ~~defined~~ in s. 823.14.

(5) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and the ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. The term also includes the potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others, including failing to follow the instructions given by the agritourism operator or failing to exercise reasonable caution while engaging in the agritourism activity.

Section 67. Section 570.962, Florida Statutes, is renumbered as section 570.87, Florida Statutes.

Section 68. Section 570.963, Florida Statutes, is renumbered as section 570.88, Florida Statutes, and subsection (1) of that section is amended, to read:

570.88 ~~570.963~~ Liability.—

(1) Except as provided in subsection (2), an agritourism operator, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs is not liable for injury or death of, or damage or loss to, a participant resulting from the inherent risks of agritourism activities if the notice of risk required under s. 570.89 ~~s. 570.964~~ is posted as required. Except as provided in subsection (2), a participant, or a participant's representative, may not maintain an action against or recover from an agritourism operator, his or her employer or employee, or the owner of the underlying land

on which the agritourism occurs for the injury or death of, or damage or loss to, an agritourism participant resulting exclusively from any of the inherent risks of agritourism activities.

Section 69. Section 570.964, Florida Statutes, is renumbered as section 570.89, Florida Statutes, and subsection (3) of that section is amended, to read:

570.89 ~~570.964~~ Posting and notification.—

(3) Failure to comply with ~~the requirements of~~ this section ~~subsection~~ prevents an agritourism operator, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs from invoking the privileges of immunity provided by this section.

Section 70. Part IV of chapter 570, Florida Statutes, consisting of ss. 570.916-570.94, Florida Statutes, is created and entitled "Agricultural Water Policy."

Section 71. Section 570.075, Florida Statutes, is renumbered as section 570.916, Florida Statutes.

Section 72. Section 570.076, Florida Statutes, is renumbered as section 570.921, Florida Statutes, and paragraph (c) of subsection (2) of that section is amended to read:

570.921 ~~570.076~~ Environmental Stewardship Certification Program.—The department may, by rule, establish the Environmental Stewardship Certification Program consistent with this section. A rule adopted under this section must be developed in consultation with state universities, agricultural organizations, and other interested parties.

(2) The department shall provide an agricultural certification under this program for implementation of one or

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more of the following criteria:

(c) Best management practices adopted by rule pursuant to s. 403.067(7)(c) or s. 570.93(1)(b) ~~s. 570.085(1)(b)~~.

Section 73. Section 570.085, Florida Statutes, is renumbered as section 570.93, Florida Statutes.

Section 74. Section 570.087, Florida Statutes, is renumbered as section 570.94, Florida Statutes.

Section 75. Part V of chapter 570, Florida Statutes, consisting of s. 570.971, Florida Statutes, is created and entitled "Penalties."

Section 76. Section 570.971, Florida Statutes, is created to read:

570.971 Penalties; administrative and civil.—

(1) The department or enforcing authority may impose the following fine amount for the class category specified in the chapter or section of law violated:

(a) Class I.—For each violation in the Class I category, a fine not to exceed $1,000 may be imposed.

(b) Class II.—For each violation in the Class II category, a fine not to exceed $5,000 may be imposed.

(c) Class III.—For each violation in the Class III category, a fine not to exceed $10,000 may be imposed.

(d) Class IV.—For each violation in the Class IV category, a fine of $10,000 or more may be imposed.

(2)(a) This section does not supersede a chapter or section of law or rule that limits the total fine amount that may be imposed for a violation.

(b) The class categories under this section also apply to penalties provided by rule.

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(c) The penalties under this section are in addition to any other remedy provided by law.

(3) A person who violates this chapter or any rule adopted under this chapter is subject to an administrative or civil fine in the Class II category in addition to any other penalty provided by law.

(4) The department may refuse to issue or renew any license, permit, authorization, certificate, or registration to a person who has not satisfied a penalty imposed by the department.

(5) The department may adopt rules to implement this section or any section that references this section.

Section 77. Subsection (1) and paragraph (a) of subsection (2) of section 576.021, Florida Statutes, are amended to read:

576.021 Registration and licensing.—

(1) A company the ~~person whose~~ name and address of which appears upon a label and which ~~who~~ guarantees a fertilizer may not distribute that fertilizer to a nonlicensee until a license to distribute has been obtained by the company ~~that person~~ from the department upon payment of a $100 fee. All licenses shall expire on June 30 each year. An application for license shall include the following information:

(a) The name and address of the applicant.

(b) The name and address of the distribution point. The name and address shown on the license shall be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(2)(a) A company the name and address of which appear upon a label and which guarantees a fertilizer ~~person~~ may not

distribute a specialty fertilizer in this state until it is registered with the department ~~by the licensee whose name appears on the label~~. An application for registration of each brand and grade of specialty fertilizer shall be filed with the department by using ~~made on~~ a form prescribed ~~furnished~~ by the department or by using the department's website and shall be accompanied by an annual fee of $100 for each specialty fertilizer that is registered. All specialty fertilizer registrations expire June 30 each year. All licensing and registration fees paid to the department under this section shall be deposited into the State Treasury to be placed in the General Inspection Trust Fund to be used for the sole purpose of funding the fertilizer inspection program.

Section 78. Subsection (2) of section 576.031, Florida Statutes, is amended to read:

576.031 Labeling.—

(2) If distributed in bulk, two ~~five~~ labels containing the information required in paragraphs (1)(a)-(f) shall accompany delivery and be supplied to the purchaser at time of delivery with the delivery ticket, which shall show the certified net weight.

Section 79. Subsections (3), (4), (6), and (7) of section 576.041, Florida Statutes, are amended to read:

576.041 Inspection fees; records~~; bond~~.—

(3) In addition to any other penalty provided by this chapter, a ~~any~~ licensee who fails to timely pay the inspection ~~tonnage~~ fee shall be assessed a penalty of 1.5 percent for each month or part of a month that the fee or portion of the fee is not paid.

(4) If the report is not filed and the inspection fee is not paid on the date due or if the report of tonnage is false, the amount of the inspection fee due is subject to a penalty of 10 percent or $25, whichever is greater. ~~The penalty shall be added to the inspection fee due and constitutes a debt and becomes a claim and lien against the surety bond or certificate of deposit required by this chapter.~~

~~(6) In order to guarantee faithful performance of the provisions of subsection (2), the applicant for license shall post with the department a surety bond, or assign a certificate of deposit, in an amount required by rule of the department to cover fees for any reporting period. The amount shall not be less than $1,000. The surety bond shall be executed by a corporate surety company authorized to do business in this state. The certificate of deposit shall be issued by any recognized financial institution doing business in the United States. The department shall establish, by rule, whether an annual or continuous surety bond or certificate of deposit will be required and shall approve each surety bond or certificate of deposit before acceptance. The department shall examine and approve as to sufficiency all such bonds and certificates of deposit before acceptance. When the licensee ceases operation, said bond or certificate of deposit shall be returned, provided there are no outstanding fees due and payable.~~

(6) ~~(7)~~ In order to obtain information that will facilitate the collection of inspection fees and serve other useful purposes relating to fertilizer, the department may, by rule, require licensees, manufacturers, registrants, and dealers to report movements of fertilizer.

Section 80. Subsection (3) of section 576.051, Florida Statutes, is amended to read:

576.051 Inspection, sampling, analysis.—

(3) The official analysis shall be made from the official sample. The department, before making the official analysis, shall take a sufficient portion from the official sample for check analysis and place that portion in a bottle sealed and identified by number, date, and the preparer's initials. The official check sample shall be kept until the analysis of the official sample is completed. However, the licensee may obtain upon request a portion of the official check sample. Upon completion of the analysis of the official sample, a true copy of the fertilizer analysis report shall be mailed to the licensee of the fertilizer from whom the official sample was taken and to the dealer or agent, if any, and purchaser, if known. This fertilizer analysis report shall show all determinations of plant nutrients ~~nutrient~~ and pesticides. If the official analysis conforms with ~~the provisions of~~ this section ~~law~~, the official check sample may be destroyed. If the official analysis does not conform with ~~the provisions of~~ this section ~~law~~, the official check sample shall be retained for 60 ~~a period of 90~~ days after ~~from~~ the date of the fertilizer analysis report of the official sample. If, within that time, the licensee of the fertilizer from whom the official sample was taken, upon receipt of the fertilizer analysis report, makes written demand for analysis of the official check sample by a referee chemist, a portion of the official check sample sufficient for analysis shall be sent to a referee chemist who is mutually acceptable to the department and the licensee for

analysis at the expense of the licensee. The referee chemist, upon completion of the analysis, shall forward to the department and to the licensee a fertilizer analysis report bearing a proper identification mark or number, ~~,~~ and the fertilizer analysis report shall be verified by an affidavit of the person making the analysis. If the results reported on the fertilizer analysis report agree within the matching criteria defined in department rule with the department's analysis on each element for which analysis was made, the mean average of the two analyses shall be accepted as final and binding on all concerned. However, if the referee's fertilizer analysis report results do not agree within the matching criteria defined in department rule with the department's analysis in any one or more elements for which an analysis was made, upon demand of either the department or the licensee from whom the official sample was taken, a portion of the official check sample sufficient for analysis shall be submitted to a second referee chemist who is mutually acceptable to the department and to the licensee from whom the official sample was taken, at the expense of the party or parties requesting the referee analysis. If no demand is made for an analysis by a second referee chemist, the department's fertilizer analysis report shall be accepted as final and binding on all concerned. The second referee chemist, upon completion of the analysis, shall make a fertilizer analysis report as provided in this subsection for the first referee chemist. The mean average of the two analyses nearest in conformity to each other shall be accepted as final and binding on all concerned.

Section 81. Subsections (4) and (5) of section 576.061,

Florida Statutes, are amended to read:

576.061 Plant nutrient investigational allowances, deficiencies, and penalties.—

~~(4) When it is determined by the department that a fertilizer has been distributed without being licensed or registered, or without labeling, the department shall require the licensee to pay a penalty in the amount of $100. The proceeds from any penalty payments shall be deposited by the department in the General Inspection Trust Fund to be used for the sole purpose of funding the fertilizer inspection program.~~

(4) ~~(5)~~ The department may enter an order imposing one or more of the following penalties against a ~~any~~ person who violates ~~any of the provisions of~~ this chapter or the rules adopted under this chapter ~~hereunder~~ or who impedes, obstructs, or hinders ~~shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent~~ the department in performing ~~the performance of~~ its duties under ~~duty in connection with the provisions of~~ this chapter:

(a) Issuance of a warning letter.

(b) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each ~~of not more than $1,000 per~~ occurrence after the issuance of a warning letter.

(c) Cancellation, revocation, or suspension of any license issued by the department.

Section 82. Section 576.071, Florida Statutes, is amended to read:

576.071 Commercial value.—The commercial value used in assessing penalties for a ~~any~~ deficiency shall be determined by surveying the fertilizer industry in the state and using

annualized plant nutrient values contained in one or more generally recognized journals.

Section 83. Subsections (3) and (4) of section 576.087, Florida Statutes, are amended to read:

576.087 Antisiphon requirements for irrigation systems.—

~~(3) The department shall establish specific requirements for antisiphon devices.~~

~~(4) Any governmental agency which requires antisiphon devices on irrigation systems used for the application of fertilizer shall use the specific antisiphon device requirements adopted by the department.~~

Section 84. Section 576.101, Florida Statutes, is amended to read:

576.101 Cancellation, revocation, and suspension~~, probationary status~~.—

~~(1)~~ The department may deny, suspend, or revoke a ~~any~~ license issued by the department for a ~~any~~ violation of ~~the provisions of~~ this chapter, the rules adopted under this chapter ~~thereunder~~, or any lawful order of the department.

~~(2) The department may place any licensee on a probationary status when the deficiency levels of samples taken from that licensee do not meet minimum performance levels established by statute within the investigational allowances provided in s. 576.061.~~

Section 85. Subsection (1) of section 578.08, Florida Statutes, is amended to read:

578.08 Registrations.—

(1) Every person, except as provided in subsection (4) and s. 578.14, before selling, distributing for sale, offering for

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sale, exposing for sale, handling for sale, or soliciting orders for the purchase of an ~~any~~ agricultural, vegetable, flower, or forest tree seed, or mixture thereof, shall first register with the department as a seed dealer. ~~The application for registration shall include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale.~~ The application for registration shall be filed with the department by using a form prescribed by the department or by using the department's website and shall be accompanied by an annual registration fee for each such place of business based on the gross receipts from the sale of such seed for the last preceding license year as follows:

(a)1. Receipts of less than $500, a fee of.....$10.

2. Receipts of $500 or more but less than $1,000, a fee of.....$25.

3.~~1.~~ Receipts of $1,000 or more but less than $2,500 ~~$2,500.01~~, a fee of.....$100.

4.~~2.~~ Receipts of ~~more than~~ $2,500 or more but ~~and~~ less than $5,000 ~~$5,000.01~~, a fee of.....$200.

5.~~3.~~ Receipts of ~~more than~~ $5,000 or more but ~~and~~ less than $10,000 ~~$10,000.01~~, a fee of.....$350.

6.~~4.~~ Receipts of ~~more than~~ $10,000 or more but ~~and~~ less than $20,000 ~~$20,000.01~~, a fee of.....$800.

7.~~5.~~ Receipts of ~~more than~~ $20,000 or more but ~~and~~ less than $40,000 ~~$40,000.01~~, a fee of.....$1,000.

8.~~6.~~ Receipts of ~~more than~~ $40,000 or more but ~~and~~ less than $70,000 ~~$70,000.01~~, a fee of.....$1,200.

9.~~7.~~ Receipts of ~~more than~~ $70,000 or more but ~~and~~ less

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than $150,000 ~~$150,000.01~~, a fee of.....$1,600.

10.~~8.~~ Receipts of ~~more than~~ $150,000 or more but ~~and~~ less than $400,000 ~~$400,000.01~~, a fee of.....$2,400.

11.~~9.~~ Receipts of ~~more than~~ $400,000 or more, a fee of.....$4,600.

(b) For places of business not previously in operation, the fee shall be based on anticipated receipts for the first license year.

Section 86. Paragraph (g) of subsection (2) of section 580.036, Florida Statutes, is amended to read:

580.036 Powers and duties.—

(2) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce the provisions of this chapter. These rules shall be consistent with the rules and standards of the United States Food and Drug Administration and the United States Department of Agriculture, when applicable, and shall include:

(g) Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and well-being and, to the extent that meat, poultry, and other animal products for human consumption may be affected by commercial feed or feedstuff, to ensure that these products are safe for human consumption. Such standards, if adopted, must be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council created under s. 570.451.

Section 87. Paragraphs (a), (b), and (d) of subsection (1) of section 580.041, Florida Statutes, are amended to read:

580.041 Master registration; fee; refusal or cancellation

of registration; reporting.—

(1)(a) Each distributor of commercial feed must annually obtain a master registration before her or his brands are distributed in this state. Upon initial registration, ~~The department shall furnish the registration forms requiring~~ the distributor shall agree to ~~state that the distributor will~~ comply with ~~all provisions of~~ this chapter and applicable rules. ~~The registration form shall identify the manufacturer's or guarantor's name and place of business and the location of each manufacturing facility in the state and shall be signed by the owner; by a partner, if a partnership; or by an authorized officer or agent, if a corporation.~~ All registrations expire on June 30 of each year.

(b) The application for registration ~~form~~ shall be filed with the department by using a form prescribed by the department or by using the department's website and shall be accompanied by a fee ~~that shall be~~ based on tons of feed distributed in this state during the previous year. If a distributor has been in business less than 1 year, the tonnage shall be estimated by the distributor for the first year and based on actual tonnage thereafter. These fees shall be as follows:

SALES IN TONS	FEE
Zero, up to and including 25	$40
More than 25, up to and including 50	$75
More than 50, up to and including 100	$150
More than 100, up to and including 300	$375
More than 300, up to and including 600	$600

More than 600, up to and including 1,000.....$900

More than 1,000, up to and including 2,000.....$1,250

More than 2,000, up to and including 5,000.....$2,000

More than 5,000.....$3,500

(d) The department shall provide ~~mail~~ a copy of the master registration to the registrant to signify that administrative requirements have been met.

Section 88. Subsection (1) of section 580.071, Florida Statutes, is amended to read:

580.071 Adulteration.—No person shall distribute an adulterated commercial feed or feedstuff. A commercial feed or feedstuff shall be deemed to be adulterated:

(1)(a) If it bears or contains any poisonous, deleterious, or nonnutritive substance that may render it injurious to animal or human health. However, if the substance is not an additive, the feed shall not be considered adulterated if the quantity of the substance does not ordinarily render it injurious to animal or human health;

(b) If it bears or contains any food additive or added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of s. 406 of the Federal Food, Drug, and Cosmetic Act, other than a pesticide chemical in or on a raw agricultural commodity;

(c) If it is, or it bears or contains, any food additive or color additive that is unsafe within the meaning of s. 409 or s. 512 of the Federal Food, Drug, and Cosmetic Act, respectively;

(d) If it is a raw agricultural commodity and it bears or

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contains a pesticide chemical that is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; however, if ~~where~~ a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under s. 408 of the Federal Food, Drug, and Cosmetic Act and that raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the processed feed will result, or is likely to result, in pesticide residue in the edible product of the animal which is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; ~~or~~

(e) If it is, or it bears or contains, a ~~any~~ new animal drug that is unsafe within the meaning of s. 512 of the Federal Food, Drug, and Cosmetic Act; ~~.~~

(f) If it consists, in whole or in part, of a filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed;

(g) If it is prepared, packaged, or held under unsanitary conditions whereby it may have become contaminated with filth, or may have been rendered injurious to health; or

(h) If it is, in whole or in part, the product of a diseased animal or of an animal that died by a means other than slaughter which is unsafe within the meaning of s. 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act.

Section 89. Subsection (5) of section 581.091, Florida Statutes, is amended to read:

581.091 Noxious weeds and infected plants or regulated articles; sale or distribution; receipt; information to department; withholding information.—

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(5)(a) Notwithstanding any other ~~provision of state~~ law or rule, a person may obtain a special permit from the department to plant *Casuarina cunninghamiana* as a windbreak for a commercial citrus grove if ~~provided~~ the plants are produced in an authorized registered nursery and certified by the department as being vegetatively propagated from male plants. ~~A "commercial citrus grove" means a contiguous planting of 100 or more citrus trees where citrus fruit is produced for sale.~~

~~(b) For a 5-year period, special permits authorizing a person to plant *Casuarina cunninghamiana* shall be issued only as part of a pilot program for fresh fruit groves in areas of Indian River, St. Lucie, and Martin Counties where citrus canker is determined by the department to be widespread. The pilot program shall be reevaluated annually, and a comprehensive review shall be conducted in 2013. The purpose of the annual and 5-year reviews is to determine if the use of *Casuarina cunninghamiana* as an agricultural pest and disease windbreak poses any adverse environmental consequences. At the end of the 5-year pilot program, if the Noxious Weed and Invasive Plant Review Committee, created by the department, and the Department of Environmental Protection, in consultation with a representative of the citrus industry who has a *Casuarina cunninghamiana* windbreak, determine that the potential is low for adverse environmental impacts from planting *Casuarina cunninghamiana* as windbreaks, the department may, by rule, allow the use of *Casuarina cunninghamiana* windbreaks for commercial citrus groves in other areas of the state. If it is determined at the end of the 5-year pilot program that additional time is needed to further evaluate *Casuarina cunninghamiana*, the department will remain the lead agency.~~

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(b) ~~(c)~~ Each application for a special permit must ~~shall~~ be accompanied by a fee in an amount determined by ~~the~~ department~~,~~ ~~by~~ rule, not to exceed $500. A special permit is ~~shall be~~ required for each noncontiguous commercial citrus grove and shall be renewed every 5 years. The property owner shall maintain and produce ~~is responsible for maintaining and producing~~ for inspection the original nursery invoice with certification documentation. If ownership of the property is transferred, the seller shall ~~must~~ notify the department and provide the buyer with a copy of the special permit and copies of all invoices and certification documentation before ~~prior to~~ the closing of the sale.

(c) ~~(d)~~ Each application must ~~shall~~ include a baseline survey of all lands within 500 feet of the proposed *Casuarina cunninghamiana* windbreak showing the location and identifying the ~~identification to~~ species of ~~all~~ existing *Casuarina spp.*

(d) ~~(c)~~ Nurseries authorized to produce *Casuarina cunninghamiana* shall ~~must~~ obtain a special permit from the department certifying that the plants have been vegetatively propagated from sexually mature male source trees currently grown in the state. The importation of *Casuarina cunninghamiana* from any area outside the state for use ~~to be used~~ as a propagation source tree is prohibited. Each male source tree must be registered by the department as being a horticulturally true-to-type male plant and be labeled with a source tree registration number. Each nursery application for a special permit must ~~shall~~ be accompanied by a fee in an amount determined by ~~the~~ department~~, by~~ rule, not to exceed $200.

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Special permits shall be renewed annually. The department shall, by rule, set the amount of an annual fee, not to exceed $50, for each *Casuarina cunninghamiana* registered as a source tree. ~~Nurseries may only sell *Casuarina cunninghamiana* to a person with a special permit as specified in paragraphs (a) and (b).~~ The source tree registration numbers of the parent plants must be documented on each invoice or other certification documentation provided to the buyer.

(e)~~(f)~~ All *Casuarina cunninghamiana* shall ~~must~~ be destroyed by the property owner within 6 months after:

1. The property owner takes permanent action to no longer use the site for commercial citrus production;

2. The site has not been used for commercial citrus production for a period of 5 years; or

3. The department determines that the *Casuarina cunninghamiana* on the site has become invasive. This determination shall be based on, but not limited to, the recommendation of the Noxious Weed and Invasive Plant Review Committee and the Department of Environmental Protection and made in consultation with a representative of the citrus industry who has a *Casuarina cunninghamiana* windbreak.

If the owner or person in charge refuses or neglects to comply, the director or her or his authorized representative may, under authority of the department, ~~proceed to~~ destroy the plants. The expense of the destruction shall be assessed, collected, and enforced against the owner by the department. If the owner does not pay the assessed cost, the department may record a lien against the property.

(f)~~(g)~~ The use of *Casuarina cunninghamiana* for windbreaks does ~~shall~~ not preclude the department from issuing permits for the research or release of biological control agents to control *Casuarina spp.* as provided in ~~in accordance with~~ s. 581.083.

(g)~~(h)~~ The use of *Casuarina cunninghamiana* for windbreaks may ~~shall~~ not restrict or interfere with any other agency or local government effort to manage or control noxious weeds or invasive plants, including *Casuarina cunninghamiana*. An~~, nor shall any other~~ agency or local government may not remove any *Casuarina cunninghamiana* planted as a windbreak under special permit issued by the department.

~~(i) The department shall develop and implement a monitoring protocol to determine invasiveness of *Casuarina cunninghamiana*. The monitoring protocol shall, at a minimum, require:~~

~~1. Inspection of the planting site by department inspectors within 30 days following initial planting or any subsequent planting of *Casuarina cunninghamiana* to ensure the criteria of the special permit have been met.~~

~~2. Annual site inspections of planting sites and all lands within 500 feet of the planted windbreak by department inspectors who have been trained to identify *Casuarina spp.* and to make determinations of whether *Casuarina cunninghamiana* has spread beyond the permitted windbreak location.~~

~~3. Any new seedlings found within 500 feet of the planted windbreak to be removed, identified to the species level, and evaluated to determine if hybridization has occurred.~~

~~4. The department to submit an annual report and a final 5-year evaluation identifying any adverse effects resulting from the planting of *Casuarina cunninghamiana* for windbreaks and~~

~~documenting all inspections and the results of those inspections to the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and a designated representative of the citrus industry who has a *Casuarina cunninghamiana* windbreak.~~

~~(j) If the department determines that female flowers or cones have been produced on any *Casuarina cunninghamiana* that have been planted under a special permit issued by the department, the property owner shall be responsible for destroying the trees. The department shall notify the property owner of the timeframe and method of destruction.~~

~~(k) If at any time the department determines that hybridization has occurred during the pilot program between *Casuarina cunninghamiana* planted as a windbreak and other *Casuarina spp.*, the department shall expeditiously initiate research to determine the invasiveness of the hybrid. The information obtained from this research shall be evaluated by the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and a designated representative of the citrus industry who has a *Casuarina cunninghamiana* windbreak. If the department determines that the hybrids have a high potential to become invasive, based on, but not limited to, the recommendation of the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and a designated representative of the citrus industry who has a *Casuarina cunninghamiana* windbreak, this pilot program shall be permanently suspended.~~

~~(l) Each application for a special permit must be accompanied by a fee as described in paragraph (c) and an~~

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~~agreement that the property owner will abide by all permit conditions including the removal of *Casuarina cunninghamiana* if invasive populations or other adverse environmental factors are determined to be present by the department as a result of the use of *Casuarina cunninghamiana* as windbreaks. The application must include, on a form provided by the department, the name of the applicant and the applicant's address or the address of the applicant's principal place of business; a statement of the estimated cost of removing and destroying the *Casuarina cunninghamiana* that is the subject of the special permit; and the basis for calculating or determining that estimate. If the applicant is a corporation, partnership, or other business entity, the applicant must also provide in the application the name and address of each officer, partner, or managing agent. The applicant shall notify the department within 30 business days of any change of address or change in the principal place of business. The department shall mail all notices to the applicant's last known address.~~

1. Upon obtaining a permit, the permitholder must annually maintain the *Casuarina cunninghamiana* authorized by a special permit as required in the permit. If the permitholder ceases to maintain the *Casuarina cunninghamiana* as required by the special permit, if the permit expires, or if the permitholder ceases to abide by the conditions of the special permit, the permitholder must ~~shall~~ remove and destroy the *Casuarina cunninghamiana* in a timely manner as specified in the permit.

2. If the department:

a. Determines that the permitholder is no longer maintaining the *Casuarina cunninghamiana* subject to the special

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permit and has not removed and destroyed the *Casuarina cunninghamiana* authorized by the special permit;

b. Determines that the continued use of *Casuarina cunninghamiana* as windbreaks presents an imminent danger to public health, safety, or welfare; or

c. Determines that the permitholder has exceeded the conditions of the authorized special permit,~~;~~

the department may issue an immediate final order, which is ~~shall be~~ immediately appealable or enjoinable pursuant to ~~as provided by~~ chapter 120, directing the permitholder to immediately remove and destroy the *Casuarina cunninghamiana* authorized to be planted under the special permit. A copy of the immediate final order shall be provided ~~mailed~~ to the permitholder.

3. If, upon issuance by the department of an immediate final order to the permitholder, the permitholder fails to remove and destroy the *Casuarina cunninghamiana* subject to the special permit within 60 days after issuance of the order~~,~~ or such shorter period as is designated in the order as public health, safety, or welfare requires, the department may remove and destroy the *Casuarina cunninghamiana* that are the subject of the special permit. If the permitholder makes a written request to the department for an extension of time to remove and destroy the *Casuarina cunninghamiana* that demonstrates specific facts showing why the *Casuarina cunninghamiana* could not reasonably be removed and destroyed in the applicable timeframe, the department may extend the time for removing and destroying *Casuarina cunninghamiana* subject to a special permit. The

reasonable costs and expenses incurred by the department for removing and destroying *Casuarina cunninghamiana* subject to a special permit shall be paid out of the Citrus Inspection Trust Fund and shall be reimbursed by the party to which the immediate final order is issued. If the party to which the immediate final order has been issued fails to reimburse the state within 60 days, the department may record a lien on the property. The lien shall be enforced by the department.

4. In order to carry out the purposes of this paragraph, the department or its agents may require a permitholder to provide verified statements of the planted acreage subject to the special permit and may review the permitholder's business or planting records at her or his place of business during normal business hours in order to determine the acreage planted. The failure of a permitholder to furnish such statement or to make such records available is cause for suspension of the special permit. If the department finds such failure to be willful, the special permit may be revoked.

Section 90. Subsection (8) of section 581.131, Florida Statutes, is amended to read:

581.131 Certificate of registration.—

(8) The department shall provide to each person subject to this section written notice and renewal forms 30 ~~60~~ days before ~~prior to~~ the annual renewal date informing the person of the certificate of registration renewal date and the applicable fee.

Section 91. Subsection (4) of section 583.01, Florida Statutes, is amended to read:

583.01 Definitions.—For the purpose of this chapter, unless elsewhere indicated, the term:

(4) "Dealer" means a ~~any~~ person, firm, or corporation, including a producer, processor, retailer, or wholesaler, that sells, offers for sale, or holds for the purpose of sale in this state 30 dozen or more eggs or its equivalent in any one week, or more than 384 ~~in excess of 100 pounds of~~ dressed birds ~~poultry~~ in any one week.

Section 92. Section 570.38, Florida Statutes, is transferred, renumbered as section 585.008, Florida Statutes, and amended to read:

585.008 ~~570.38~~ Animal Industry Technical Council.—

(1) COMPOSITION.—The Animal Industry Technical Council is hereby created in the department and shall be composed of 14 members as follows:

(a) The beef cattle, swine, dairy, horse, independent agricultural market ~~markets~~, meat processing and packing establishment ~~establishments~~, veterinary medicine, and poultry representatives who serve on the State Agricultural Advisory Council and three additional representatives from the beef cattle industry, as well as three at-large members representing other animal industries in the state, who shall be appointed by the commissioner for 4-year terms or until their successors are duly qualified and appointed.

(b) Each additional beef cattle representative shall be appointed subject to the qualifications and by the procedure as prescribed in s. 570.23 for membership to the council by the beef cattle representative. If a vacancy occurs in these three positions, it shall be filled for the remainder of the term in the same manner as an initial appointment.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The

meetings, powers and duties, procedures, and recordkeeping of the Animal Industry Technical Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 93. Subsection (3) is added to section 589.08, Florida Statutes, to read:

589.08 Land acquisition restrictions.—

(3) The Florida Forest Service shall pay 15 percent of the gross receipts from the Goethe State Forest to each fiscally constrained county as described in s. 218.67(1) in which a portion of the Goethe State Forest is located in proportion to the forest acreage located in such county. The funds must be equally divided between the board of county commissioners and the school board of each fiscally constrained county.

Section 94. Subsections (1) and (3) of section 589.011, Florida Statutes, are amended to read:

589.011 Use of state forest lands; fees; rules.—

(1) If authorized by a land management plan approved pursuant to chapter 253 or by an interim assignment letter that identifies the interim management activities issued by the Department of Environmental Protection pursuant to chapter 259, the Florida Forest Service of the Department of Agriculture and Consumer Services may grant privileges, permits, leases, and concessions for the use of state forest lands or any land leased by or otherwise assigned to the Florida Forest Service for management purposes, timber, and forest products pursuant to ~~for purposes not inconsistent with the provisions of~~ this chapter.

(3) The Florida Forest Service may ~~shall have the power to~~ set and collect ~~charge~~ reasonable fees, rentals, or charges ~~or~~

~~rent~~ for the use or operation of facilities and concessions on state forests or any lands leased by or otherwise assigned to the Florida Forest Service for management purposes based on factors such as the cost and extent of recreational facilities and services, geographical location, seasonal public demand, fees charged by other governmental and private entities for comparable services and activities, and market value and demand for forest products. Moneys collected from such fees, rentals, and charges ~~rent~~ shall be deposited into the Incidental Trust Fund of the Florida Forest Service.

Section 95. Section 589.20, Florida Statutes, is amended to read:

589.20 Cooperation by Florida Forest Service.—The Florida Forest Service may cooperate with other state agencies, water management districts, municipalities, or other governmental entities ~~who are custodians of lands which are suitable for forestry purposes,~~ in the designation and dedication of ~~such~~ lands that are suitable for forestry purposes ~~when in the opinion of the state agencies concerned such lands are suitable for these purposes and can be so administered~~. Lands designated and dedicated by a state agency, water management district, municipality, or other government entity ~~Upon the designation and dedication of said lands~~ for forestry ~~these~~ purposes ~~by the agencies concerned, said lands~~ shall be administered by the Florida Forest Service.

Section 96. Subsection (7) of section 590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training

~~Florida~~ Center ~~for Wildfire and Forest Resources Management Training~~.—

(7) The Florida Forest Service may organize, staff, equip, and operate the Withlacoochee ~~Florida Forest~~ Training Center. The center shall serve as a site where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory as they relate to their respective disciplines.

(a) The center may establish cooperative efforts involving federal, state, and local entities; hire appropriate personnel; and engage others by contract or agreement with or without compensation to assist in carrying out the training and operations of the center.

(b) The center shall provide wildfire suppression training opportunities for rural fire departments, volunteer fire departments, and other local fire response units.

(c) The center shall ~~will~~ focus on curriculum related ~~to~~, but not limited to, fuel reduction, an incident management system, prescribed burning certification, multiple-use land management, water quality, forest health, environmental education, and wildfire suppression training for structural firefighters.

(d) The center may assess appropriate fees for food, lodging, travel, course materials, and supplies in order to meet its operational costs and may grant free meals, room, and scholarships to persons and other entities in exchange for instructional assistance.

Section 97. Subsection (2) of section 590.125, Florida Statutes, is amended to read:

590.125 Open burning authorized by the Florida Forest

Service.—

(2) NONCERTIFIED BURNING.—

(a) Persons may ~~be authorized to~~ broadcast burn or pile burn pursuant to ~~in accordance with~~ this subsection if:

1. There is specific consent of the landowner or his or her designee;

2. Authorization has been obtained from the Florida Forest Service or its designated agent before starting the burn;

3. There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the containment of the fire;

4. The fire remains within the boundary of the authorized area;

5. The person named responsible in the burn authorization or a designee is present at the burn site until the fire is completed;

6. The Florida Forest Service does not cancel the authorization; and

7. The Florida Forest Service determines that air quality and fire danger are favorable for safe burning.

(b) A new authorization is not required for smoldering that occurs within the authorized burn area unless new ignitions are conducted by the person named responsible in the burn authorization or a designee.

(c) Monitoring the smoldering activity of a burn does not require an additional authorization even if flames begin to spread within the authorized burn site due to ongoing smoldering activity.

(d) ~~(b)~~ A person who broadcast burns or pile burns in a

manner that violates ~~any requirement of~~ this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 98. Section 570.0725, Florida Statutes, is transferred and renumbered as section 595.420, Florida Statutes.

Section 99. Paragraph (k) of subsection (1) of section 597.003, Florida Statutes, is amended to read:

597.003 Powers and duties of Department of Agriculture and Consumer Services.—

(1) The department is hereby designated as the lead agency in encouraging the development of aquaculture in the state and shall have and exercise the following functions, powers, and duties with regard to aquaculture:

(k) Make available state lands and the water column for the purpose of producing aquaculture products when the aquaculture activity is compatible with state resource management goals, environmental protection, and proprietary interest and when such state lands and waters are determined to be suitable for aquaculture development by the Board of Trustees of the Internal Improvement Trust Fund pursuant to s. 253.68; provide training as necessary to lessees; and be responsible for all saltwater aquaculture activities located on sovereignty submerged land or in the water column above such land and adjacent facilities directly related to the aquaculture activity.

1. The department shall act in cooperation with other state and local agencies and programs to identify and designate sovereignty lands and waters that would be suitable for aquaculture development.

2. The department shall identify and evaluate specific

tracts of sovereignty submerged lands and water columns in various areas of the state to determine where such lands and waters are suitable for leasing for aquaculture purposes. Nothing in this subparagraph or subparagraph 1. shall preclude the applicant from applying for sites identified by the applicant.

3. The department shall provide assistance in developing technologies applicable to aquaculture activities, evaluate practicable production alternatives, and provide agreements to develop innovative culture practices.

Section 100. Paragraph (j) is added to subsection (1) of section 597.004, Florida Statutes, to read:

597.004 Aquaculture certificate of registration.—

(1) CERTIFICATION.—Any person engaging in aquaculture must be certified by the department. The applicant for a certificate of registration shall submit the following to the department:

(j) A certificate of training, if required under the best management practices adopted pursuant to this section.

Section 101. Subsection (1) of section 597.020, Florida Statutes, is amended to read:

597.020 Shellfish processors; regulation.—

(1) The department may:

(a) ~~is authorized to~~ Adopt by rule regulations, specifications, training requirements, and codes relating to sanitary practices for catching, cultivating, handling, processing, packaging, preserving, canning, smoking, and storing ~~of~~ oysters, clams, mussels, scallops, and crabs.

(b) ~~The department is also authorized to~~ License shellfish processors who handle oysters, clams, mussels, scallops, and

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crabs when such activities relate to quality control, sanitary, and public health practices pursuant to this section and chapter 500.

(c) ~~The department is also authorized to~~ License or certify, for a fee determined by rule, facilities used for processing oysters, clams, mussels, scallops, and crabs~~;, to~~ levy an administrative fine in the Class I category pursuant to s. 570.971 for each violation, for each day the violation exists ~~of up to $1,000 per violation per day~~ or ~~to~~ suspend or revoke such licenses or certificates upon satisfactory evidence of a ~~any~~ violation of rules adopted pursuant to this section~~;~~ and ~~to~~ seize and destroy any adulterated or misbranded shellfish products as defined by rule.

Section 102. Section 570.481, Florida Statutes, is transferred and renumbered as section 603.011, Florida Statutes.

Section 103. Section 570.55, Florida Statutes, is transferred and renumbered as section 603.211, Florida Statutes.

Section 104. Subsection (2) of section 604.16, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

604.16 Exceptions to provisions of ss. 604.15-604.34.—Except for s. 604.22(2), the provisions of ss. 604.15-604.34 do not apply to:

(2) A dealer in agricultural products who pays at the time of purchase with United States cash currency or a cash equivalent, such as a money order, cashier's check, wire transfer, electronic funds transfer, or PIN debit transaction ~~debit card~~.

(5) A dealer in agricultural products to the extent that

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the dealer purchases agricultural products from a producer owned by the exact same person as the dealer, owned solely by the dealer, or who solely owns the dealer.

Section 105. Section 604.22, Florida Statutes, is amended to read:

604.22 Dealers to keep records; contents.—

(1)(a) Each licensee, while acting as agent for a producer, shall make and preserve for at least 1 year a record of each transaction, specifying the name and address of the producer for whom she or he acts as agent; the date of receipt; the kind, quality, and quantity of agricultural products received; the name and address of the purchaser of each package of agricultural products; the price for which each package was sold; the amount of any additional charges necessary to effectuate the sale; the amount and explanation of any adjustments given; and the net amount due from each purchaser.

(b) An account of sales shall be furnished to each producer within 48 hours after the sale of such agricultural products unless otherwise agreed to in a written contract or verifiable oral agreement. Such account of sales shall clearly show the sale price of each lot of agricultural products sold; all adjustments to the original price, along with an explanation of such adjustments; and an itemized showing of all marketing costs deducted by the licensee, along with the net amount due the producer.

(c) The licensee shall make the payment to the producer within 5 days after ~~of~~ the licensee's receipt of payment unless otherwise agreed to in a written contract or verifiable oral agreement.

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(2)(a) Notwithstanding ~~The provisions of~~ s. 604.16(2), (3), and (4) ~~notwithstanding~~, a ~~any~~ person, partnership, corporation, or other business entity, except a person described in s. 604.16(1), who possesses and offers for sale agricultural products is required to possess and display, upon the request of a ~~any~~ department representative or state, county, or local law enforcement officer, an invoice, bill of sale, manifest, or other written document showing the date of sale, the name and address of the seller, and the kind and quantity of products for all such agricultural products.

(b) A ~~Any~~ person who violates ~~the provisions of~~ this section is subject to s. 604.30(2) and (3) ~~subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 106. Sections 487.172, 500.301, 500.302, 500.303, 500.304, 500.305, 500.306, 500.601, 570.345, 570.542, 570.72, 570.92, 589.081, and 590.091, Florida Statutes, are repealed.

Section 107. Paragraph (c) of subsection (6) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(6)

(c)1. For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land are ~~shall be~~ considered a part of the average yields per acre and ~~shall~~ have no separately assessable contributory value.

2. Litter containment structures located on producing

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poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection~~,~~ which ~~structures or improvements~~ are consistent with the interim measures or best management practices adopted by the Department of Agriculture and Consumer Services ~~Services' interim measures or best management practices adopted~~ pursuant to s. 570.93 ~~s. 570.085~~ or s. 403.067(7)(c)~~,~~ shall be assessed by the methodology described in subparagraph 1.

Section 108. Subsection (1) of section 253.74, Florida Statutes, is amended to read:

253.74 Penalties.—

(1) A ~~Any~~ person who conducts aquaculture activities in excess of those authorized by the board or who conducts such activities on state-owned submerged lands without having previously obtained an authorization from the board commits a misdemeanor of the second degree, punishable as provided in s. 775.082, is ~~and shall be~~ subject to a civil fine in the Class I category pursuant to s. 570.971 ~~imprisonment for not more than 6 months or fine of not more than $1,000~~, or both. In addition to such fine and imprisonment, all works, improvements, and animal and plant life involved in the project~~,~~ may be forfeited to the state.

Section 109. Paragraph (c) of subsection (5) of section 288.1175, Florida Statutes, is amended to read:

288.1175 Agriculture education and promotion facility.—

(5) The Department of Agriculture and Consumer Services

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shall competitively evaluate applications for funding of an agriculture education and promotion facility. If the number of applicants exceeds three, the Department of Agriculture and Consumer Services shall rank the applications based upon criteria developed by the Department of Agriculture and Consumer Services, with priority given in descending order to the following items:

(c) The location of the facility in a brownfield site as defined in s. 376.79(3), a rural enterprise zone as defined in s. 290.004, an agriculturally depressed area as defined in s. 570.74 ~~s. 570.242(1)~~, or a county that has lost its agricultural land to environmental restoration projects.

Section 110. Paragraph (b) of subsection (14) and paragraph (b) of subsection (77) of section 320.08058, Florida Statutes, are amended to read:

320.08058 Specialty license plates.—

(14) FLORIDA AGRICULTURAL LICENSE PLATES.—

(b) The proceeds of the Florida Agricultural license plate annual use fee must be forwarded to the direct-support organization created pursuant to s. 570.691 ~~in s. 570.903~~. The funds must be used for the sole purpose of funding and promoting the Florida agriculture in the classroom program established within the Department of Agriculture and Consumer Services pursuant to s. 570.693 ~~s. 570.91~~.

(77) FLORIDA HORSE PARK LICENSE PLATES.—

(b) The annual use fees shall be distributed to the Florida Agriculture Center and Horse Park Authority created by s. 570.685 ~~s. 570.952~~, which shall retain all proceeds until all startup costs for developing and establishing the plate have

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been recovered. Thereafter, the proceeds shall be used as follows:

1. A maximum of 5 percent of the proceeds from the annual use fees may be used for the administration of the Florida Horse Park license plate program.

2. A maximum of 5 percent of the proceeds may be used to promote and market the license plate.

3. The remaining proceeds shall be used by the authority to promote the Florida Agriculture Center and Horse Park located in Marion County; to support continued development of the park, including the construction of additional educational facilities, barns, and other structures; to provide improvements to the existing infrastructure at the park; and to provide for operational expenses of the Florida Agriculture Center and Horse Park.

Section 111. Section 373.621, Florida Statutes, is amended to read:

373.621 Water conservation.—The Legislature recognizes the significant value of water conservation in the protection and efficient use of water resources. Accordingly, consideration in the administration of ss. 373.223, 373.233, and 373.236 shall be given to applicants who implement water conservation practices pursuant to s. 570.93 ~~s. 570.085~~ or other applicable water conservation measures as determined by the department or a water management district.

Section 112. Paragraph (a) of subsection (2) of section 373.709, Florida Statutes, is amended to read:

373.709 Regional water supply planning.—

(2) Each regional water supply plan must be based on at

least a 20-year planning period and must include, but need not be limited to:

(a) A water supply development component for each water supply planning region identified by the district which includes:

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses must be based upon meeting those needs for a 1-in-10-year drought event.

a. Population projections used for determining public water supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

b. Agricultural demand projections used for determining the needs of agricultural self-suppliers must be based upon the best available data. In determining the best available data for agricultural self-supplied water needs, the district shall consider the data indicative of future water supply demands provided by the Department of Agriculture and Consumer Services pursuant to s. 570.93 ~~s. 570.085~~ and agricultural demand

projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1), if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the data provided by the Department of Agriculture and Consumer Services must be fully described, and the original data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of alternative water supply projects. If such users propose a project to be listed as an alternative water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan must exceed the needs identified in subparagraph 1. and take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water

supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

3. For each project option identified in subparagraph 2., the following must be provided:

a. An estimate of the amount of water to become available through the project.

b. The timeframe in which the project option should be implemented and the estimated planning-level costs for capital investment and operating and maintaining the project.

c. An analysis of funding needs and sources of possible funding options. For alternative water supply projects, the water management districts shall provide funding pursuant to ~~assistance in accordance with~~ s. 373.707(8).

d. Identification of the entity that should implement each project option and the current status of project implementation.

Section 113. Paragraph (d) of subsection (2) of section 381.0072, Florida Statutes, is amended to read:

381.0072 Food service protection.—It shall be the duty of the Department of Health to adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness. These rules shall provide the standards and requirements for the storage, preparation, serving, or display of food in food service establishments as defined in this section and which are not permitted or licensed under chapter 500 or chapter 509.

(2) DUTIES.—

(d) The department shall inspect each food service establishment as often as necessary to ensure compliance with

applicable laws and rules. The department shall have the right of entry and access to these food service establishments at any reasonable time. In inspecting food service establishments ~~as provided~~ under this section, the department shall provide each inspected establishment with the food recovery brochure developed under s. 595.420 ~~s. 570.0725~~.

Section 114. Paragraph (c) of subsection (2) of section 388.46, Florida Statutes, is amended to read:

388.46 Florida Coordinating Council on Mosquito Control; establishment; membership; organization; responsibilities.—

(2) MEMBERSHIP, ORGANIZATION, AND RESPONSIBILITIES.—

(c) *Responsibilities.*—The council shall:

1. Develop and implement guidelines to assist the department in resolving disputes arising over the control of arthropods on publicly owned lands.

2. Develop and recommend to the department a request for proposal process for arthropod control research.

3. Identify potential funding sources for research or implementation projects and evaluate and prioritize proposals upon request by the funding source.

4. Prepare and present reports, as needed, on arthropod control activities in the state to ~~the Pesticide Review Council and other~~ governmental organizations, as appropriate.

Section 115. Paragraph (c) of subsection (2) of section 472.0351, Florida Statutes, is amended to read:

472.0351 Grounds for discipline; penalties; enforcement.—

(2) If the board finds a surveyor or mapper guilty of any of the grounds set forth in subsection (1) or a violation of this chapter which occurred before obtaining a license, the

board may enter an order imposing one or more of the following penalties:

(c) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000~~ for each count or separate offense.

Section 116. Subsections (1) and (2) and paragraph (a) of subsection (3) of section 472.036, Florida Statutes, are amended to read:

472.036 Unlicensed practice of professional surveying and mapping; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.—

(1) When the department has probable cause to believe that a ~~any~~ person not licensed by the department or the board has violated ~~any provision of~~ this chapter, or any rule adopted pursuant to this chapter, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to a ~~any~~ person who aids and abets the unlicensed practice of surveying and mapping by employing such unlicensed person. The issuance of a notice to cease and desist does ~~shall~~ not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against a ~~any~~ person who violates ~~any provisions of~~ such order. In addition to the foregoing remedies, the department may impose an administrative fine in the Class II category pursuant to s. 570.971 for each ~~penalty not to exceed $5,000 per~~ incident pursuant to ~~the~~

~~provisions of~~ chapter 120 or may issue a citation pursuant to ~~the provisions of~~ subsection (3). If the department is required to seek enforcement of the order for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney ~~attorney's~~ fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be a fine in the Class II category pursuant to s. 570.971 ~~no less than $500 and no more than $5,000~~ for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.

(3)(a) Notwithstanding ~~the provisions of~~ s. 472.033, the department shall adopt rules for ~~to permit~~ the issuance of citations for unlicensed practice of a profession. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 472.033. If the subject disputes the matter in the citation, the procedures set forth in s. 472.033 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of

the department upon filing with the agency clerk. The penalty shall be a fine in the Class II category pursuant to s. 570.971 ~~of not less than $500 or more than $5,000~~ or other conditions as established by rule.

Section 117. Subsection (7) of section 482.161, Florida Statutes, is amended to read:

482.161 Disciplinary grounds and actions; reinstatement.—

(7) The department, pursuant to chapter 120, in addition to or in lieu of any other remedy provided by state or local law, may impose an administrative fine in the Class II category pursuant to s. 570.971~~, in an amount not exceeding $5,000,~~ for a ~~the~~ violation ~~of any of the provisions~~ of this chapter or of the rules adopted pursuant to this chapter. In determining the amount of fine to be levied for a violation, the following factors shall be considered:

(a) The severity of the violation, including the probability that the death, or serious harm to the health or safety, of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which ~~the provisions of~~ this chapter or of the rules adopted pursuant to this chapter were violated;

(b) Any actions taken by the licensee or certified operator in charge, or limited certificateholder, to correct the violation or to remedy complaints;

(c) Any previous violations of this chapter or of the rules adopted pursuant to this chapter; and

(d) The cost to the department of investigating the violation.

Section 118. Subsections (3) and (5) of section 482.165,

Florida Statutes, are amended to read:

482.165 Unlicensed practice of pest control; cease and desist order; injunction; civil suit and penalty.—

(3) In addition to or in lieu of any remedy provided under subsection (2), the department may institute a civil suit in circuit court to recover a civil penalty for a ~~any~~ violation for which the department may issue a notice to cease and desist under subsection (2). The civil penalty shall be in Class II category pursuant to s. 570.971 ~~may not be less than $500 or more than $5,000 for each offense~~. The court may also award to the prevailing party court costs and reasonable attorney ~~attorney's~~ fees.

(5) In addition to or in lieu of any remedy provided under subsections (2) and (3), the department may, even in the case of a first offense, impose a fine not less than twice the cost of a pest control business license, but not more than a fine in the Class II category pursuant to s. 570.971 ~~$5,000~~, upon a determination by the department that a person is in violation of subsection (1). For the purposes of this subsection, the lapse of a previously issued license for a period of less than 1 year is ~~shall~~ not ~~be~~ considered a violation.

Section 119. Subsection (6) of section 482.243, Florida Statutes, is amended to read:

482.243 Pest Control Enforcement Advisory Council.—

(6) The meetings, powers and duties, procedures, and recordkeeping of the council shall be pursuant to s. 570.232 ~~in accordance with the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 120. Subsection (3) of section 487.047, Florida

Statutes, is amended to read:

487.047 Nonresident license; reciprocal agreement; authorized purchase.—

(3) Restricted-use pesticides may be purchased by a ~~any~~ person who holds a valid applicator's license or who holds a valid purchase authorization card issued by the department or by a licensee under chapter 388 or chapter 482. A nonlicensed person may apply restricted-use pesticides under the direct supervision of a licensed applicator. An applicator's license shall be issued by the department pursuant to ~~on a form supplied by it in accordance with the requirements of~~ this part.

Section 121. Subsections (2) and (3) of section 487.091, Florida Statutes, are amended to read:

487.091 Tolerances, deficiencies, and penalties.—

(2) If a pesticide is found by analysis to be deficient in an active ingredient beyond the tolerance as provided in this part, the registrant is subject to a penalty for the deficiency in the Class III category pursuant to s. 570.971 for each~~, not to exceed $10,000 per~~ violation. However, a ~~no~~ penalty may not ~~shall~~ be assessed when the official sample was taken from a pesticide that was in the possession of a consumer for more than 45 days after ~~from~~ the date of purchase by that consumer, or when the product label specifies that the product should be used by an expiration date that has passed. Procedures for assessing penalties shall be established by rule, based on the degree of the deficiency. Penalties assessed shall be paid to the consumer or, in the absence of a known consumer, the department. If the penalty is not paid within the prescribed period ~~of time~~ as established by rule, the department may deny, suspend, or revoke

the registration of any pesticide.

(3) If a pesticide is found to be ineffective, it shall be deemed to be misbranded and subject to a penalty in the Class III category pursuant to s. 570.971 for each ~~as established by rule, not to exceed $10,000 per~~ violation.

Section 122. Paragraph (e) of subsection (1) of section 487.175, Florida Statutes, is amended to read:

487.175 Penalties; administrative fine; injunction.—

(1) In addition to any other penalty provided in this part, when the department finds any person, applicant, or licensee has violated any provision of this part or rule adopted under this part, it may enter an order imposing any one or more of the following penalties:

(e) Imposition of an administrative fine in the Class III category pursuant to s. 570.971 ~~not to exceed $10,000~~ for each violation. When imposing a ~~any~~ fine under this paragraph, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefited from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.

Section 123. Paragraph (c) of subsection (2) of section 493.6118, Florida Statutes, is amended to read:

493.6118 Grounds for disciplinary action.—

(2) When the department finds any violation of subsection (1), it may do one or more of the following:

(c) Impose an administrative fine in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000~~ for every count or separate offense.

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Section 124. Subsection (1) of section 496.420, Florida Statutes, is amended to read:

496.420 Civil remedies and enforcement.—

(1) In addition to other remedies authorized by law, the department may bring a civil action in circuit court to enforce ss. 496.401-496.424 or s. 496.426. Upon a finding that any person has violated any of these sections, a court may make any necessary order or enter a judgment including, but not limited to, a temporary or permanent injunction, a declaratory judgment, the appointment of a general or special magistrate or receiver, the sequestration of assets, the reimbursement of persons from whom contributions have been unlawfully solicited, the distribution of contributions pursuant to ~~in accordance with~~ the charitable or sponsor purpose expressed in the registration statement or pursuant to ~~in accordance with~~ the representations made to the person solicited, the reimbursement of the department for investigative costs, and attorney ~~attorney's~~ fees and costs, and any other equitable relief the court finds appropriate. Upon a finding that a ~~any~~ person has violated any provision of ss. 496.401-496.424 or s. 496.426 with actual knowledge or knowledge fairly implied on the basis of objective circumstances, a court may enter an order imposing a civil fine in the Class III category pursuant to s. 570.971 for each ~~penalty in an amount not to exceed $10,000 per~~ violation.

Section 125. Paragraph (b) of subsection (3) of section 500.70, Florida Statutes, is amended to read:

500.70 Tomato food safety standards; inspections; penalties; tomato good agricultural practices; tomato best management practices.—

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(3)

(b) The department may impose an administrative fine in the Class II category pursuant to s. 570.971 for each ~~not to exceed $5,000 per~~ violation~~,~~ or issue a written notice or warning under s. 500.179~~,~~ against a person who violates ~~any applicable provision of~~ this section or any rule adopted under this section.

Section 126. Paragraph (b) of subsection (2) of section 501.612, Florida Statutes, is amended to read:

501.612 Grounds for departmental action against licensure applicants or licensees.—

(2) Upon a finding as set forth in subsection (1), the department may enter an order:

(b) Imposing an administrative fine in the Class III category pursuant to s. 570.971 ~~not to exceed $10,000~~ for each act or omission which constitutes a violation under this part.

Section 127. Section 501.619, Florida Statutes, is amended to read:

501.619 Civil penalties.—A ~~Any~~ person who engages in any act or practice declared in this part to be unlawful is liable for a civil penalty in the Class III category pursuant to s. 570.971 ~~of not more than $10,000~~ for each such violation. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any such civil penalty or other fines or costs if the person has previously made full restitution or reimbursement or has paid actual damages to the purchasers who have been injured by the

unlawful act or practice.

Section 128. Paragraph (b) of subsection (1) of section 502.231, Florida Statutes, is amended to read:

502.231 Penalty and injunction.—

(1) The department may enter an order imposing one or more of the following penalties against any person who violates any provision of this chapter:

(b) Imposition of an administrative fine ~~not to exceed~~:

1. In the Class II category pursuant s. 570.971 for each ~~Ten thousand dollars per~~ violation in the case of a frozen dessert licensee;

2. Not to exceed ten percent of the license fee or $100, whichever is greater, for failure to report the information described in s. 502.053(3)(d); or

3. In the Class I category pursuant to s. 570.971 for each ~~One thousand dollars per~~ occurrence for any other violation.

When imposing a fine under this paragraph, the department must consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the benefit to the violator, whether the violation was committed willfully, and the violator's compliance record.

Section 129. Subsection (1) of section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the

rules or orders issued pursuant to ~~in accordance with~~ this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation ~~for a period of time~~, subject to the conditions specified by the department.

Section 130. Subsection (2) of section 507.10, Florida Statutes, is amended to read:

507.10 Civil penalties; remedies.—

(2) The department may seek a civil penalty in the Class II category pursuant to s. 570.971 ~~of up to $5,000~~ for each violation of this chapter.

Section 131. Paragraph (g) of subsection (2) and paragraph (c) of subsection (3) of section 509.032, Florida Statutes, are amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(g) In inspecting public food service establishments, the department shall provide each inspected establishment with the food-recovery brochure developed under s. 595.420 ~~s. 570.0725~~.

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary

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food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before ~~prior to~~ the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors, including the food-recovery brochure developed under s. 595.420 ~~s. 570.0725~~.

3.a. A public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may

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operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events of 3 days or less in duration.

Section 132. Paragraph (a) of subsection (1) of section 525.16, Florida Statutes, is amended to read:

525.16 Administrative fine; penalties; prosecution of cases by state attorney.—

(1)(a) The department may enter an order imposing one or more of the following penalties against a ~~any~~ person who violates ~~any of the provisions of~~ this chapter or the rules adopted under this chapter or impedes, obstructs, or hinders the department in the performance of its duty in connection with ~~the provisions of~~ this chapter:

1. Issuance of a warning letter.

2. Imposition of an administrative fine in the Class II category pursuant to s. 570.971 for each ~~of not more than $1,000 per violation for a first-time offender. For a second-time or repeat offender, or any person who is shown to have willfully and intentionally violated any provision of this chapter, the administrative fine shall not exceed $5,000 per~~ violation. When imposing any fine under this section, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefited from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.

3. Revocation or suspension of any registration issued by the department.

Section 133. Subsection (1) of section 526.311, Florida Statutes, is amended to read:

526.311 Enforcement; civil penalties; injunctive relief.—

(1) A ~~Any~~ person who knowingly violates this act shall be subject to a civil penalty in the Class III category pursuant to s. 570.971 for each ~~not to exceed $10,000 per~~ violation. Each day that a violation of this act occurs shall be considered a separate violation, but a ~~no~~ civil penalty may not ~~shall~~ exceed $250,000. ~~Any~~ Such a person shall also be liable for attorney ~~attorney's~~ fees and shall be subject to an action for injunctive relief.

Section 134. Subsection (2) of section 526.55, Florida Statutes, is amended to read:

526.55 Violation and penalties.—

(2) If the department finds that a person has violated or is operating in violation of ss. 526.50-526.56 or the rules or orders adopted thereunder, the department may, by order:

(a) Issue a notice of noncompliance pursuant to s. 120.695;

(b) Impose an administrative fine in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each violation;

(c) Direct that the person cease and desist specified activities;

(d) Revoke or suspend a registration, or refuse to register a product; or

(e) Place the registrant on probation for a period of time, subject to conditions as the department may specify.

Section 135. Subsection (1) of section 527.13, Florida

Statutes, is amended to read:

527.13 Administrative fines and warning letters.—

(1) If a ~~any~~ person violates ~~any provision of~~ this chapter or any rule adopted under this chapter ~~pursuant thereto~~ or a cease and desist order, the department may impose civil or administrative penalties in the Class II category pursuant to s. 570.971, not to exceed $3,000 for each offense, suspend or revoke the license or qualification issued to such person, or any of the foregoing. The cost of the proceedings to enforce this chapter may be added to any penalty imposed. The department may allow the licensee a reasonable period, not to exceed 90 days, within which to pay to the department the amount of the penalty so imposed. If the licensee fails to pay the penalty in its entirety to the department at its office at Tallahassee within the period so allowed, the licenses of the licensee shall stand revoked upon expiration of such period.

Section 136. Subsection (1) of section 531.50, Florida Statutes, is amended to read:

531.50 Administrative fine, penalties, and offenses.—

(1) The department may enter an order imposing one or more of the following penalties against a ~~any~~ person who violates ~~any provision of~~ this chapter or rule adopted under this chapter or impedes, obstructs, or hinders the department in performing ~~the performance of~~ its duties under ~~in connection with the provisions of~~ this chapter:

(a) Issuance of a warning letter or notice.

(b) Imposition of an administrative fine in the Class II category pursuant to s. 570.971 for each ~~of:~~

~~1. Up to $1,000 for a first violation;~~

~~2. Up to $2,500 for a second violation within 2 years after the first violation; or~~

~~3. Up to $5,000 for a third violation within 2 years after the first~~ violation.

When imposing any fine under this section, the department shall consider the degree and extent of potential harm caused by the violation, the amount of money by which the violator benefited from noncompliance, whether the violation was committed willfully, and the compliance record of the violator. All fines, monetary penalties, and costs received by the department shall be deposited in the General Inspection Trust Fund for the purpose of administering the provisions of this chapter.

Section 137. Subsection (2) of section 534.52, Florida Statutes, is amended to read:

534.52 Violations; refusal, suspension, revocation; penalties.—

(2) In addition, or as an alternative to refusing, suspending, or revoking a license in cases involving violations, the department may impose an administrative ~~a~~ fine in the Class I category pursuant to s. 570.971 not to exceed $500 for the first offense and not to exceed $1,000 for the second or subsequent violations. When imposed and paid, such fines shall be deposited in the General Inspection Trust Fund.

Section 138. Paragraphs (b) and (d) of subsection (7) of section 539.001, Florida Statutes, are amended to read:

539.001 The Florida Pawnbroking Act.—

(7) ORDERS IMPOSING PENALTIES.—

(b) Upon a finding as set forth in paragraph (a), the

agency may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each act which constitutes a violation of this section or a rule or an order.

3. Directing that the pawnbroker cease and desist specified activities.

4. Refusing to license or revoking or suspending a license.

5. Placing the licensee on probation ~~for a period of time~~, subject to such conditions as the agency may specify.

(d)1. When the agency, if a violation of this section occurs, has reasonable cause to believe that a person is operating in violation of this section, the agency may bring a civil action in the appropriate court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000 for each violation~~, restitution and damages for injured customers, court costs, and reasonable attorney ~~attorney's~~ fees.

2. The agency may terminate any investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to satisfy ~~any~~ other relief authorized herein and requested by the agency.

Section 139. Paragraph (b) of subsection (4) and paragraph (a) of subsection (5) of section 559.921, Florida Statutes, are amended to read:

559.921 Remedies.—

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(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000 per violation~~ for each act which constitutes a violation of this part or a rule or order.

3. Directing that the motor vehicle repair shop cease and desist specified activities.

4. Refusing to register or revoking or suspending a registration.

5. Placing the registrant on probation ~~for a period of time~~, subject to such conditions as the department may specify.

(5)(a) The department or the state attorney, if a violation of this part occurs in his or her judicial circuit, is ~~shall be~~ the enforcing authority for purposes of this part and may bring a civil action in circuit court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000~~ for each violation, restitution and damages for injured customers, court costs, and reasonable attorney ~~attorney's~~ fees.

Section 140. Subsection (1) of section 559.9355, Florida Statutes, is amended to read:

559.9355 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of

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the following if the department finds that a person has violated or is operating in violation of ~~any of the provisions of~~ this part or the rules or orders issued thereunder:

(a) Issuing a notice of noncompliance pursuant to s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each act or omission.

~~(c) Imposing an administrative fine not to exceed $10,000 for each act or omission in violation of s. 559.9335(22) or (23).~~

(c) ~~(d)~~ Directing that the person cease and desist specified activities.

(d) ~~(e)~~ Refusing to register or canceling or suspending a registration.

(e) ~~(f)~~ Placing the registrant on probation ~~for a period of time~~, subject to such conditions as the department may specify.

(f) ~~(g)~~ Canceling an exemption granted under s. 559.935.

Section 141. Subsections (2) and (3) of section 559.936, Florida Statutes, are amended to read:

559.936 Civil penalties; remedies.—

(2) The department may seek a civil penalty in the Class II category pursuant to s. 570.971 ~~of up to $5,000~~ for each violation of this part.

(3) The department may seek a civil penalty in the Class III category pursuant to s. 570.971 ~~of up to $10,000~~ for each act or omission in violation of s. 559.9335(22) or (23).

Section 142. Subsection (1) of section 571.11, Florida Statutes, is amended to read:

571.11 Eggs and poultry; Seal of quality violations; administrative penalties.—

(1) The Department of Agriculture and Consumer Services may impose an administrative ~~a~~ fine in the Class II category pursuant to s. 570.971 ~~not exceeding $5,000~~ against any dealer, as defined in ~~under~~ s. 583.01(4), in violation of the guidelines for the Florida seal of quality for eggs or poultry programs. All fines, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund.

Section 143. Subsection (2) of section 571.28, Florida Statutes, is amended to read:

571.28 Florida Agricultural Promotional Campaign Advisory Council.—

(2) MEETINGS; POWERS AND DUTIES; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Florida Agricultural Promotional Campaign Advisory Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 144. Paragraph (b) of subsection (3) of section 571.29, Florida Statutes, is amended to read:

571.29 Unlawful acts; administrative remedies; criminal penalties.—

(3) The department may enter an order imposing one or more of the following penalties against any person who violates any of the provisions of this part or any rules adopted under this part:

(b) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each ~~of not more than $1,000~~

~~per~~ violation for a first-time ~~first time~~ offender. For a second-time ~~second time~~ offender, or a ~~any~~ person who is shown to have willfully and intentionally violated ~~any provision of~~ this part or any rules adopted under this part, the administrative fine shall be in the Class II category pursuant to s. 570.971 for each ~~may not exceed $5,000 per~~ violation. The term "each ~~per~~ violation" means each incident in which a logo of the Florida Agricultural Promotional Campaign has been used, reproduced, or distributed in any manner inconsistent with ~~the provisions of~~ this part or the rules adopted under this part.

The administrative proceedings that could result in the entry of an order imposing any of the penalties specified in paragraphs (a)-(c) shall be conducted in accordance with chapter 120.

Section 145. Subsection (1) of section 578.181, Florida Statutes, is amended to read:

578.181 Penalties; administrative fine.—

(1) The department may enter an order imposing one or more of the following penalties against a ~~any~~ person who violates ~~any of the provisions of~~ this chapter or the rules adopted under this chapter ~~promulgated hereunder~~ or who impedes, obstructs, or hinders~~, or otherwise prevents or attempts to prevent~~ the department in performing ~~the performance of~~ its duties under ~~duty in connection with the provisions of~~ this chapter:

(a) Issuance of a warning letter.

(b) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each ~~of not more than $1,000 per~~ occurrence after the issuance of a warning letter.

(c) Revocation or suspension of the registration as a seed

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dealer.

Section 146. Paragraph (b) of subsection (1) of section 580.121, Florida Statutes, is amended to read:

580.121 Penalties; duties of law enforcement officers; injunctive relief.—

(1) The department may impose one or more of the following penalties against any person who violates any provision of this chapter:

(b) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each~~, by the department, of not more than $1,000 per~~ occurrence.

However, the severity of the penalty imposed shall be commensurate with the degree of risk to human or animal safety or the level of financial harm to the consumer that is created by the violation.

Section 147. Paragraph (a) of subsection (2) of section 581.141, Florida Statutes, is amended to read:

581.141 Certificate of registration or of inspection; revocation and suspension; fines.—

(2) FINES; PROBATION.—

(a)1. The department may, after notice and hearing, impose an administrative ~~a~~ fine in the Class II category pursuant to s. 570.971 ~~not exceeding $5,000~~ or probation not exceeding 12 months, or both, for a ~~the~~ violation of ~~any of the provisions of~~ this chapter or the rules adopted under this chapter upon a ~~any~~ person, nurseryman, stock dealer, agent, or plant broker. The fine, when paid, shall be deposited in the Plant Industry Trust Fund.

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2. The imposition of a fine or probation pursuant to this subsection may be in addition to or in lieu of the suspension or revocation of a certificate of registration or certificate of inspection.

Section 148. Subsection (2) of section 581.186, Florida Statutes, is amended to read:

581.186 Endangered Plant Advisory Council; organization; meetings; powers and duties.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Endangered Plant Advisory Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 149. Paragraph (a) of subsection (3) of section 581.211, Florida Statutes, is amended to read:

581.211 Penalties for violations.—

(3)(a)1. In addition to any other ~~provision of~~ law, the department may, after notice and hearing, impose an administrative fine in the Class II category pursuant to s. 570.971 ~~not exceeding $5,000~~ for each violation of this chapter, upon a ~~any~~ person, nurseryman, stock dealer, agent, or plant broker. The fine, when paid, shall be deposited in the Plant Industry Trust Fund. In addition, the department may place the violator on probation for up to 1 year, with conditions.

2. The imposition of a fine or probation pursuant to this subsection may be in addition to or in lieu of the suspension or revocation of a certificate of registration or certificate of inspection.

Section 150. Subsection (2) of section 582.06, Florida

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Statutes, is amended to read:

582.06 Soil and Water Conservation Council; powers and duties.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Soil and Water Conservation Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 151. Subsection (1) of section 585.007, Florida Statutes, is amended to read:

585.007 Violation of rules; violation of chapter.—

(1) A ~~Any~~ person who violates ~~the provisions of~~ this chapter or any rule of the department shall be subject to the imposition of an administrative fine in the Class III category pursuant to s. 570.971 ~~of up to $10,000~~ for each offense. Upon repeated violation, the department may seek enforcement pursuant to s. 120.69.

Section 152. Paragraph (a) of subsection (2) of section 586.15, Florida Statutes, is amended to read:

586.15 Penalty for violation.—

(2)(a) The department may, after notice and hearing, impose an administrative ~~a~~ fine in the Class II category pursuant to s. 570.971 ~~not exceeding $5,000~~ for a ~~the~~ violation of ~~any of the provisions of~~ this chapter or the rules adopted under this chapter upon any person. The fine, when paid, shall be deposited in the Plant Industry Trust Fund. The imposition of a fine pursuant to this subsection may be in addition to or in lieu of the suspension or revocation of a permit or a certificate of inspection or registration.

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Section 153. Subsection (3) of section 586.161, Florida Statutes, is amended to read:

586.161 Honeybee Technical Council.—

(3) MEETINGS; POWERS AND DUTIES; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Honeybee Technical Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 154. Subsection (3) of section 590.14, Florida Statutes, is amended to read:

590.14 Notice of violation; penalties; legislative intent.—

(3) The department may also impose an administrative fine in the Class I category pursuant to s. 570.971 for each~~, not to exceed $1,000 per~~ violation of ~~any section of~~ chapter 589 or this chapter or violation of any rule adopted by the Florida Forest Service to administer ~~provisions of~~ law conferring duties upon the Florida Forest Service. The fine shall be based upon the degree of damage, the prior violation record of the person, and whether the person knowingly provided false information to obtain an authorization. The fines shall be deposited in the Incidental Trust Fund of the Florida Forest Service.

Section 155. Subsection (2) of section 595.701, Florida Statutes, is amended to read:

595.701 Healthy Schools for Healthy Lives Council.—

(2) The meetings, powers, duties, procedures, and recordkeeping of the Healthy Schools for Healthy Lives Council shall be pursuant to s. 570.232 ~~governed by s. 570.0705, relating to advisory committees established within the department~~.

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Section 156. Subsection (2) of section 597.0041, Florida Statutes, is amended to read:

597.0041 Prohibited acts; penalties.—

(2)(a) A ~~Any~~ person who violates ~~any provision of~~ this chapter or any rule adopted under this chapter ~~promulgated hereunder~~ is subject to a suspension or revocation of his or her certificate of registration or license under this chapter. The department may, in lieu of~~,~~ or in addition to the suspension or revocation, impose on the violator an administrative fine in the Class I category pursuant to s. 570.971 for each violation, for each day the violation exists ~~in an amount not to exceed $1,000 per violation per day~~.

(b) Except as provided in subsection (4), a ~~any~~ person who violates ~~any provision of~~ this chapter~~,~~ or any rule adopted under this chapter ~~hereunder,~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 157. Subsection (2) of section 599.002, Florida Statutes, is amended to read:

599.002 Viticulture Advisory Council.—

(2) The meetings, powers and duties, procedures, and recordkeeping of the Viticulture Advisory Council shall be pursuant to s. 570.232 ~~governed by the provisions of s. 570.0705 relating to advisory committees established within the department~~.

Section 158. Section 601.67, Florida Statutes, is amended to read:

601.67 Disciplinary action by Department of Agriculture against citrus fruit dealers.—

(1) The Department of Agriculture may impose an

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administrative ~~a~~ fine in the Class IV category pursuant to s. 570.971 not to exceed ~~exceeding~~ $50,000 for each ~~per~~ violation against a ~~any~~ licensed citrus fruit dealer who violates ~~for violation of any provision of~~ this chapter and, in lieu of~~,~~ or in addition to~~,~~ such fine, may revoke or suspend the license of ~~any~~ such a dealer when it has been satisfactorily shown that such dealer, in her or his activities as a citrus fruit dealer, has:

(a) Obtained a license by means of fraud, misrepresentation, or concealment;

(b) Violated or aided or abetted in the violation of any law of this state governing or applicable to citrus fruit dealers or any lawful rules of the Department of Citrus;

(c) Been guilty of a crime against the laws of this or any other state or government involving moral turpitude or dishonest dealing or has become legally incompetent to contract or be contracted with;

(d) Made, printed, published, distributed, or caused, authorized, or knowingly permitted the making, printing, publication, or distribution of false statements, descriptions, or promises of such a character as to reasonably induce any person to act to her or his damage or injury, if such citrus fruit dealer then knew, or by the exercise of reasonable care and inquiry could have known, of the falsity of such statements, descriptions, or promises;

(e) Knowingly committed or been a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby another ~~any other~~ person lawfully relying upon the word, representation, or conduct of

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the citrus fruit dealer has acted to her or his injury or damage;

(f) Committed any act or conduct of the same or different character than ~~of~~ that ~~hereinabove~~ enumerated which constitutes fraudulent or dishonest dealing; or

(g) Violated ~~any of the provisions of~~ ss. 506.19-506.28~~,~~ ~~both sections inclusive~~.

(2) The Department of Agriculture may impose an administrative ~~a~~ fine in the Class IV category pursuant to s. 570.971 not to exceed ~~exceeding~~ $100,000 for each ~~per~~ violation against a ~~any~~ person who operates as a citrus fruit dealer without a current citrus fruit dealer license issued by the Department of Agriculture pursuant to s. 601.60. In addition, the Department of Agriculture may order such person to cease and desist operating as a citrus fruit dealer without a license. An administrative order entered by the Department of Agriculture under this subsection may be enforced pursuant to s. 601.73.

(3) The Department of Agriculture shall impose an administrative ~~a~~ fine in the Class IV category pursuant to s. 570.971 not to exceed ~~of not less than $10,000 nor more than~~ $100,000 for each ~~per~~ violation against a ~~any~~ licensed citrus fruit dealer and shall suspend, for 60 days during the first available period between September 1 and May 31, the license of a ~~any~~ citrus fruit dealer who:

(a) Falsely labels or otherwise misrepresents that a fresh citrus fruit was grown in a specific production area specified in s. 601.091; or

(b) Knowingly, falsely labels or otherwise misrepresents that a processed citrus fruit product was prepared solely with

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citrus fruit grown in a specific production area specified in s. 601.091.

(4) A ~~Any~~ fine imposed pursuant to subsection (1), subsection (2), or subsection (3), when paid, shall be deposited by the Department of Agriculture into its General Inspection Trust Fund.

(5) Whenever an ~~any~~ administrative order has been made and entered by the Department of Agriculture that imposes a fine pursuant to this section, such order shall specify a time limit for payment of the fine, not exceeding 15 days. The failure of the citrus fruit dealer ~~involved~~ to pay the fine within that time shall result in the immediate suspension of such citrus fruit dealer's current license, or any subsequently issued license, until ~~such time as~~ the order has been fully satisfied. An ~~Any~~ order suspending a citrus fruit dealer's license shall include a provision that the ~~such~~ suspension shall be for a specified period ~~of time~~ not to exceed 60 days, and such period of suspension may begin ~~commence~~ at any designated date within the current license period or subsequent license period. Whenever an order has been entered that suspends a citrus fruit dealer's license for a definite period ~~of time~~ and that license, by law, expires during the period of suspension, the suspension order shall continue automatically and shall be effective against any subsequent citrus fruit dealer ~~dealer's~~ license issued to such dealer until ~~such time as~~ the entire period of suspension has elapsed. Whenever any such administrative order of the Department of Agriculture is sought to be reviewed by the offending dealer involved in a court of competent jurisdiction, if such court proceedings should finally terminate in such

administrative order being upheld or not quashed, such order shall ~~thereupon~~, upon the filing with the Department of Agriculture of a certified copy of the mandate or other order of the last court having to do with the matter in the judicial process, become immediately effective and shall then be carried out and enforced notwithstanding such time will be during a new and subsequent shipping season from that during which the administrative order was first originally entered by the Department of Agriculture.

Section 159. Paragraph (a) of subsection (3) of section 604.30, Florida Statutes, is amended to read:

604.30 Penalties; injunctive relief; administrative fines.—

(3)(a) In addition to the penalties provided in this section, the department may, after notice and hearing, impose an administrative ~~a~~ fine in the Class II category pursuant to s. 570.971, not to exceed ~~exceeding~~ $2,500 for a ~~the~~ violation of ~~any of the provisions of~~ ss. 604.15-604.34 or the rules adopted thereunder against a ~~any~~ dealer in agricultural products.~~;~~ Such fine, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund.

Section 160. Paragraph (a) of subsection (19) of section 616.242, Florida Statutes, is amended to read:

616.242 Safety standards for amusement rides.—

(19) ENFORCEMENT AND PENALTIES.—

(a) The department may deny, suspend for a period not to exceed 1 year, or revoke a ~~any~~ permit or inspection certificate. In addition to denial, suspension, or revocation, the department may impose an administrative fine in the Class II category pursuant to s. 570.971, not to exceed ~~of up to~~ $2,500 for each

~~per~~ violation, for each day the violation exists ~~per day~~, against the owner of the amusement ride if it finds that:

1. An amusement ride has operated or is operating:

a. With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager has knowledge, or, through the exercise of reasonable diligence, should have knowledge;

b. In a manner or circumstance that presents a risk of serious injury to patrons;

c. At a speed in excess of its maximum safe operating speed;

d. In violation of this section or any rule adopted under this section; or

e. In violation of an ~~any~~ order of the department or order of any court; or~~.~~

2. A ~~Any~~ manager in the course of his or her duties is under the influence of drugs or alcohol.

Section 161. This act shall take effect July 1, 2014.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:
Select Committee on Indian River Lagoon and Lake Okeechobee Basin, *Vice Chair*

SENATOR BILL MONTFORD
Democratic Policy Chair
3rd District

April 10, 2014

Senator Joe Negron, Chair
Senate Appropriations Committee
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

I respectfully request that CS/CS/CS/SB 1630 be scheduled for a hearing before the Senate Appropriations Committee, upon receipt by your committee. CS/CS/CS/SB 1630 is the Department of Agriculture and Consumer Services Legislative Package.

Your assistance and favorable consideration of my request is greatly appreciated
.
Sincerely,

Your assistance and favorable consideration of my request is greatly appreciated
.
Sincerely,

William “Bill” Montford, III
State Senator, District 3

cc: Cindy Kynoch, Staff Director

WM/mam

REPLY TO:
❒ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
❒ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656
❒ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate’s Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-22-14
Meeting Date

Topic FPACS

Bill Number 1630 *(if applicable)*

Name Grace Lovett

Amendment Barcode 476562 *(if applicable)*

Job Title Dir. Legislative Affairs

Address PL 10 The Capitol
Street

Phone 850 617 7700

Tallahassee FL 32399
City *State* *Zip*

E-mail grace.lovett@freshfromflorida.com

Speaking: ☐ For ☒ Against ☐ Information

Representing FL Dept of Agriculture & Consumer Svcs.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-22-14
Meeting Date

Topic Ag. Dept. Bill

Bill Number 1630 *(if applicable)*

Name Grace Lovett

Amendment Barcode 952720 *(if applicable)*

Job Title Dir. of Legislative Affairs

Address PL 10 The Capitol
Street

Phone 850 617 7700

Tallahassee FL 32399
City *State* *Zip*

E-mail grace.lovett@freshfromflorida.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Fl. Dept. of Agriculture & Consumer Svcs.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Cy Lien Injury Repeal

Bill Number 1630 *(if applicable)*

Name Don Goldstein

Amendment Barcode 952 720 *(if applicable)*

Job Title

Address 12321 Bramfield Dr.
Street
Riverview FL 33579
City *State* *Zip*

Phone 813 361-7146

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing himself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Cyclones Injury Reparty

Bill Number 1630 *(if applicable)*

Name Keeter MacFall

Amendment Barcode 952720 *(if applicable)*

Job Title FL. State Director

Address 1624 Metropolitan Circle
Street
Tallahassee FL. 32308
City *State* *Zip*

Phone 850 508-1001

E-mail kmacfall@humanesociety.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Guyhano injury repatory

Bill Number 1630 *(if applicable)*

Name Carey Theil

Amendment Barcode 952720 *(if applicable)*

Job Title Execute Director

Address PO Box F
Street
Arlington Mass 02476
City *State* *Zip*

Phone 781-488 3526

E-mail Careyegy2kusa.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Guy2K USA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic _____ Bill Number 1630 *(if applicable)*

Name Adam Basford Amendment Barcode _____ *(if applicable)*

Job Title Legislative Affairs

Address 325 S Calhoun St Phone 222-2557
Street

Tallahassee FL 32301 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Farm Bureau

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Ag. Dept. Bill

Bill Number 1630 *(if applicable)*

Name Grace Lovett

Amendment Barcode _____ *(if applicable)*

Job Title Dir. of Legislative Affairs

Address PL 10 The Capitol
Street

Phone 850 617 7100

Tallahassee FL 32399
City *State* *Zip*

E-mail grace.lovett@freshfromflorida.com

Speaking: [X] For [ ] Against [ ] Information

Representing Fl. Dept. of Agriculture + Consumer Services

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-22-14
Meeting Date

Barcode 476562

Topic Amendment — Bill Number 1630 *(if applicable)*

Name Missy Timmins — Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2910 Kerry Forest Pkwy D438 — Phone 668-8006
Street

TLH — FL — 32309 — E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Tampa Bay Downs

Appearing at request of Chair: ☐ Yes ☑ No — Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/22/14
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic DACS

Bill Number 1630 *(if applicable)*

Name Leticia Adams

Amendment Barcode _____ *(if applicable)*

Job Title Senior Policy Director

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 1632
INTRODUCER:	Appropriations Committee; Community Affairs Committee; Ethics and Elections Committee; and Senator Stargel
SUBJECT:	Special Districts
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/CS**
2.	White	Yeatman	CA	**Fav/CS**
3.	Pingree	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1632 is an omnibus special district bill that reorganizes, renumbers and makes numerous technical and conforming changes to special district provisions in ch. 189, F.S. The bill outlines a process by which the Joint Legislative Auditing Committee (JLAC) and the Department of Economic Opportunity (DEO) may enforce reporting and other requirements when special districts fall out of compliance with their obligations or become inactive. After notifying the DEO, relevant legislators and the local general-purpose government, and after a public hearing, the JLAC may request that the DEO file a petition for enforcement with the Circuit Court of Leon County. Additionally, the bill:

- Requires special districts to maintain a website that offers the public specified information;
- Requires special districts to give the website address to the DEO for publication on its website;
- Amends the definition of agency in the Code of Ethics to specifically include special districts;
- Redefines the term special district in s. 189.403, F.S.;
- Removes provisions concerning a special district's application to amend its charter;
- Amends the circumstances under which the DEO may declare a special district inactive;
- Requires the DEO to notify the chair of the county legislative delegation and the Legislative Auditing Committee;
- Prohibits inactive districts from collecting taxes, fees, and assessments;

- Changes the required education for new special district members;
- Revises the provisions concerning the failure to file certain reports;
- Requires administrative fees to be placed into the Operating Trust Fund (see Section VI); and
- Requires public hearings concerning certain noncompliance.

The bill provides that any downtown development authority that was established before the effective date of the 1968 constitution and has its millage approved by a municipality is an independent special taxing district. The governing body of the municipality is authorized to levy an additional ad valorem tax on all real and personal property in the downtown district to finance the operations of the downtown development authority. The ad valorem tax levied for the authority is in addition to regular ad valorem taxes; however, the combined levy may not exceed the maximum levy provided by the constitution.

The fiscal impact of the bill on the DEO, the JLAC, and local governments is indeterminate, but expected to be minimal. See Section V.

II. Present Situation:

Special Districts

Special districts are local units of special purpose government, within limited geographical areas, which are used to manage, own, operate, maintain, and finance basic capital infrastructure, facilities, and services. Special districts have existed in Florida since 1845 when the Legislature authorized five commissioners to drain the "Alachua Savannah" also known as Paynes Prairie. The project was financed by special assessments made on landowners based on the number of acres owned and the benefit derived. Since that time, special districts have been used by local governments to provide a broad range of government services. All special districts must comply with the requirements of the Uniform Special District Accountability Act of 1989 which was enacted by the Legislature to reform and consolidate laws relating to special districts. Chapter 189, F.S., applies to the formation, governance, administration, supervision, merger and dissolution of special districts unless otherwise expressly provided in law.[1] The Act includes an extensive statement of legislative intent emphasizing improved accountability to state and local governments, better communication and coordination in monitoring required reporting of special districts, and improved uniformity in special district elections and non-ad valorem assessments. The statement also specifies the elements required in the charter of each new district.[2]

Special districts serve a limited purpose, function as an administrative unit separate and apart from the county or city in which they may be located, and are often referred to as a local unit of special purpose. Special districts may be created by general law (an act of the Legislature), by special act (a law enacted by the Legislature at the request of a local government and affecting only that local government), by local ordinance, or by rule of the Governor and Cabinet.

The Special District Information Program (SDIP) within the Department of Economic Opportunity (DEO) serves as the clearinghouse for special district information, and maintains a

[1] For example, the creation of community development districts and their charters is exclusively controlled by ch. 190, F.S. Section 190.004, F.S.
[2] Section 189.402(2), F.S.

list of special districts categorized by function which can include community development districts (575), community redevelopment districts (213), downtown development districts (14), drainage and water control districts (86), economic development districts (11), fire control and rescue districts (65), mosquito control districts (18), and soil and water conservation districts (62).[3] There are a total of 1,634 special districts in Florida. There are two types of special districts, dependent and independent. There are 1,008 independent special districts and 644 dependent special districts.

Each special district must file with the SDIP the ordinance or document creating the district, amendments to the creation document, and a written statement referencing the basis for the district's dependent or independent status. The SDIP enforces compliance with financial reporting requirements and currently collects an annual special district fee of $175 to cover administrative costs of the SDIP.[4]

Dependent Special Districts

A dependent special district meets at least one of the following criteria:

- The special district governing body members are the same as the governing body members of the county or city that created the district;
- The special district governing board members are appointed by the governing body of the county or city that created the district;
- During the terms of membership, the governing board members of the special district are subject to removal at will by the governing body of the county or city that created the district;
- The special district budget must be approved by an affirmative vote of the governing body of the county or city that created the district; or
- The special district budget can be vetoed by the governing body of the county or city that created the district.

The ordinance creating a dependent special district must provide the following:

- A statement referencing the district's dependent status, including a statement that explains why the special district is the best way to provide the service being provided;
- The purpose, powers, functions, authority, and duties of the district;
- District boundaries;
- The membership, organization, compensation, and administrative duties of the special district governing board;
- Applicable financial disclosure, noticing, and reporting requirements;
- The method by which the special district will be financed; and
- A declaration that the creation of the special district is consistent with the approved local government comprehensive plan.

[3] Information relating to special districts and their functions can be found in the SDIP online publication "Florida Special District Handbook Online" which can be found at http://www.floridaspecialdistricts.org/handbook/.
[4] Section 189.427, F.S., requires the DEO to establish a schedule of fees to pay one-half of the costs incurred by the department in administering the Act. The fee may not exceed $175 per district per year.

Independent Special Districts

An independent special district does not have any of the characteristics of a dependent district, may encompass more than one county unless the district lies wholly within the boundaries of one city, and generally is created by an act of the Legislature. However, counties and cities may create community development districts of less than 1,000 acres,[5] public hospital districts,[6] county children's services districts,[7] and county health and mental health care districts.[8] Two or more counties may create regional jail districts,[9] and any combination of counties or cities, or both, may create regional water supply authorities.[10] Regional transportation authorities may be created by any combination of contiguous counties, cities, or other political subdivisions.[11] Finally, the Governor and the Cabinet, sitting as the Florida Land and Water Adjudicatory Commission, have the authority to create community development districts.[12]

With the exception of a community development district, the charter creating an independent special district must contain the following information:

- The purpose of the special district;
- The powers, functions and duties of the special district relating to ad valorem taxes, bonds and other revenue-raising abilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and certificates for non-ad valorem assessments and contractual agreements;
- Method for establishing the district and amending the district charter;
- The membership, organization, compensation, and administrative duties of the governing board and its members;
- Applicable financial disclosure, noticing, and reporting requirements;
- Procedures and requirements for bond issues, if the special district will issue bonds;
- Election procedures and requirements;
- Method for financing the district;
- Authorized millage rate, and methods for collecting non-ad valorem assessments, fees, or service charges;
- Planning requirements; and
- District boundaries.

Downtown Development Authorities

Florida currently has 14 downtown development authorities (DDAs).[13] A downtown development authority (DDA) is formed for the purpose of preventing deterioration of property

[5] Section 190.005(2), F.S.
[6] Sections 155.04 and 155.05, F.S.
[7] Section 125.901, F.S.
[8] Section 154.331, F.S.
[9] Section 950.001, F.S.
[10] Section 373.1962, F.S.
[11] Section 163.567, F.S.
[12] Section 190.005(1), F.S.
[13] The Department of Economic Opportunity, Special District Website, found online at: http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/criteria.cfm (last visited April 23, 2014).

values within a municipal area.[14] Most current DDAs were created pursuant to special laws; however, the process to create a DDA has changed since their use began in 1965.

The first DDAs were authorized by chapter 65-1090, L.O.F. A municipality with a population in excess of 250,000 could create a DDA by municipal ordinance after a public hearing.[15] The governing body of the municipality was authorized to levy an additional ad valorem tax on property within the DDA, not exceeding 0.5 mill.[16]

In 1971, the Legislature – citing the fact that the Florida Constitution and general laws of Florida granted municipalities and counties home rule powers – repealed hundreds of general laws passed between 1921 and 1970, which had been identified as general laws of local application.[17] The 1965 general law authorizing municipal creation of DDAs was part of this repeal. The 1971 law provided that the provisions of the repealed laws became local ordinances on the effective date of the 1971 law.[18]

In 1977, the Legislature – citing the fact that the principle of "home rule" in local government is eroded when a special law is used to create a local governmental agency – repealed several special laws creating local governmental entities.[19] At least one DDA was affected by this repeal, the City of Clearwater's Downtown Development Board.[20] Like the 1971 repeal, this 1977 repeal converted the provisions of the repealed laws to municipal ordinances.[21]

After 1977, other DDAs were created by special law and still operate under that authority.[22]

The current DDAs appear to be operating under three distinct authorizations: 1) under local ordinance, but originally created under chapter 65-1090, L.O.F.; 2) under local ordinance, but originally created by a special law; and 3) under special law.

Due to the changes that have been made to the laws authorizing the creation of DDAs, the authority of a municipality to levy additional ad valorem taxes for the operation of a DDA created under the authority of chapter 65-1090, L.O.F., has been called into question.

[14] Chapter 65-1090, L.O.F.
[15] *Id.*
[16] Section 11, ch. 65-1090, L.O.F.
[17] *See* ch. 71-29, L.O.F.
[18] Section 3, ch. 71-29, L.O.F.
[19] Chapter 77-637, L.O.F.
[20] Section 4, ch. 77-637, L.O.F.
[21] *Id.*
[22] For example, *see* ch. 2003-380, L.O.F., codifying various special laws regarding the City of West Palm Beach Downtown Development Agency.

III. Effect of Proposed Changes:

General Statutory Structure (Section 1)

The bill changes the subject of ch. 189, F.S., from "Special Districts: General Provisions" to "Special Districts," and divides the chapter into the following named parts:

- Part I - "General Provisions"
- Part II - "Dependent Special Districts"
- Part III - "Independent Special Districts"
- Part IV - "Elections"
- Part V - "Finance"
- Part VI - "Oversight and Accountability"
- Part VII - "Merger and Dissolution"
- Part VIII - "Comprehensive Planning"

Joint Legislative Auditing Committee (Section 2)

Current Situation

The Joint Legislative Auditing Committee (JLAC) has the authority to enforce provisions against local governmental entities when they fail to submit financial reports required by law. All counties, municipalities and special districts are required to complete an annual financial report (AFR) for each fiscal year. Counties, municipalities and independent special districts are required to submit the AFR to the Department of Financial Services (DFS). Any dependent special district that is a component unit[23] of the county or the municipality to which it is dependent is required to provide that entity the financial information necessary to comply with the AFR reporting requirements. It is then the county's or the municipality's responsibility to include the financial information of the dependent special district in its AFR. A dependent special district that is not determined to be a component unit of the county or the municipality to which it is dependent is required to file the AFR with the DFS.

In addition, all counties, municipalities and special districts that meet a certain threshold for revenues or expenditures/expenses are also required to have an annual financial audit (audit) of their accounts and records conducted by an independent certified public accountant (CPA). Audits are required to be submitted to both the DFS and the Auditor General. Each year, these offices provide the JLAC with a list of all entities that have failed to comply with these financial reporting requirements. The JLAC may choose to take action pursuant to s. 11.40(2), F.S., against noncompliant entities. For counties and municipalities, the JLAC may direct the DFS and the Department of Revenue (DOR) to withhold any funds due to the entity that are not pledged for bond debt service satisfaction until they have complied with the law. For special districts, the JLAC may direct the Department of Economic Opportunity (DEO or department) to begin legal proceedings against the special district to compel compliance or declare the special district inactive pursuant to the provisions of s. 189.4044, F.S., if applicable.

[23] "Component unit" as defined by Generally Accepted Accounting Principles. *See* Governmental Accounting Standards Board (GASB) Statement No. 14, *The Financial Reporting Entity* (Issued 6/91).

Effect of Proposed Changes

Section 2 amends s. 11.40, F.S., to provide additional notification responsibilities for the JLAC when a special district fails to comply with the financial reporting requirements. If a district was created by special act, the JLAC must notify the DEO, the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight, and legislators representing the geographical jurisdiction of the special district. If the district was created by local ordinance, the JLAC must notify the local general-purpose government and the DEO. If the district was created by any other manner than special act or local ordinance, the JLAC must notify the local general-purpose government and the DEO. Upon receipt, the DEO must proceed pursuant to s. 189.062, F.S., (special procedures for inactive districts) or 189.067 F.S., (failure of district to disclose financial reports).

If the special district remains noncompliant, the JLAC may request that the DEO file a petition for enforcement with the Circuit Court of Leon County.[24]

Code of Ethics for Public Officers and Public Employees (Section 3)

Current Situation

The term "agency" means: any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.[25]

This definition of "agency" would encompass a special district.

Effect of Proposed Changes

The bill specifically adds "any special district as defined in s.189.012, F.S." to the definition of "agency."

Governor's Suspension Power (Section 4)

Current Situation

Pursuant to Article IV, s. 7, of the State Constitution, the Governor may suspend any state officer not subject to impeachment, any officer of the militia not in active service of the United States, or any county officer for misfeasance, malfeasance, neglect of duty, public drunkenness, incompetence, permanent inability to perform public duties, or commission of a felony. If the Governor suspends one of these officers, the decision to remove or reinstate the officer is made by the Senate.[26]

[24] *See* Section 43 of the bill.
[25] Section 112.312(2), F.S., provides definitions as used in Part III of ch. 112, F.S. (Code of Ethics for Public Officers and Employees) and for purposes of the provisions of section 8, Article II of the Florida Constitution, unless the context otherwise requires.
[26] Article IV, s. 7(b), Fla. Const.

Pursuant to Article IV, s. 7(c), of the State Constitution, the Governor may suspend any elected municipal officer indicted for a crime. Additionally, the Legislature provided the Governor the authority to suspend any elected or appointed municipal official for misfeasance, malfeasance, neglect of duty, public drunkenness, incompetence, permanent inability to perform public duties, arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor.[27] This jurisdiction is concurrent in the Governor and in the statutory or charter authority.[28] In the event that a municipal officer is convicted, the Governor is required to remove him or her from office.[29]

Currently, the law contemplates the following types of special districts:
- An independent special district that is created by special act,
- An independent special district created by county/municipal charter or ordinance,
- An independent special district created by agreement between counties,
- An independent special district created by agreement between a county and a municipality,
- A county/municipal dependent district created by charter, or
- A county/municipal dependent special district created by ordinance.

Members of special districts may be considered to be county officers, municipal officers, or neither county nor municipal officers. If a Governor were to suspend a member of a special district board that exercises powers and duties that are county-related, the Senate would likely have jurisdiction over the executive order of suspension pursuant to Art. IV, s. 7, Fla. Const. If the Governor were to suspend a member of a special district that exercises powers and duties that are municipal in nature, then the Senate would not have jurisdiction. The Governor could take any action consistent with ss. 112.50-112.52, F.S. It is unclear what would happen in the event that a special district board member whose board is created by interlocal agreement between multiple counties or municipal-county agreement was suspended.

Effect of Proposed Changes

The bill provides that the Governor may suspend board members of special districts exercising state or county jurisdiction subject to removal or reinstatement by the Senate as provided in Art. IV, s. 7(a), of the State Constitution. Alternatively, the bill provides that the Governor may suspend and remove board members of special districts exercising powers other than state or county powers as provided in s. 112.51, F.S.

Children's Services Independent Special Districts (Section 5)

Current Situation

The governing body of a children's services independent special district is typically composed of 10 members, and serves to promote juvenile welfare. A county, as defined in s. 125.011(1), F.S., may instead have a governing body composed of 33 members, one of whom is a member of the state Legislature who represents residents of the county. The member of the Legislature is

[27] Section 112.51, F.S.
[28] Section 112.50, F.S.
[29] Section 112.51(5), F.S.

selected to serve on the governing body of the children's services district by the chair of the local legislative delegation.

Any children's services district may be dissolved by a special act of the Legislature, or by ordinance of the county governing body. A county ordinance dissolving the independent special district is conditioned upon the approval of the electorate. The question of retention or dissolution of the district must be presented to the electorate in a general election no later than 12 years after initial authorization, although a shorter period for reauthorization may be specified.[30]

Effect of Proposed Changes

The bill removes the selection criteria for the member of the state Legislature serving on the governing body of the children's special district of a county defined in s. 125.011(1), F.S. In the absence of any direction, it is unclear how this member would be selected.

Statement of Legislative Intent (Sections 7-9)

Current Situation

Section 189.402, F.S., contains the statements of legislative intent concerning creation and purpose of special districts. In its current form, it contains statements of legislative intent relating to both dependent and independent special districts.

Effect of Proposed Changes

The general statements of legislative intent applicable to both types of districts in ss. 189.402(1), 189.402(6), and 189.402(7), F.S., are transferred to s. 189.011, F.S., which is located in "Part I - General Provisions." The bill moves from s. 189.402(6), F.S., to s. 189.011(2), F.S., the Legislative findings that special districts serve a necessary and useful public purpose and the intent that the public trust be secured by requiring independent special districts to register and provide certain financial reports.

Additionally, the current statements of legislative intent concerning improvement of communication and uniformity in s. 189.402(2), F.S., are moved and renumbered to s. 189.06, F.S., located in "Part VI - Oversight and Accountability."

The statements of legislative intent concerning independent special districts in s. 189.402(3), (4), (5), and (8) are moved to s. 189.03, F.S., in "Part III - Independent Special Districts," and substantively revised. The revisions include deleting references to managing and financing capital infrastructure, facilities and services.

Special District Definition (Section 10)

Current Situation

Under s. 189.403, F.S., "special district" means:

> a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local

[30] Section 125.901(4), F.S.

> ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts shall be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

Effect of Proposed Changes

Section 10 transfers, renumbers, and amends s. 189.403, F.S., to redefine the term "special district" as:

> a unit <u>of local government created for a</u> special purpose, as opposed to <u>a general purpose</u>, <u>which has jurisdiction to operate</u> within a limited <u>geographic</u> boundary <u>and is</u> created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

Creation, Dissolution, Reporting Requirements of Special Districts (Section 12)

Current Situation

Section 189.4031, F.S., requires all special districts to follow creation, dissolution, and reporting requirements set forth in Chapter 189 of the Florida Statutes. It also requires certain information concerning powers and duties of the district, methods for establishing and amending the charter, certain information concerning ad valorem taxing and fees, planning requirements, and geographical boundaries to be contained in the charter of an independent special district. Because the only charter available for a community development district is that provided in ss. 190.006-190.041, F.S., an exception is created for community development districts.

Effect of Proposed Changes

The bill moves the provision that all special districts must follow creation, dissolution and reporting requirements to s. 189.013, F.S., which is located in "Part I - General Provisions." The remaining provisions are moved to s. 189.0311, F.S., which is located in "Part III - Independent Special Districts."

Official List of Special Districts (Section 13)

Current Situation

Section 189.4035, F.S., requires the DEO to compile and maintain an official list of special districts which must be posted on the department's website. That provision also states that if a special district was created by a local general-purpose government or a state agency, any proposed charter amendments must be approved as a matter of right. If the special district was created by the Legislature, the district must seek legislative amendment to its charter during the next legislative session or it will become a dependent special district.

Effect of Proposed Changes

In addition to moving s. 189.4035, F.S., to s. 189.061, F.S., located in "Part VI - Oversight and Accountability," the bill makes the following changes:

- Requires the DEO to post a link to the special district's website, which is required to contain certain information pursuant to newly created s. 189.069, F.S.;
- Deletes the requirement that charter amendment requests made by a local general-purpose government or state agency be approved as a matter of right; and
- Deletes the requirements that special districts created by the Legislature seek an amendment at the next legislative session and that failure to do so will result in conversion to a dependent special district.

Merger and Dissolution of Special Districts (Sections 18-23)

Current Situation

Section 189.4042, F.S., governs the merger and dissolution of special districts. That section provides definitions, procedures for merger or dissolution of a dependent special district, dissolution of an independent special district, legislative dissolution of special districts created by special acts of the Legislature, dissolution of inactive independent special districts, legislative or voluntary merger of independent special districts, the merger by referendum process, and involuntary merger of independent special districts.

Effect of Proposed Changes

The following provisions of s. 189.4042, F.S., are relocated to "Part VII - Merger and Dissolution:"

- Definitions in s. 189.4042(1), F.S., are moved to s. 189.07, F.S.;
- Merger or dissolution of dependent special districts provisions in s. 189.4042(2), F.S., are moved to s. 189.071, F.S.;
- Dissolution of independent special districts provisions in s. 189.4042(3), F.S., are moved to s. 189.072, F.S.;
- Legislative merger of independent special districts provisions are moved from s. 189.4042(4), F.S., to s. 189.073, F.S.;
- The provisions for voluntary merger of independent special districts in s. 189.4042(5), F.S., are moved to s. 189.074, F.S.;
- The provisions relating to involuntary merger of independent special districts in s. 189.4042(6), F.S., are moved to s. 189.075, F.S.; and

- The provisions relating to community development districts is moved from s. 189.4042(7), F.S., to s. 189.0761, F.S.

Special Procedures for Inactive Districts (Section 24)

Current Situation

Section 189.4044, F.S., requires the DEO to declare a special district inactive and provides the circumstances under which it must do so. That section provides for repayment of an inactive district's debt and that the remainder of any assets or property escheat to the county or municipality wherein the district is located. If the department declares a district inactive, that statute specifies who the department must notify.

In the case of a district created by special act of the Legislature, the DEO must send a notice of declaration of inactive status to the Speaker of the House of Representatives and the President of the Senate.

Effect of Proposed Changes

The bill moves s. 189.4044, F.S., to s. 189.062, F.S., located in "Part VI - Oversight and Accountability." The bill requires the DEO to send additional notices of declaration of a special district's inactive status to the standing committees of the Senate and the House of Representatives charged with special district oversight, and the JLAC. Currently, the law authorizes the department to declare a district inactive when "following an inquiry from the department, the registered agent of the district or the chair of the governing body of the appropriate unit of local general-purpose government notifies the department in writing that the district has not had a governing body or a sufficient number of governing body members to constitute a quorum for 2 or more years." The bill removes the condition precedent that the department must ask whether there has been a board or a quorum for the past two years.

The bill also allows a special district that declares itself inactive by unanimously adopted resolution to be dissolved without a referendum.

The bill prevents a special district declared inactive from collecting taxes, fees, or assessments, unless the declaration is withdrawn or revoked by the department or invalidated in proceedings initiated by the special district. The governing body of the special district may initiate such proceedings by filing a petition for administrative hearing, or filing an action for declaratory and injunctive relief in the circuit court where the majority of the geographic area of the district is located.

The DEO may also file a petition to enforce the prohibitions on the district from collecting taxes, fees, or assessments. Such a petition for enforcement would be filed with the circuit court in and for Leon County. The petition may request declaratory, injunctive, or other equitable relief, including appointment of a receiver. The prevailing party shall be awarded litigation costs and reasonable attorney fees.

Governing Body Elections (Sections 27 and 28)

Current Situation

Section 189.405, F.S., requires elections of board members of dependent special districts be conducted by the supervisor of elections of the county where the district is located. That section also provides that elections of board members of independent special districts located entirely within one county may be conducted by the supervisor of elections of that county. Alternatively, if such a district conducts its own elections it must report the results to the supervisor of elections. The statute also provides an election process for multicounty special districts. It also allows the department to provide education for newly elected or appointed board members concerning the Code of Ethics, public records and open meetings laws, public finance, and parliamentary procedure. Education may be provided by means of videotapes, live seminars, workshops, conferences, teleconferences, computer-based training, multimedia presentations, or other available instructional methods. Finally, the law does not apply to community development districts or water management districts.

Effect of Proposed Changes

The bill moves these provisions, with the exception of the education of newly elected or appointed officials, to newly created s. 189.04, F.S., located in "Part IV - Elections." The education programs provisions are moved to newly created s. 189.063, F.S., located in "Part VI - Oversight and Accountability." However, the bill deletes the references to the specific means of providing training.

Special District Information Program (Section 33)

Current Situation

The Special District Information Program (SDIP) is created in s. 189.412, F.S., to:

- Maintain a database of special district non-compliance reports;
- Maintain a master list of special districts for the DEO website;
- Publish and update the "Florida Special District Handbook;"
- Secure and maintain access to special district information collected by all state agencies, when feasible;
- Facilitate coordination and communication among state agencies regarding special districts;
- Conduct studies relevant to special districts;
- Provide assistance to comply with the requirements of law, including assistance with an annual conference presented by the Florida Association of Special Districts; and
- Provide assistance to local general-purpose governments and certain state agencies in collecting delinquent reports or information, help special districts comply with reporting requirements, declare special districts inactive when appropriate, and initiate enforcement actions when directed to by the JLAC.

Effect of Proposed Changes

The bill renames the Special District Information Program as the "Special District Accountability Program" and moves the program to s. 189.064, F.S., in "Part VI - Oversight and Accountability." It requires electronic publication of special district noncompliance status

reports. The bill requires the program to maintain the official list of special districts. Additionally, the bill requires that the program provide technical advisory assistance to special districts which may be performed by the DEO or a qualified third-party vendor pursuant to a contract entered into in accordance with applicable bidding requirements.

Failure to File Reports or Information (Sections 41 and 43)

Current Situation

If a special district fails to file the required reports or information, the person authorized to receive and read the reports or information or the local general-purpose government must notify the district's registered agent.[31] The district can request, and be granted, a 30 day extension of time in which to file the required report or information. If the governing body of the local general-purpose government or governments determines that the failure was unjustified, it may notify the department. The department must then provide the district 60 days to comply and follow subsequent remedial procedures in s. 189.421, F.S., if warranted.

If a dependent special district fails to file required reports or information, the local governing authority on which the district is dependent may take whatever steps it deems necessary to enforce the district's accountability, including withholding funds, removing governing board members at will, vetoing the special district's budget, conducting the oversight review process set forth in s. 189.428, F.S., or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.

If a special district fails to file a notice of bond issuance with the appropriate state agency, the agency is required to notify the DEO. The department must notify the district of the requirements and encourage the special district to take steps to assure that noncompliance will not recur.

If a special district fails to file actuarial reports or statements of actuarial impact with the appropriate state agency, that agency must notify the department and the department may begin the remedial measures in s. 189.421(1), F.S.

Finally, if a special district fails to file annual financial reports or annual financial audits, the appropriate state agency or office must, and the Joint Legislative Auditing Committee may, notify the department and the department must proceed pursuant to s. 189.421, F.S.

Section 189.421, F.S., provides that if the department has been notified of a special district's failure to file a required report or information, it must provide a letter to the district notifying the district that it has 60 days to comply and offer assistance to the district in complying. If a district is unable to make the 60 day deadline, the district must notify the department why it cannot comply and the steps it is taking to prevent a recurrence. The district must also notify the department when it will file the report. The department must forward the letter to the appropriate entity. The law provides a mechanism for filing a suit seeking a writ of certiorari.

[31] Section 189.419, F.S.

Effect of Proposed Changes

The bill moves s. 189.419, F.S., to s. 189.066, F.S., located in "Part VI - Oversight and Accountability." The bill requires the governing body of the local general-purpose government to notify the DEO if they determine that a special district has an unjustified failure to file reports or information, required under s. 189.08, 189.014, 189.015, or 189.016(9), F.S.

The bill also provides that if a special district created by special act of the Legislature fails to file annual financial reports or annual financial audits, the JLAC must notify the President of the Senate, the Speaker of the House of Representatives, and the standing committees of the Senate and the House of Representatives charged with special district oversight. If a special district created by ordinance fails to file annual financial reports or annual financial audits, the JLAC must provide written notification to the DEO and chair or equivalent of the local general-purpose government that created the district.

The bill moves s. 189.421, F.S., to s. 189.067, F.S., located in "Part VI - Oversight and Accountability." The bill provides remedies for noncompliance with reporting requirements. To enforce compliance, the DEO may file a petition with the circuit court in and for Leon County requesting declaratory, injunctive, any equitable relief, or any remedy provided by law.

Grants and Donations Trust Fund (Section 47)

Current Situation

Section 189.427, F.S., requires the DEO to establish, by rule, a schedule of fees to pay one-half of the costs incurred by the department to administer the special districts act. The fee may not exceed $175 per district each year. The fees must be deposited in the department's Grants and Donations Trust Fund. Any fee rule must consider factors including the special district's dependent or independent status and the district's reported revenues for the most recent fiscal year. That section also authorizes the DEO to assess fines of not more than $25, with an aggregate total not to exceed $50, as penalties against special districts that fail to remit required fees. The section provides legislative intent that general revenue funds will be provided to the DEO to pay one-half of the costs to administer the special districts act.

Effect of Proposed Changes

The bill moves s. 189.427, F.S., to s. 189.018, F.S., located in "Part I - General Provisions." The bill also renames the trust fund as the "Operating Trust Fund." See Section VI.

Oversight Review Process (Sections 48, 51 and 52)

Current Situation

Section 189.428, F.S., contains several statements of legislative intent. It specifies the order in which special districts may be subject to oversight review and criteria for evaluating the district's performance. Special districts being reviewed may provide written questions, concerns, preliminary reports, draft reports, or final reports relating to the district. The final report shall form the basis of a charter modification or dissolution. That section provides the process for legislative dissolution. Deepwater ports and airport authorities are exempt under certain circumstances. Finally, special districts organized to operate licensed health systems and facilities are exempt.

Effect of Proposed Changes

The bill moves s. 189.428, F.S., to s. 189.068, F.S., located in "Part VI - Oversight and Accountability." The bill also creates s. 189.034, F.S., located in "Part III - Independent Special Districts." The bill requires the JLAC to oversee special districts created by special act of the Legislature when a special district fails to file required reports or information under ss.11.45(7), 218.32, 218.39, and 218.503(3), F.S. The JLAC would perform the following:

- Provide written notice of district's noncompliance to the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight, and legislators representing the geographical jurisdiction of the special district.
- Convene a public hearing on the issue of noncompliance, as well as general oversight of the district, at the discretion of the Speaker of the House of Representatives and the President of the Senate.
- Obtain specified information from a special district in preparation for a public hearing, as follows:
  - The district's annual financial report for the previous fiscal year;
  - The district's audit report for the previous fiscal year;
  - An annual report containing:
    - The district's mission;
    - Funding sources;
    - Major activities, programs, and initiatives it undertook in the most recently completed fiscal year and the benchmarks or criteria used by the governing body to determine success or failure;
    - Challenges or obstacles faced by the district in fulfilling its mission and responsibilities;
    - Ways in which the district believes it could better fulfill its mission and related responsibilities and a description of the actions it intends to take during the ensuing fiscal year;
    - Proposed changes to its special act and the justifications for such changes;
    - Any reasons for the district's noncompliance;
    - Whether the district is currently in compliance and plans to correct any recurring issues of noncompliance; and
    - Efforts to promote transparency, including maintenance of the district's website in accordance with new s. 189.069, F.S.

The bill also creates a new provision concerning oversight of special districts created by local ordinance in s. 189.035, F.S., located in "Part III - Independent Special Districts." This new provision requires the JLAC or its designee to provide written notice of failure to file annual financial reports or annual financial audits to the chair or equivalent of the local general-purpose government. The chair may convene a public hearing on the non-compliance within 6 months after receiving such notice. The local general-purpose government is authorized to request:

- The district's annual financial report for the previous fiscal year;
- The district's audit report for the previous fiscal year;
- An annual report containing:
  - The district's purpose;
  - Funding sources;
  - Major activities, programs, and initiatives it undertook in the most recently completed fiscal year and the benchmarks or criteria used by the governing body to determine success or failure;
  - Challenges or obstacles faced by the district in fulfilling its purpose and responsibilities;
  - Ways in which the district believes it could better fulfill its purpose and a description of the actions it intends to take during the ensuing fiscal year;
  - Proposed changes to the ordinance that established it and the justifications for such changes;
  - Any reasons for the district's noncompliance;
  - Whether the district is currently in compliance;
  - Plans to correct any recurring issues of noncompliance; and
  - Efforts to promote transparency, including maintenance of the district's website in accordance with new s. 189.069, F.S.

The local general-purpose government must report findings of any public hearing to the DEO and the JLAC within 6 months after completing the hearing.

Property Tax Exemption (Section 53)

Current Situation

The definition of special district in s. 189.403(1), F.S., in pertinent part, provides, "For the purpose of s. 196.199(1), special districts shall be treated as municipalities." Section 196.199(1), F.S., provides that municipalities are exempt from ad valorem taxes in the same manner that municipalities are exempt from taxes.

Effect of Proposed Changes

The bill creates new s. 189.055, F.S., located in "Part V - Finance." The new statute incorporates the language quoted above to maintain property tax exempt status for special districts.

Web-based Public Access (Section 54)

Current Situation

There are currently no statutory requirements relating to special districts' websites.

Effect of Proposed Changes

The bill creates new s. 189.069, F.S., in "Part VI - Oversight and Accountability." Beginning October 1, 2015, or by the end of the first fiscal year after creation of a special district, all special districts would be required to annually update and maintain their official websites and submit their official website address to the DEO. Independent special districts must maintain a separate internet website, while dependent special districts would be allowed to use the website of the general-purpose government that created them to provide the required information. The following information must be posted on the special district's website:

- The full legal name of the special district;
- The public purpose of the special district;
- The name, address, email address, and, if applicable the term and appointing authority for each member of the governing body of the special district;
- The fiscal year of the special district;
- The full text of the special district's charter, the date the special district was established, the entity that established the special district, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established;[32]
- The mailing address, e-mail address, telephone number, and Internet website uniform resource locator of the special district;
- A description of the boundaries or service area of, and the services provided by, the special district;
- A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts charged for the fiscal year and the statutory authority for the levy of the tax, fee, or charge;
- The primary contact information for the special district for the purpose of communication from the DEO;
- The code of ethics that applies to the special district, and whether the special district has adopted additional ethics provisions;
- The budget of the special district; and amendments; and
- The final, complete audit report for the most recent completed fiscal year.

Downtown Development Authorities (Section 55)

The bill amends s. 200.065(5), F.S., to provide that any downtown development authority that was established before the effective date of the 1968 constitution and has its millage approved by a municipality is an independent special taxing district. The governing body of the municipality is authorized to levy an additional ad valorem tax on all real and personal property in the downtown district to finance the operations of the downtown development authority. The ad valorem tax levied for the authority is in addition to regular ad valorem taxes; however, the combined levy may not exceed the maximum levy provided by the constitution.

[32] Community development districts may use chapter 190, as the uniform charter, but must include information relating to any grant of special powers.

Effective Date (Section 90)

The bill provides an effective date of July 1, 2014.

Other Provisions

Created in 2000, the Community Improvement Authority Act was intended to facilitate improvement of port areas.[33] The purpose of the Act is to prescribe a uniform procedure for establishing independent authorities for the purpose of planning, financing, constructing, renovating, developing, operating, and maintaining facilities and other attractions, including professional sports facilities and other related amenities and infrastructure within highly populated counties of the state and within counties contiguous therewith.[34] Section 50 of the bill repeals Community Improvement Authority Act by repealing the following: ss. 189.430, 189.431, 189.432, 189.433, 189.434, 189.435, 189.436, 189.437, 189.438, 189.439, 189.440, 189.441, 189.442, 189.443, and 189.444, F.S.

Numerous sections of the bill make only technical, conforming, or renumbering changes to the statutes. Those sections of the bill are: 6, 11, 14-17, 25, 26, 29-32, 34-40, 42, 44-46, 49, 50, 56-89.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, s. 11(a)(21) of the Florida Constitution states that there shall be no special law or general law of local application[35] pertaining to "any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote." Prohibited subject matters include s. 189.404(2), F.S., pertaining to independent special districts; and s. 190.049, F.S., pertaining to the creation of independent special districts having the powers enumerated in two or more of the paragraphs of s. 190.012, F.S. The bill raises an issue as to whether

[33] Ch. 2000-348, L.O.F.
[34] Section 189.431(2), F.S.
[35] *School Board of Escambia Co. v. State*, 353 So. 2d 834, 839 (Fla. 1977).

proposed conforming changes to s. 190.049 and s. 189.404(2), F.S., require a three-fifths vote of both houses in order to pass.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of CS/CS/CS/SB 1632 is indeterminate, but anticipated to be minimal. Currently, the Department of Economic Opportunity's website links to a special district's website when a URL is provided. There will be minimal administrative costs associated with collecting all URLs for special districts and establishing links. The DEO indicates that these costs can be absorbed within existing resources. The bill contemplates the possibility of hearings and notices which would be conducted by local governments, the JLAC, or the DEO. The costs associated with such hearings and notices are indeterminate, but anticipated to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill transfers, renumbers, and substantially amends the following sections of the Florida Statutes: 11.40, 112.312, 125.901, 189.401, 189.402, 189.403, 189.4031, 189.4035, 189.404, 189.40401, 189.4041, 189.4042, 189.4044, 189.4045, 189.4047, 189.405, 189.4051,189.4065, 189.408, 189.4085, 189.412, 189.413, 189.415, 189.4155, 189.4156, 189.416, 189.417, 189.418, 189.419, 189.420, 189.421, 189.4221, 189.423, 189.425, 189.427, 189.428, 189.429, 11.45, 100.011, 101.657, 112.061, 112.63, 112.665, 121.021, 121.051, , 153.94, 163.08, 165.031, 165.0615, 171.202, 175.032, 190.011, 190.046, 190.049, 191.003, 191.005, 191.013, 191.014, 191.015, 200.001, 218.31, 218.32, 218.37, 255.20, 298.225, 343.922, 348.0004, 373.711, 403.0891, 582.32, and 1013.355.

This bill creates the following sections of the Florida Statutes: 112.511, 189.034, 189.035, 189.055, and 189.069.

This bill repeals the following sections of the Florida Statutes: 189.430, 189.431, 189.432, 189.433, 189.434, 189.435, 189.436, 189.437, 189.438, 189.439, 189.440, 189.441, 189.442, 189.443, and 189.444**.**

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on April 22, 2014:

- Provides that special district fees collected by the Department of Economic Opportunity will continue to be deposited in the department's Grants and Donations Trust Fund; and
- Provides that any downtown development authority that was established before the effective date of the 1968 constitution and has its millage approved by a municipality is an independent special taxing district. Authorizes the governing body of the municipality to levy an additional ad valorem tax on all real and personal property in the downtown district to finance the operations of the downtown development authority. The ad valorem tax levied for the authority is in addition to regular ad valorem taxes and the combined levy may not exceed the maximum levy provided by the constitution.

CS/CS by Community Affairs on April 1, 2014:

- Postpones the date by which a special district must have a website to October 1, 2015;
- Requires a special district's website to include any code of ethics adopted, and any assessments imposed;
- Creates a process by which the JLAC and the DEO may enforce reporting and other requirements when special districts are noncompliant or inactive. Subsequent to notifying DEO, relevant legislators and the local general-purpose government, and subsequent to a public hearing, JLAC may request that DEO file a petition for enforcement with the Circuit Court of Leon County; and
- Establishes separate oversight controls appropriate to different special districts depending on how they were created.

CS by Ethics and Elections on March 17, 2014:

- Provides that the Governor may suspend board members of special districts exercising state or county jurisdiction subject to removal or reinstatement by the Senate;
- Provides that the Governor may suspend and remove board members of special districts exercising powers other than state or county powers; and
- Provides that the Governor may suspend special district officers for violations of the Special District Act in Chapter 189, F.S., but the Governor and appointing authority must ensure that the governing body of the district maintains enough members to constitute a quorum.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

704556

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2309 - 2328

and insert:

Section 47. Section 189.427, Florida Statutes, is transferred and renumbered as section 189.018, Florida Statutes.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 65 - 69

704556

and insert:

renumbering ss. 189.4221, 189.423, 189.425, and 189.427, F.S.; transferring, renumbering,

851674

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 2665 and 2666
insert:

Section 55. Subsection (5) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(5) In each fiscal year:

(a) The maximum millage rate that a county, municipality, special district dependent to a county or municipality,

municipal service taxing unit, or independent special district may levy is a rolled-back rate based on the amount of taxes which would have been levied in the prior year if the maximum millage rate had been applied, adjusted for change in per capita Florida personal income, unless a higher rate was adopted, in which case the maximum is the adopted rate. The maximum millage rate applicable to a county authorized to levy a county public hospital surtax under s. 212.055 and which did so in fiscal year 2007 shall exclude the revenues required to be contributed to the county public general hospital in the current fiscal year for the purposes of making the maximum millage rate calculation, but shall be added back to the maximum millage rate allowed after the roll back has been applied, the total of which shall be considered the maximum millage rate for such a county for purposes of this subsection. The revenue required to be contributed to the county public general hospital for the upcoming fiscal year shall be calculated as 11.873 percent times the millage rate levied for countywide purposes in fiscal year 2007 times 95 percent of the preliminary tax roll for the upcoming fiscal year. A higher rate may be adopted only under the following conditions:

1. A rate of not more than 110 percent of the rolled-back rate based on the previous year’s maximum millage rate, adjusted for change in per capita Florida personal income, may be adopted if approved by a two-thirds vote of the membership of the governing body of the county, municipality, or independent district; or

2. A rate in excess of 110 percent may be adopted if approved by a unanimous vote of the membership of the governing

body of the county, municipality, or independent district or by a three-fourths vote of the membership of the governing body if the governing body has nine or more members, or if the rate is approved by a referendum.

(b) The millage rate of a county or municipality, municipal service taxing unit of that county, and any special district dependent to that county or municipality may exceed the maximum millage rate calculated pursuant to this subsection if the total county ad valorem taxes levied or total municipal ad valorem taxes levied do not exceed the maximum total county ad valorem taxes levied or maximum total municipal ad valorem taxes levied respectively. Voted millage and taxes levied by a municipality or independent special district that has levied ad valorem taxes for less than 5 years are not subject to this limitation. The millage rate of a county authorized to levy a county public hospital surtax under s. 212.055 may exceed the maximum millage rate calculated pursuant to this subsection to the extent necessary to account for the revenues required to be contributed to the county public hospital. Total taxes levied may exceed the maximum calculated pursuant to subsection (6) as a result of an increase in taxable value above that certified in subsection (1) if such increase is less than the percentage amounts contained in subsection (6) or if the administrative adjustment cannot be made because the value adjustment board is still in session at the time the tax roll is extended; otherwise, millage rates subject to this subsection, s. 200.185, or s. 200.186 may be reduced so that total taxes levied do not exceed the maximum.

Any unit of government operating under a home rule charter

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adopted pursuant to ss. 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the State Constitution of 1968, which is granted the authority in the State Constitution to exercise all the powers conferred now or hereafter by general law upon municipalities and which exercises such powers in the unincorporated area shall be recognized as a municipality under this subsection. For a downtown development authority established before the effective date of the 1968 State Constitution which has a millage that must be approved by a municipality, the governing body of that municipality shall be considered the governing body of the downtown development authority for purposes of this subsection. Any such downtown development authority is an independent special taxing district, and the governing body of the municipality is authorized to levy an additional ad valorem tax on all real and personal property in the downtown district for the purpose of financing the operation of the authority. The levy of the ad valorem tax shall be in addition to regular ad valorem taxes and special assessments for improvements imposed by the governing body of the municipality; however, the combined levy may not exceed the maximum provided by the State Constitution.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 103

and insert:

website of certain special districts; amending s. 200.065, F.S.; providing that certain downtown

851674

development authorities are independent special taxing districts authorized to levy an additional ad valorem tax on real and personal property in the district; limiting the amount of the levy; amending ss.

By the Committees on Community Affairs; and Ethics and Elections; and Senator Stargel

578-03590-14 20141632c2

A bill to be entitled

An act relating to special districts; designating parts I-VIII of chapter 189, F.S., relating to special districts; amending s. 11.40, F.S.; revising duties of the Legislative Auditing Committee; amending s. 112.312, F.S.; redefining the term "agency" as it applies to the code of ethics for public officers and employees to include special districts; creating s. 112.511, F.S.; specifying applicability of procedures regarding suspension and removal of a member of the governing body of a special district; amending s. 125.901, F.S.; revising governing body membership for independent special districts created to provide funding for children's services; conforming provisions to changes made by the act; transferring, renumbering, and amending s. 189.401, F.S.; revising a short title; transferring, renumbering, and amending s. 189.402, F.S.; revising a statement of legislative purpose and intent; making technical changes; conforming provisions to changes made by the act; transferring, renumbering, and amending s. 189.403, F.S.; redefining the term "special district"; transferring, renumbering, and amending ss. 189.4031, 189.4035, 189.404, 189.40401, 189.4041, and 189.4042, F.S.; deleting provisions relating to the application of a special district to amend its charter; conforming provisions to changes made by the act; transferring, renumbering, and amending s. 189.4044, F.S.; revising the circumstances under which the Department of

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578-03590-14 20141632c2

Economic Opportunity may declare a special district inactive; requiring the department to provide notice of a declaration of inactive status to certain persons and bodies; prohibiting special districts that are declared inactive from collecting taxes, fees, or assessments; providing exceptions; providing for enforcement of the prohibition; providing for costs of litigation and reasonable attorney fees in certain proceedings; transferring and renumbering ss. 189.4045 and 189.4047, F.S.; transferring, renumbering, and amending s. 189.405, F.S.; revising requirements related to education programs for new members of special district governing bodies; amending s. 189.4051, F.S.; revising definitions; conforming provisions to changes made by the act; transferring and renumbering ss. 189.4065, 189.408, and 189.4085, F.S.; transferring, renumbering, and amending ss. 189.412 and 189.413, F.S.; renaming the Special District Information Program the Special District Accountability Program; revising duties of the Special District Accountability Program; transferring and renumbering ss. 189.415, 189.4155, and 189.4156, F.S.; transferring, renumbering, and amending ss. 189.416, 189.417, and 189.418, F.S.; conforming provisions to changes made by the act; transferring, renumbering, and amending s. 189.419, F.S.; revising provisions related to the failure of a special district to file certain reports or information; conforming provisions to changes made by the act; transferring and

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renumbering s. 189.420, F.S.; transferring, renumbering, and amending s. 189.421, F.S.; revising notification requirements for special districts that fail to file certain reports; revising available remedies for the failure of a special district to disclose required financial reports; transferring and renumbering ss. 189.4221, 189.423, and 189.425, F.S.; transferring, renumbering, and amending s. 189.427, F.S.; providing for the deposit of administration fees into the Operating Trust Fund rather than the Grants and Donations Trust Fund; transferring, renumbering, and amending s. 189.428, F.S.; revising the oversight review process for special districts; transferring and renumbering s. 189.429, F.S.; repealing ss. 189.430, 189.431, 189.432, 189.433, 189.434, 189.435, 189.436, 189.437, 189.438, 189.439, 189.440, 189.441, 189.442, 189.443, and 189.444, F.S., relating to the Community Improvement Authority Act; creating ss. 189.034 and 189.035, F.S.; providing applicability; requiring the Legislative Auditing Committee to provide notice of the failure of special districts to file certain required reports and requested information to certain persons and bodies; authorizing the Legislative Auditing Committee and the chair or equivalent of a local general-purpose government to convene a public hearing on the issue of a special district's noncompliance and general oversight of the special district; requiring a special district to provide certain information to the Legislative Auditing

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Committee before a public hearing upon request; authorizing a local general-purpose government to request certain information from a special district created by local ordinance before a public hearing; requiring a local general-purpose government to report the findings of a public hearing to the department and the Legislative Auditing Committee; creating s. 189.055, F.S.; requiring special districts to be treated as municipalities for certain purposes; creating s. 189.069, F.S.; requiring special districts to establish and maintain an official website for certain information; requiring special districts to submit the web address of their respective websites to the department; requiring that the department's online list of special districts include a link to the website of certain special districts; amending ss. 11.45, 100.011, 101.657, 112.061, 112.63, 112.665, 121.021, 121.051, 153.94, 163.08, 165.031, 165.0615, 171.202, 175.032, 190.011, 190.046, 190.049, 191.003, 191.005, 191.013, 191.014, 191.015, 200.001, 218.31, 218.32, 218.37, 255.20, 298.225, 343.922, 348.0004, 373.711, 403.0891, 582.32, and 1013.355, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 189, Florida Statutes, as amended by this act, is divided into the following parts:

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(1) Part I, consisting of sections 189.01, 189.011, 189.012, 189.013, 189.014, 189.015, 189.016, 189.017, 189.018, and 189.019, Florida Statutes, as created by this act, and entitled "General Provisions."

(2) Part II, consisting of sections 189.02 and 189.021, Florida Statutes, as created by this act, and entitled "Dependent Special Districts."

(3) Part III, consisting of sections 189.03, 189.031, 189.0311, 189.033, 189.034, and 189.035, Florida Statutes, as created by this act, and entitled "Independent Special Districts."

(4) Part IV, consisting of sections 189.04, 189.041, and 189.042, Florida Statutes, as created by this act, and entitled "Elections."

(5) Part V, consisting of sections 189.05, 189.051, 189.052, 189.053, 189.054, and 189.055, Florida Statutes, as created by this act, and entitled "Finance."

(6) Part VI, consisting of sections 189.06, 189.061, 189.062, 189.063, 189.064, 189.065, 189.066, 189.067, 189.068, and 189.069, Florida Statutes, as created by this act, and entitled "Oversight and Accountability."

(7) Part VII, consisting of sections 189.07, 189.071, 189.072, 189.073, 189.074, 189.075, 189.076, and 189.0761, Florida Statutes, as created by this act, and entitled "Merger and Dissolution."

(8) Part VIII, consisting of sections 189.08, 189.081, and 189.082, Florida Statutes, as created by this act, and entitled "Comprehensive Planning."

Section 2. Paragraph (b) of subsection (2) of section

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11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), ~~or~~ s. 218.38, or s. 218.503(3), the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, pursuant to s. 189.034(2) and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.034(3), the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3) ~~189.4044 or s. 189.421~~.

2. A local ordinance, notify the chair or equivalent of the

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local general-purpose government pursuant to s. 189.035(1) and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.035(2), or if a public hearing has not been held within 6 months, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

Section 3. Subsection (2) of section 112.312, Florida Statutes, is amended to read:

112.312 Definitions.—As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

(2) "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; ~~or~~ any public school, community college, or state university; or any special district as defined in s. 189.012.

Section 4. Section 112.511, Florida Statutes, is created to read:

112.511 Members of special district governing bodies; suspension; removal from office.—

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(1) A member of the governing body of a special district, as defined in s. 189.012, who exercises the powers and duties of a state or a county officer, is subject to the Governor's power under s. 7(a), Art. IV of the State Constitution to suspend such officers.

(2) A member of the governing body of a special district, as defined in s. 189.012, who exercises powers and duties other than that of a state or county officer, is subject to the suspension and removal procedures under s. 112.51.

Section 5. Subsections (1), (4), and (6) of section 125.901, Florida Statutes, are amended to read:

125.901 Children's services; independent special district; council; powers, duties, and functions; public records exemption.—

(1) Each county may by ordinance create an independent special district, as defined in ss. 189.012 ~~189.403(3)~~ and 200.001(8)(e), to provide funding for children's services throughout the county in accordance with this section. The boundaries of such district shall be coterminous with the boundaries of the county. The county governing body shall obtain approval, by a majority vote of those electors voting on the question, to annually levy ad valorem taxes which shall not exceed the maximum millage rate authorized by this section. Any district created pursuant to the provisions of this subsection shall be required to levy and fix millage subject to the provisions of s. 200.065. Once such millage is approved by the electorate, the district shall not be required to seek approval of the electorate in future years to levy the previously approved millage.

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(a) The governing body ~~board~~ of the district shall be a council on children's services, which may also be known as a juvenile welfare board or similar name as established in the ordinance by the county governing body. Such council shall consist of 10 members, including: the superintendent of schools; a local school board member; the district administrator from the appropriate district of the Department of Children and Family Services, or his or her designee who is a member of the Senior Management Service or of the Selected Exempt Service; one member of the county governing body; and the judge assigned to juvenile cases who shall sit as a voting member of the board, except that said judge shall not vote or participate in the setting of ad valorem taxes under this section. If there is more than one judge assigned to juvenile cases in a county, the chief judge shall designate one of said juvenile judges to serve on the board. The remaining five members shall be appointed by the Governor, and shall, to the extent possible, represent the demographic diversity of the population of the county. After soliciting recommendations from the public, the county governing body shall submit to the Governor the names of at least three persons for each vacancy occurring among the five members appointed by the Governor, and the Governor shall appoint members to the council from the candidates nominated by the county governing body. The Governor shall make a selection within a 45-day period or request a new list of candidates. All members appointed by the Governor shall have been residents of the county for the previous 24-month period. Such members shall be appointed for 4-year terms, except that the length of the terms of the initial appointees shall be adjusted to stagger the

terms. The Governor may remove a member for cause or upon the written petition of the county governing body. If any of the members of the council required to be appointed by the Governor under the provisions of this subsection shall resign, die, or be removed from office, the vacancy thereby created shall, as soon as practicable, be filled by appointment by the Governor, using the same method as the original appointment, and such appointment to fill a vacancy shall be for the unexpired term of the person who resigns, dies, or is removed from office.

(b) However, any county as defined in s. 125.011(1) may instead have a governing body ~~board~~ consisting of 33 members, including: the superintendent of schools; two representatives of public postsecondary education institutions located in the county; the county manager or the equivalent county officer; the district administrator from the appropriate district of the Department of Children and Family Services, or the administrator's designee who is a member of the Senior Management Service or the Selected Exempt Service; the director of the county health department or the director's designee; the state attorney for the county or the state attorney's designee; the chief judge assigned to juvenile cases, or another juvenile judge who is the chief judge's designee and who shall sit as a voting member of the board, except that the judge may not vote or participate in setting ad valorem taxes under this section; an individual who is selected by the board of the local United Way or its equivalent; a member of a locally recognized faith-based coalition, selected by that coalition; a member of the local chamber of commerce, selected by that chamber or, if more than one chamber exists within the county, a person selected by

a coalition of the local chambers; a member of the early learning coalition, selected by that coalition; a representative of a labor organization or union active in the county; a member of a local alliance or coalition engaged in cross-system planning for health and social service delivery in the county, selected by that alliance or coalition; a member of the local Parent-Teachers Association/Parent-Teacher-Student Association, selected by that association; a youth representative selected by the local school system's student government; a local school board member appointed by the chair of the school board; the mayor of the county or the mayor's designee; one member of the county governing body, appointed by the chair of that body; a member of the state Legislature who represents residents of the county~~, selected by the chair of the local legislative delegation~~; an elected official representing the residents of a municipality in the county, selected by the county municipal league; and 4 members-at-large, appointed to the council by the majority of sitting council members. The remaining 7 members shall be appointed by the Governor in accordance with procedures set forth in paragraph (a), except that the Governor may remove a member for cause or upon the written petition of the council. Appointments by the Governor must, to the extent reasonably possible, represent the geographic and demographic diversity of the population of the county. Members who are appointed to the council by reason of their position are not subject to the length of terms and limits on consecutive terms as provided in this section. The remaining appointed members of the governing body ~~board~~ shall be appointed to serve 2-year terms, except that those members appointed by the Governor shall be appointed to

serve 4-year terms, and the youth representative and the legislative delegate shall be appointed to serve 1-year terms. A member may be reappointed; however, a member may not serve for more than three consecutive terms. A member is eligible to be appointed again after a 2-year hiatus from the council.

(c) This subsection does not prohibit a county from exercising such power as is provided by general or special law to provide children's services or to create a special district to provide such services.

(4)(a) Any district created pursuant to this section may be dissolved by a special act of the Legislature, or the county governing body may by ordinance dissolve the district subject to the approval of the electorate.

(b)1.a. Notwithstanding paragraph (a), the governing body of the county shall submit the question of retention or dissolution of a district with voter-approved taxing authority to the electorate in the general election according to the following schedule:

(I) For a district in existence on July 1, 2010, and serving a county with a population of 400,000 or fewer persons as of that date.....2014.

(II) For a district in existence on July 1, 2010, and serving a county with a population of more than 400,000 but fewer than 2 million persons as of that date.....2016.

(III) For a district in existence on July 1, 2010, and serving a county with a population of 2 million or more persons as of that date.....2020.

b. A referendum by the electorate on or after July 1, 2010,

creating a new district with taxing authority may specify that the district is not subject to reauthorization or may specify the number of years for which the initial authorization shall remain effective. If the referendum does not prescribe terms of reauthorization, the governing body of the county shall submit the question of retention or dissolution of the district to the electorate in the general election 12 years after the initial authorization.

2. The governing body ~~board~~ of the district may specify, and submit to the governing body of the county no later than 9 months before the scheduled election, that the district is not subsequently subject to reauthorization or may specify the number of years for which a reauthorization under this paragraph shall remain effective. If the governing body ~~board~~ of the district makes such specification and submission, the governing body of the county shall include that information in the question submitted to the electorate. If the governing body ~~board~~ of the district does not specify and submit such information, the governing body of the county shall resubmit the question of reauthorization to the electorate every 12 years after the year prescribed in subparagraph 1. The governing body ~~board~~ of the district may recommend to the governing body of the county language for the question submitted to the electorate.

3. This paragraph does not limit ~~Nothing in this paragraph limits~~ the authority to dissolve a district as provided under paragraph (a).

4. This paragraph does not preclude ~~Nothing in this paragraph precludes~~ the governing body ~~board~~ of a district from requesting that the governing body of the county submit the

question of retention or dissolution of a district with voter-approved taxing authority to the electorate at a date earlier than the year prescribed in subparagraph 1. If the governing body of the county accepts the request and submits the question to the electorate, the governing body satisfies the requirement of that subparagraph.

If any district is dissolved pursuant to this subsection, each county must first obligate itself to assume the debts, liabilities, contracts, and outstanding obligations of the district within the total millage available to the county governing body for all county and municipal purposes as provided for under s. 9, Art. VII of the State Constitution. Any district may also be dissolved pursuant to part VII of chapter 189 ~~s. 189.4042~~.

(6) Any district created pursuant to the provisions of this section shall comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports required under part III of chapter 218, or any other report or documentation required by law, including the requirements of ss. 189.08, 189.015, and 189.016 ~~189.415, 189.417, and 189.418~~.

Section 6. Section 189.401, Florida Statutes, is transferred, renumbered as section 189.01, Florida Statutes, and amended to read:

189.01 ~~189.401~~ Short title.—This chapter may be cited as the "Uniform Special District Accountability Act ~~of 1989~~."

Section 7. Subsections (1), (6), and (7) of section 189.402, Florida Statutes, are transferred and renumbered as

subsections (1), (2), and (3), respectively, of section 189.011, Florida Statutes, and present subsection (6) of that section is amended, to read:

189.011 ~~189.402~~ Statement of legislative purpose and intent.—

(2)~~(6)~~ The Legislature finds that special districts serve a necessary and useful function by providing services to residents and property in the state. The Legislature finds further that special districts operate to serve a public purpose and that this is best secured by certain minimum standards of accountability designed to inform the public and appropriate general-purpose local governments of the status and activities of special districts. It is the intent of the Legislature that this public trust be secured by requiring each independent special district in the state to register and report its financial and other activities. The Legislature further finds that failure of an independent special district to comply with the minimum disclosure requirements set forth in this chapter may result in action against officers of such district body ~~board~~.

Section 8. Subsection (2) of section 189.402, Florida Statutes, is transferred, renumbered as section 189.06, Florida Statutes, and amended to read:

189.06 ~~189.402~~ Legislative intent; centralized location ~~Statement of legislative purpose and intent~~.—

~~(2)~~ It is the intent of the Legislature through the adoption of this chapter to have one centralized location for all legislation governing special districts and to:

(1)~~(a)~~ Improve the enforcement of statutes currently in

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place that help ensure the accountability of special districts to state and local governments.

(2)~~(b)~~ Improve communication and coordination between state agencies with respect to required special district reporting and state monitoring.

(3)~~(c)~~ Improve communication and coordination between special districts and other local entities with respect to ad valorem taxation, non-ad valorem assessment collection, special district elections, and local government comprehensive planning.

(4)~~(d)~~ Move toward greater uniformity in special district elections and non-ad valorem assessment collection procedures at the local level without hampering the efficiency and effectiveness of the current procedures.

(5)~~(e)~~ Clarify special district definitions and creation methods in order to ensure consistent application of those definitions and creation methods across all levels of government.

(6)~~(f)~~ Specify in general law the essential components of any new type of special district.

(7)~~(g)~~ Specify in general law the essential components of a charter for a new special district.

(8)~~(h)~~ Encourage the creation of municipal service taxing units and municipal service benefit units for providing municipal services in unincorporated areas of each county.

Section 9. Subsections (3), (4), (5), and (8) of section 189.402, Florida Statutes, are transferred, renumbered as subsections (1), (2), (3), and (4), respectively, of section 189.03, Florida Statutes, and amended to read:

189.03 ~~189.402~~ Statement of legislative purpose and intent;

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independent special districts.—

(1) ~~(3)~~ The Legislature finds that:

(a) There is a need for uniform, focused, and fair procedures in state law to provide a reasonable alternative for the establishment, powers, operation, and duration of independent special districts ~~to manage and finance basic capital infrastructure, facilities, and services; and that, based upon a proper and fair determination of applicable facts, an independent special district can constitute a timely, efficient, effective, responsive, and economic way to deliver these basic services, thereby providing a means of solving the state's planning, management, and financing needs for delivery of capital infrastructure, facilities, and services in order to provide for projected growth without overburdening other governments and their taxpayers~~.

(b) It is in the public interest that any independent special district created pursuant to state law not outlive its usefulness and that the operation of such a district and the exercise by the district of its powers be consistent with applicable due process, disclosure, accountability, ethics, and government-in-the-sunshine requirements which apply both to governmental entities and to their elected and appointed officials.

~~(c) It is in the public interest that long-range planning, management, and financing and long-term maintenance, upkeep, and operation of basic services by independent special districts be uniform.~~

(2) ~~(4)~~ It is the policy of this state:

(a) That independent special districts may be used ~~are a~~

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~~legitimate alternative method available for use~~ by the private and public sectors, as authorized by state law, to manage, own, operate, construct, and finance basic capital infrastructure, facilities, and services.

(b) That the exercise by any independent special district of its powers~~, as set forth by uniform general law~~ comply with all applicable ~~governmental comprehensive planning~~ laws, rules, and regulations.

(3) ~~(5)~~ It is the legislative intent ~~and purpose, based upon, and consistent with, its findings of fact and declarations of policy,~~ to authorize a uniform procedure by general law to create an independent special district, ~~as an alternative method to manage and finance basic capital infrastructure, facilities, and services. It is further the legislative intent~~ and ~~purpose~~ to provide by general law for the uniform operation, exercise of power, and procedure for termination of any such independent special district.

(4) ~~(8)~~ The Legislature finds and declares that:

(a) Growth and development issues transcend the boundaries and responsibilities of individual units of government, and often no single unit of government can plan or implement policies to deal with these issues without affecting other units of government.

(b) The provision of capital infrastructure, facilities, and services for the preservation and enhancement of the quality of life of the people of this state may require the creation of multicounty and multijurisdictional districts.

Section 10. Section 189.403, Florida Statutes, is transferred, renumbered as section 189.012, Florida Statutes,

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reordered, and amended, to read:

189.012 ~~189.403~~ Definitions.—As used in this chapter, the term:

(6)~~(1)~~ "Special district" means a ~~local~~ unit of local government created for a ~~of~~ special purpose, as opposed to a general purpose ~~general-purpose~~, which has jurisdiction to operate ~~government~~ within a limited geographic boundary and is~~,~~ created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. ~~The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), special districts shall be treated as municipalities.~~ The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

(2) "Dependent special district" means a special district that meets at least one of the following criteria:

(a) The membership of its governing body is identical to that of the governing body of a single county or a single municipality.

(b) All members of its governing body are appointed by the governing body of a single county or a single municipality.

(c) During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality.

(d) The district has a budget that requires approval

through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

This subsection is for purposes of definition only. Nothing in this subsection confers additional authority upon local governments not otherwise authorized by the provisions of the special acts or general acts of local application creating each special district, as amended.

(3) "Independent special district" means a special district that is not a dependent special district as defined in subsection (2). A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.

(1)~~(4)~~ "Department" means the Department of Economic Opportunity.

(4)~~(5)~~ "Local governing authority" means the governing body of a unit of local general-purpose government. However, if the special district is a political subdivision of a municipality, "local governing authority" means the municipality.

(7)~~(6)~~ "Water management district" for purposes of this chapter means a special taxing district which is a regional water management district created and operated pursuant to chapter 373 or chapter 61-691, Laws of Florida, or a flood control district created and operated pursuant to chapter 25270, Laws of Florida, 1949, as modified by s. 373.149.

(5)~~(7)~~ "Public facilities" means major capital improvements, including, but not limited to, transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water

facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and, except for spoil disposal by those ports listed in s. 311.09(1), spoil disposal sites for maintenance dredging in waters of the state.

Section 11. Subsection (1) of section 189.4031, Florida Statutes, is transferred and renumbered as section 189.013, Florida Statutes, and the catchline of that section shall read: "Special districts; creation, dissolution, and reporting requirements."

Section 12. Subsection (2) of section 189.4031, Florida Statutes, is transferred, renumbered as section 189.0311, Florida Statutes, and amended to read:

189.0311 ~~189.4031~~ Independent special districts ~~Special districts; creation, dissolution, and reporting requirements~~; charter requirements.—

~~(2)~~ Notwithstanding any general law, special act, or ordinance of a local government to the contrary, any independent special district charter enacted after September 30, 1989, ~~the effective date of this section~~ shall contain the information required by s. 189.031(3) ~~189.404(3)~~. Recognizing that the exclusive charter for a community development district is the statutory charter contained in ss. 190.006-190.041, community development districts established after July 1, 1980, pursuant to the provisions of chapter 190 shall be deemed in compliance with this requirement.

Section 13. Section 189.4035, Florida Statutes, is transferred and renumbered as section 189.061, Florida Statutes, and subsections (1), (5), and (6) of that section are amended,

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to read:

189.061 ~~189.4035~~ ~~Preparation of~~ Official list of special districts.—

(1) The department ~~of Economic Opportunity~~ shall maintain ~~compile~~ the official list of special districts. The official list of special districts shall include all special districts in this state and shall indicate the independent or dependent status of each district. All special districts on ~~in~~ the list shall be sorted by county. The definitions in s. 189.012 ~~189.403~~ shall be the criteria for determination of the independent or dependent status of each special district on the official list. The status of community development districts shall be independent on the official list of special districts.

(5) The official list of special districts shall be available on the department's website and must include a link to the website of each special district that provides web-based access to the public of the information and documentation required under s. 189.069.

(6) ~~Preparation of~~ The official list of special districts or the determination of status does not constitute final agency action pursuant to chapter 120. If the status of a special district on the official list is inconsistent with the status submitted by the district, the district may request the department to issue a declaratory statement setting forth the requirements necessary to resolve the inconsistency. If necessary, upon issuance of a declaratory statement by the department which is not appealed pursuant to chapter 120, the governing body ~~board~~ of any special district receiving such a declaratory statement shall apply to the entity which originally

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established the district for an amendment to its charter correcting the specified defects in its original charter. This amendment shall be for the sole purpose of resolving inconsistencies between a district charter and the status of a district as it appears on the official list. ~~Such application shall occur as follows:~~

~~(a) In the event a special district was created by a local general-purpose government or state agency and applies for an amendment to its charter to confirm its independence, said application shall be granted as a matter of right. If application by an independent district is not made within 6 months of rendition of a declaratory statement, the district shall be deemed dependent and become a political subdivision of the governing body which originally established it by operation of law.~~

~~(b) If the Legislature created a special district, the district shall request, by resolution, an amendment to its charter by the Legislature. Failure to apply to the Legislature for an amendment to its charter during the next regular legislative session following rendition of a declaratory statement or failure of the Legislature to pass a special act shall render the district dependent.~~

Section 14. Section 189.404, Florida Statutes, is transferred and renumbered as section 189.031, Florida Statutes, and subsection (2) and paragraphs (e), (f), and (g) of subsection (3) of that section are amended, to read:

189.031 ~~189.404~~ Legislative intent for the creation of independent special districts; special act prohibitions; model elements and other requirements; general-purpose local

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government/Governor and Cabinet creation authorizations.—

(2) SPECIAL ACTS PROHIBITED.—Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application which:

(a) Create independent special districts that do not, at a minimum, conform to the minimum requirements in subsection (3);

(b) Exempt independent special district elections from the appropriate requirements in s. 189.04 ~~189.405~~;

(c) Exempt an independent special district from the requirements for bond referenda in s. 189.042 ~~189.408~~;

(d) Exempt an independent special district from the reporting, notice, or public meetings requirements of s. 189.051, s. 189.08, s. 189.015, or s. 189.016 ~~189.4085, s. 189.415, s. 189.417, or s. 189.418~~;

(e) Create an independent special district for which a statement has not been submitted to the Legislature that documents the following:

1. The purpose of the proposed district;

2. The authority of the proposed district;

3. An explanation of why the district is the best alternative; and

4. A resolution or official statement of the governing body or an appropriate administrator of the local jurisdiction within which the proposed district is located stating that the creation of the proposed district is consistent with the approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

(3) MINIMUM REQUIREMENTS.—General laws or special acts that

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create or authorize the creation of independent special districts and are enacted after September 30, 1989, must address and require the following in their charters:

(e) The membership and organization of the governing body ~~board~~ of the district. If a district created after September 30, 1989, uses a one-acre/one-vote election principle, it shall provide for a governing body ~~board~~ consisting of five members. Three members shall constitute a quorum.

(f) The maximum compensation of a governing body ~~board~~ member.

(g) The administrative duties of the governing body ~~board~~ of the district.

Section 15. Section 189.40401, Florida Statutes, is transferred and renumbered as section 189.033, Florida Statutes.

Section 16. Section 189.4041, Florida Statutes, is transferred and renumbered as section 189.02, Florida Statutes, and paragraph (e) of subsection (4) of that section is amended, to read:

189.02 ~~189.4041~~ Dependent special districts.—

(4) Dependent special districts created by a county or municipality shall be created by adoption of an ordinance that includes:

(e) The membership, organization, compensation, and administrative duties of the governing body ~~board~~.

Section 17. Subsection (1) of section 189.4042, Florida Statutes, is transferred, renumbered as section 189.07, Florida Statutes, and amended to read:

189.07 ~~189.4042~~ Definitions ~~Merger and dissolution procedures~~.—

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~~(1) DEFINITIONS.—~~As used in this part ~~section~~, the term:

(1)~~(a)~~ "Component independent special district" means an independent special district that proposes to be merged into a merged independent district, or an independent special district as it existed before its merger into the merged independent district of which it is now a part.

(2)~~(b)~~ "Elector-initiated merger plan" means the merger plan of two or more independent special districts, a majority of whose qualified electors have elected to merge, which outlines the terms and agreements for the official merger of the districts and is finalized and approved by the governing bodies of the districts pursuant to this part ~~section~~.

(3)~~(c)~~ "Governing body" means the governing body of the independent special district in which the general legislative, governmental, or public powers of the district are vested and by authority of which the official business of the district is conducted.

(4)~~(d)~~ "Initiative" means the filing of a petition containing a proposal for a referendum to be placed on the ballot for election.

(5)~~(e)~~ "Joint merger plan" means the merger plan that is adopted by resolution of the governing bodies of two or more independent special districts that outlines the terms and agreements for the official merger of the districts and that is finalized and approved by the governing bodies pursuant to this part ~~section~~.

(6)~~(f)~~ "Merged independent district" means a single independent special district that results from a successful merger of two or more independent special districts pursuant to

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this part ~~section~~.

(7) ~~(g)~~ "Merger" means the combination of two or more contiguous independent special districts resulting in a newly created merged independent district that assumes jurisdiction over all of the component independent special districts.

(8) ~~(h)~~ "Merger plan" means a written document that contains the terms, agreements, and information regarding the merger of two or more independent special districts.

(9) ~~(i)~~ "Proposed elector-initiated merger plan" means a written document that contains the terms and information regarding the merger of two or more independent special districts and that accompanies the petition initiated by the qualified electors of the districts but that is not yet finalized and approved by the governing bodies of each component independent special district pursuant to this part ~~section~~.

(10) ~~(j)~~ "Proposed joint merger plan" means a written document that contains the terms and information regarding the merger of two or more independent special districts and that has been prepared pursuant to a resolution of the governing bodies of the districts but that is not yet finalized and approved by the governing bodies of each component independent special district pursuant to this part ~~section~~.

(11) ~~(k)~~ "Qualified elector" means an individual at least 18 years of age who is a citizen of the United States, a permanent resident of this state, and a resident of the district who registers with the supervisor of elections of a county within which the district lands are located when the registration books are open.

Section 18. Subsection (2) of section 189.4042, Florida

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Statutes, is transferred, renumbered as section 189.071, Florida Statutes, and amended to read:

189.071 ~~189.4042~~ Merger or ~~and~~ dissolution of a dependent special district ~~procedures~~.—

~~(2) MERGER OR DISSOLUTION OF A DEPENDENT SPECIAL DISTRICT.~~

(1) ~~(a)~~ The merger or dissolution of a dependent special district may be effectuated by an ordinance of the general-purpose local governmental entity wherein the geographical area of the district or districts is located. However, a county may not dissolve a special district that is dependent to a municipality or vice versa, or a dependent district created by special act.

(2) ~~(b)~~ The merger or dissolution of a dependent special district created and operating pursuant to a special act may be effectuated only by further act of the Legislature unless otherwise provided by general law.

(3) ~~(c)~~ A dependent special district that meets any criteria for being declared inactive, or that has already been declared inactive, pursuant to s. 189.062 ~~189.4044~~ may be dissolved or merged by special act without a referendum.

(4) ~~(d)~~ A copy of any ordinance and of any changes to a charter affecting the status or boundaries of one or more special districts shall be filed with the Special District Accountability ~~Information~~ Program within 30 days after such activity.

Section 19. Subsection (3) of section 189.4042, Florida Statutes, is transferred, renumbered as section 189.072, Florida Statutes, and amended to read:

189.072 ~~189.4042~~ Dissolution of an independent special

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district ~~Merger and dissolution procedures~~.—

~~(3) DISSOLUTION OF AN INDEPENDENT SPECIAL DISTRICT.—~~

(1)~~(a)~~ VOLUNTARY DISSOLUTION.—If the governing body ~~board~~ of an independent special district created and operating pursuant to a special act elects, by a majority vote plus one, to dissolve the district, the voluntary dissolution of an independent special district created and operating pursuant to a special act may be effectuated only by the Legislature unless otherwise provided by general law.

(2)~~(b)~~ OTHER DISSOLUTIONS.—

(a)~~1.~~ In order for the Legislature to dissolve an active independent special district created and operating pursuant to a special act, the special act dissolving the active independent special district must be approved by a majority of the resident electors of the district or, for districts in which a majority of governing body ~~board~~ members are elected by landowners, a majority of the landowners voting in the same manner by which the independent special district's governing body is elected. If a local general-purpose government passes an ordinance or resolution in support of the dissolution, the local general-purpose government must pay any expenses associated with the referendum required under this paragraph ~~subparagraph~~.

(b)~~2.~~ If an independent special district was created by a county or municipality by referendum or any other procedure, the county or municipality that created the district may dissolve the district pursuant to a referendum or any other procedure by which the independent special district was created. However, if the independent special district has ad valorem taxation powers, the same procedure required to grant the independent special

district ad valorem taxation powers is required to dissolve the district.

(3)~~(c)~~ INACTIVE INDEPENDENT SPECIAL DISTRICTS.—An independent special district that meets any criteria for being declared inactive, or that has already been declared inactive, pursuant to s. 189.062 ~~189.4044~~ may be dissolved by special act without a referendum. If an inactive independent special district was created by a county or municipality through a referendum, the county or municipality that created the district may dissolve the district after publishing notice as described in s. 189.062 ~~189.4044~~.

(4)~~(d)~~ DEBTS AND ASSETS.—Financial allocations of the assets and indebtedness of a dissolved independent special district shall be pursuant to s. 189.076 ~~189.4045~~.

Section 20. Subsection (4) of section 189.4042, Florida Statutes, is transferred, renumbered as section 189.073, Florida Statutes, and amended to read:

189.073 ~~189.4042~~ Legislative merger of independent special districts ~~Merger and dissolution procedures~~.—

~~(4) LEGISLATIVE MERGER OF INDEPENDENT SPECIAL DISTRICTS.—~~ The Legislature, by special act, may merge independent special districts created and operating pursuant to special act.

Section 21. Subsection (5) of section 189.4042, Florida Statutes, is transferred, renumbered as section 189.074, Florida Statutes, and amended to read:

189.074 ~~189.4042~~ Voluntary merger of independent special districts ~~Merger and dissolution procedures~~.—

~~(5) VOLUNTARY MERGER OF INDEPENDENT SPECIAL DISTRICTS.—~~ Two or more contiguous independent special districts created by

special act which have similar functions and elected governing bodies may elect to merge into a single independent district through the act of merging the component independent special districts.

(1)~~(a)~~ INITIATION.—Merger proceedings may commence by:

(a)~~1.~~ A joint resolution of the governing bodies of each independent special district which endorses a proposed joint merger plan; or

(b)~~2.~~ A qualified elector initiative.

(2)~~(b)~~ JOINT MERGER PLAN BY RESOLUTION.—The governing bodies of two or more contiguous independent special districts may, by joint resolution, endorse a proposed joint merger plan to commence proceedings to merge the districts pursuant to this section ~~subsection~~.

(a)~~1.~~ The proposed joint merger plan must specify:

1.~~a.~~ The name of each component independent special district to be merged;

2.~~b.~~ The name of the proposed merged independent district;

3.~~c.~~ The rights, duties, and obligations of the proposed merged independent district;

4.~~d.~~ The territorial boundaries of the proposed merged independent district;

5.~~e.~~ The governmental organization of the proposed merged independent district insofar as it concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials;

6.~~f.~~ A fiscal estimate of the potential cost or savings as a result of the merger;

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7.~~g.~~ Each component independent special district's assets, including, but not limited to, real and personal property, and the current value thereof;

8.~~h.~~ Each component independent special district's liabilities and indebtedness, bonded and otherwise, and the current value thereof;

9.~~i.~~ Terms for the assumption and disposition of existing assets, liabilities, and indebtedness of each component independent special district jointly, separately, or in defined proportions;

10.~~j.~~ Terms for the common administration and uniform enforcement of existing laws within the proposed merged independent district;

11.~~k.~~ The times and places for public hearings on the proposed joint merger plan;

12.~~l.~~ The times and places for a referendum in each component independent special district on the proposed joint merger plan, along with the referendum language to be presented for approval; and

13.~~m.~~ The effective date of the proposed merger.

(b)~~2.~~ The resolution endorsing the proposed joint merger plan must be approved by a majority vote of the governing bodies of each component independent special district and adopted at least 60 business days before any general or special election on the proposed joint merger plan.

(c)~~3.~~ Within 5 business days after the governing bodies approve the resolution endorsing the proposed joint merger plan, the governing bodies must:

1.~~a.~~ Cause a copy of the proposed joint merger plan, along

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with a descriptive summary of the plan, to be displayed and be readily accessible to the public for inspection in at least three public places within the territorial limits of each component independent special district, unless a component independent special district has fewer than three public places, in which case the plan must be accessible for inspection in all public places within the component independent special district;

2.~~b.~~ If applicable, cause the proposed joint merger plan, along with a descriptive summary of the plan and a reference to the public places within each component independent special district where a copy of the merger plan may be examined, to be displayed on a website maintained by each district or on a website maintained by the county or municipality in which the districts are located; and

3.~~c.~~ Arrange for a descriptive summary of the proposed joint merger plan, and a reference to the public places within the district where a copy may be examined, to be published in a newspaper of general circulation within the component independent special districts at least once each week for 4 successive weeks.

(d)~~4.~~ The governing body of each component independent special district shall set a time and place for one or more public hearings on the proposed joint merger plan. Each public hearing shall be held on a weekday at least 7 business days after the day the first advertisement is published on the proposed joint merger plan. The hearing or hearings may be held jointly or separately by the governing bodies of the component independent special districts. Any interested person residing in the respective district shall be given a reasonable opportunity

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to be heard on any aspect of the proposed merger at the public hearing.

1.~~a.~~ Notice of the public hearing addressing the resolution for the proposed joint merger plan must be published pursuant to the notice requirements in s. 189.015 ~~189.417~~ and must provide a descriptive summary of the proposed joint merger plan and a reference to the public places within the component independent special districts where a copy of the plan may be examined.

2.~~b.~~ After the final public hearing, the governing bodies of each component independent special district may amend the proposed joint merger plan if the amended version complies with the notice and public hearing requirements provided in this section ~~subsection~~. Thereafter, the governing bodies may approve a final version of the joint merger plan or decline to proceed further with the merger. Approval by the governing bodies of the final version of the joint merger plan must occur within 60 business days after the final hearing.

(e)~~5.~~ After the final public hearing, the governing bodies shall notify the supervisors of elections of the applicable counties in which district lands are located of the adoption of the resolution by each governing body. The supervisors of elections shall schedule a separate referendum for each component independent special district. The referenda may be held in each district on the same day, or on different days, but no more than 20 days apart.

1.~~a.~~ Notice of a referendum on the merger of independent special districts must be provided pursuant to the notice requirements in s. 100.342. At a minimum, the notice must include:

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a.~~(I)~~ A brief summary of the resolution and joint merger plan;

b.~~(II)~~ A statement as to where a copy of the resolution and joint merger plan may be examined;

c.~~(III)~~ The names of the component independent special districts to be merged and a description of their territory;

d.~~(IV)~~ The times and places at which the referendum will be held; and

e.~~(V)~~ Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns.

2.~~b.~~ The referenda must be held in accordance with the Florida Election Code and may be held pursuant to ss. 101.6101-101.6107. All costs associated with the referenda shall be borne by the respective component independent special district.

3.~~c.~~ The ballot question in such referendum placed before the qualified electors of each component independent special district to be merged must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)...?

....YES

....NO"

4.~~d.~~ If the component independent special districts proposing to merge have disparate millage rates, the ballot

question in the referendum placed before the qualified electors of each component independent special district must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)... if the voter-approved maximum millage rate within each independent special district will not increase absent a subsequent referendum?

....YES

....NO"

5.~~e.~~ In any referendum held pursuant to this section ~~subsection~~, the ballots shall be counted, returns made and canvassed, and results certified in the same manner as other elections or referenda for the component independent special districts.

6.~~f.~~ The merger may not take effect unless a majority of the votes cast in each component independent special district are in favor of the merger. If one of the component districts does not obtain a majority vote, the referendum fails, and merger does not take effect.

7.~~g.~~ If the merger is approved by a majority of the votes cast in each component independent special district, the merged independent district is created. Upon approval, the merged independent district shall notify the Special District Accountability ~~Information~~ Program pursuant to s. 189.016(2)

~~189.418(2)~~ and the local general-purpose governments in which any part of the component independent special districts is situated pursuant to s. 189.016(7) ~~189.418(7)~~.

8.~~h.~~ If the referendum fails, the merger process under this subsection ~~paragraph~~ may not be initiated for the same purpose within 2 years after the date of the referendum.

(f)~~6.~~ Component independent special districts merged pursuant to a joint merger plan by resolution shall continue to be governed as before the merger until the effective date specified in the adopted joint merger plan.

(3)~~(c)~~ QUALIFIED ELECTOR-INITIATED MERGER PLAN.—The qualified electors of two or more contiguous independent special districts may commence a merger proceeding by each filing a petition with the governing body of their respective independent special district proposing to be merged. The petition must contain the signatures of at least 40 percent of the qualified electors of each component independent special district and must be submitted to the appropriate component independent special district governing body no later than 1 year after the start of the qualified elector-initiated merger process.

(a)~~1.~~ The petition must comply with, and be circulated in, the following form:

PETITION FOR
INDEPENDENT SPECIAL DISTRICT MERGER

We, the undersigned electors and legal voters of ...(name of independent special district)..., qualified to vote at the next general or special election, respectfully petition that

there be submitted to the electors and legal voters of ...(name of independent special district or districts proposed to be merged)..., for their approval or rejection at a referendum held for that purpose, a proposal to merge ...(name of component independent special district)... and ...(name of component independent special district or districts)....

In witness thereof, we have signed our names on the date indicated next to our signatures.

Date Name Home Address
(print under signature)

.....

.....

(b)~~2.~~ The petition must be validated by a signed statement by a witness who is a duly qualified elector of one of the component independent special districts, a notary public, or another person authorized to take acknowledgments.

1.~~a.~~ A statement that is signed by a witness who is a duly qualified elector of the respective district shall be accepted for all purposes as the equivalent of an affidavit. Such statement must be in substantially the following form:

"I, ...(name of witness)..., state that I am a duly qualified voter of ...(name of independent special district).... Each of the ...(insert number)... persons who have signed this petition sheet has signed his or her name in my presence on the

dates indicated above and identified himself or herself to be the same person who signed the sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a materially false statement, shall subject me to the penalties of perjury."

Date Signature of Witness

2.~~b.~~ A statement that is signed by a notary public or another person authorized to take acknowledgments must be in substantially the following form:

"On the date indicated above before me personally came each of the ...(insert number)... electors and legal voters whose signatures appear on this petition sheet, who signed the petition in my presence and who, being by me duly sworn, each for himself or herself, identified himself or herself as the same person who signed the petition, and I declare that the foregoing information they provided was true."

Date Signature of Witness

3.~~c.~~ An alteration or correction of information appearing on a petition's signature line, other than an uninitialed signature and date, does not invalidate such signature. In matters of form, this subsection ~~paragraph~~ shall be liberally construed, not inconsistent with substantial compliance thereto and the prevention of fraud.

4.~~d.~~ The appropriately signed petition must be filed with the governing body of each component independent special district. The petition must be submitted to the supervisors of elections of the counties in which the district lands are located. The supervisors shall, within 30 business days after receipt of the petitions, certify to the governing bodies the

number of signatures of qualified electors contained on the petitions.

(c)~~3.~~ Upon verification by the supervisors of elections of the counties within which component independent special district lands are located that 40 percent of the qualified electors have petitioned for merger and that all such petitions have been executed within 1 year after the date of the initiation of the qualified-elector merger process, the governing bodies of each component independent special district shall meet within 30 business days to prepare and approve by resolution a proposed elector-initiated merger plan. The proposed plan must include:

1.~~a.~~ The name of each component independent special district to be merged;

2.~~b.~~ The name of the proposed merged independent district;

3.~~c.~~ The rights, duties, and obligations of the merged independent district;

4.~~d.~~ The territorial boundaries of the proposed merged independent district;

5.~~e.~~ The governmental organization of the proposed merged independent district insofar as it concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials;

6.~~f.~~ A fiscal estimate of the potential cost or savings as a result of the merger;

7.~~g.~~ Each component independent special district's assets, including, but not limited to, real and personal property, and the current value thereof;

8.~~h.~~ Each component independent special district's

liabilities and indebtedness, bonded and otherwise, and the current value thereof;

9.~~i.~~ Terms for the assumption and disposition of existing assets, liabilities, and indebtedness of each component independent special district, jointly, separately, or in defined proportions;

10.~~j.~~ Terms for the common administration and uniform enforcement of existing laws within the proposed merged independent district;

11.~~k.~~ The times and places for public hearings on the proposed joint merger plan; and

12.~~l.~~ The effective date of the proposed merger.

(d)~~4.~~ The resolution endorsing the proposed elector-initiated merger plan must be approved by a majority vote of the governing bodies of each component independent special district and must be adopted at least 60 business days before any general or special election on the proposed elector-initiated plan.

(e)~~5.~~ Within 5 business days after the governing bodies of each component independent special district approve the proposed elector-initiated merger plan, the governing bodies shall:

1.~~a.~~ Cause a copy of the proposed elector-initiated merger plan, along with a descriptive summary of the plan, to be displayed and be readily accessible to the public for inspection in at least three public places within the territorial limits of each component independent special district, unless a component independent special district has fewer than three public places, in which case the plan must be accessible for inspection in all public places within the component independent special district;

2.~~b.~~ If applicable, cause the proposed elector-initiated

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merger plan, along with a descriptive summary of the plan and a reference to the public places within each component independent special district where a copy of the merger plan may be examined, to be displayed on a website maintained by each district or otherwise on a website maintained by the county or municipality in which the districts are located; and

3.~~c.~~ Arrange for a descriptive summary of the proposed elector-initiated merger plan, and a reference to the public places within the district where a copy may be examined, to be published in a newspaper of general circulation within the component independent special districts at least once each week for 4 successive weeks.

(f)~~6.~~ The governing body of each component independent special district shall set a time and place for one or more public hearings on the proposed elector-initiated merger plan. Each public hearing shall be held on a weekday at least 7 business days after the day the first advertisement is published on the proposed elector-initiated merger plan. The hearing or hearings may be held jointly or separately by the governing bodies of the component independent special districts. Any interested person residing in the respective district shall be given a reasonable opportunity to be heard on any aspect of the proposed merger at the public hearing.

1.~~a.~~ Notice of the public hearing on the proposed elector-initiated merger plan must be published pursuant to the notice requirements in s. 189.015 ~~189.417~~ and must provide a descriptive summary of the elector-initiated merger plan and a reference to the public places within the component independent special districts where a copy of the plan may be examined.

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2.~~b.~~ After the final public hearing, the governing bodies of each component independent special district may amend the proposed elector-initiated merger plan if the amended version complies with the notice and public hearing requirements provided in this section ~~subsection~~. The governing bodies must approve a final version of the merger plan within 60 business days after the final hearing.

(g)~~7.~~ After the final public hearing, the governing bodies shall notify the supervisors of elections of the applicable counties in which district lands are located of the adoption of the resolution by each governing body. The supervisors of elections shall schedule a date for the separate referenda for each district. The referenda may be held in each district on the same day, or on different days, but no more than 20 days apart.

1.~~a.~~ Notice of a referendum on the merger of the component independent special districts must be provided pursuant to the notice requirements in s. 100.342. At a minimum, the notice must include:

a.~~(I)~~ A brief summary of the resolution and elector-initiated merger plan;

b.~~(II)~~ A statement as to where a copy of the resolution and petition for merger may be examined;

c.~~(III)~~ The names of the component independent special districts to be merged and a description of their territory;

d.~~(IV)~~ The times and places at which the referendum will be held; and

e.~~(V)~~ Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns.

2.~~b.~~ The referenda must be held in accordance with the Florida Election Code and may be held pursuant to ss. 101.6101-101.6107. All costs associated with the referenda shall be borne by the respective component independent special district.

3.~~c.~~ The ballot question in such referendum placed before the qualified electors of each component independent special district to be merged must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)...?

....YES

....NO"

4.~~d.~~ If the component independent special districts proposing to merge have disparate millage rates, the ballot question in the referendum placed before the qualified electors of each component independent special district must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)... if the voter-approved maximum millage rate within each independent special district will not increase absent a subsequent referendum?

....YES

....NO"

5.~~e.~~ In any referendum held pursuant to this section ~~subsection~~, the ballots shall be counted, returns made and

canvassed, and results certified in the same manner as other elections or referenda for the component independent special districts.

6.~~f.~~ The merger may not take effect unless a majority of the votes cast in each component independent special district are in favor of the merger. If one of the component independent special districts does not obtain a majority vote, the referendum fails, and merger does not take effect.

7.~~g.~~ If the merger is approved by a majority of the votes cast in each component independent special district, the merged district shall notify the Special District Accountability ~~Information~~ Program pursuant to s. 189.016(2) ~~189.418(2)~~ and the local general-purpose governments in which any part of the component independent special districts is situated pursuant to s. 189.016(7) ~~189.418(7)~~.

8.~~h.~~ If the referendum fails, the merger process under this subsection ~~paragraph~~ may not be initiated for the same purpose within 2 years after the date of the referendum.

(h)~~8.~~ Component independent special districts merged pursuant to an elector-initiated merger plan shall continue to be governed as before the merger until the effective date specified in the adopted elector-initiated merger plan.

(4)~~(d)~~ EFFECTIVE DATE.—The effective date of the merger shall be as provided in the joint merger plan or elector-initiated merger plan, as appropriate, and is not contingent upon the future act of the Legislature.

(a)~~1.~~ However, as soon as practicable, the merged independent district shall, at its own expense, submit a unified charter for the merged district to the Legislature for approval.

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The unified charter must make the powers of the district consistent within the merged independent district and repeal the special acts of the districts which existed before the merger.

(b)~~2.~~ Within 30 business days after the effective date of the merger, the merged independent district's governing body, as indicated in this section ~~subsection~~, shall hold an organizational meeting to implement the provisions of the joint merger plan or elector-initiated merger plan, as appropriate.

(5)~~(c)~~ RESTRICTIONS DURING TRANSITION PERIOD.—Until the Legislature formally approves the unified charter pursuant to a special act, each component independent special district is considered a subunit of the merged independent district subject to the following restrictions:

(a)~~1.~~ During the transition period, the merged independent district is limited in its powers and financing capabilities within each subunit to those powers that existed within the boundaries of each subunit which were previously granted to the component independent special district in its existing charter before the merger. The merged independent district may not, solely by reason of the merger, increase its powers or financing capability.

(b)~~2.~~ During the transition period, the merged independent district shall exercise only the legislative authority to levy and collect revenues within the boundaries of each subunit which was previously granted to the component independent special district by its existing charter before the merger, including the authority to levy ad valorem taxes, non-ad valorem assessments, impact fees, and charges.

1.~~a.~~ The merged independent district may not, solely by

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reason of the merger or the legislatively approved unified charter, increase ad valorem taxes on property within the original limits of a subunit beyond the maximum millage rate approved by the electors of the component independent special district unless the electors of such subunit approve an increase at a subsequent referendum of the subunit's electors. Each subunit may be considered a separate taxing unit.

2.~~b.~~ The merged independent district may not, solely by reason of the merger, charge non-ad valorem assessments, impact fees, or other new fees within a subunit which were not otherwise previously authorized to be charged.

(c)~~3.~~ During the transition period, each component independent special district of the merged independent district must continue to file all information and reports required under this chapter as subunits until the Legislature formally approves the unified charter pursuant to a special act.

(d)~~4.~~ The intent of this part ~~section~~ is to preserve and transfer to the merged independent district all authority that exists within each subunit and was previously granted by the Legislature and, if applicable, by referendum.

(6)~~(f)~~ EFFECT OF MERGER, GENERALLY.—On and after the effective date of the merger, the merged independent district shall be treated and considered for all purposes as one entity under the name and on the terms and conditions set forth in the joint merger plan or elector-initiated merger plan, as appropriate.

(a)~~1.~~ All rights, privileges, and franchises of each component independent special district and all assets, real and personal property, books, records, papers, seals, and equipment,

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as well as other things in action, belonging to each component independent special district before the merger shall be deemed as transferred to and vested in the merged independent district without further act or deed.

(b)~~2.~~ All property, rights-of-way, and other interests are as effectually the property of the merged independent district as they were of the component independent special district before the merger. The title to real estate, by deed or otherwise, under the laws of this state vested in any component independent special district before the merger may not be deemed to revert or be in any way impaired by reason of the merger.

(c)~~3.~~ The merged independent district is in all respects subject to all obligations and liabilities imposed and possesses all the rights, powers, and privileges vested by law in other similar entities.

(d)~~4.~~ Upon the effective date of the merger, the joint merger plan or elector-initiated merger plan, as appropriate, is subordinate in all respects to the contract rights of all holders of any securities or obligations of the component independent special districts outstanding at the effective date of the merger.

(e)~~5.~~ The new registration of electors is not necessary as a result of the merger, but all elector registrations of the component independent special districts shall be transferred to the proper registration books of the merged independent district, and new registrations shall be made as provided by law as if no merger had taken place.

(7)~~(g)~~ GOVERNING BODY OF MERGED INDEPENDENT DISTRICT.—

(a)~~1.~~ From the effective date of the merger until the next

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general election, the governing body of the merged independent district shall be comprised of the governing body members of each component independent special district, with such members serving until the governing body members elected at the next general election take office.

(b) ~~2.~~ Beginning with the next general election following the effective date of merger, the governing body of the merged independent district shall be comprised of five members. The office of each governing body member shall be designated by seat, which shall be distinguished from other body member seats by an assigned numeral: 1, 2, 3, 4, or 5. The governing body members that are elected in this initial election following the merger shall serve unequal terms of 2 and 4 years in order to create staggered membership of the governing body, with:

1. ~~a.~~ Member seats 1, 3, and 5 being designated for 4-year terms; and

2. ~~b.~~ Member seats 2 and 4 being designated for 2-year terms.

(c) ~~3.~~ In general elections thereafter, all governing body members shall serve 4-year terms.

(8) ~~(h)~~ EFFECT ON EMPLOYEES.—Except as otherwise provided by law and except for those officials and employees protected by tenure of office, civil service provisions, or a collective bargaining agreement, upon the effective date of merger, all appointive offices and positions existing in all component independent special districts involved in the merger are subject to the terms of the joint merger plan or elector-initiated merger plan, as appropriate. Such plan may provide for instances in which there are duplications of positions and for other

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matters such as varying lengths of employee contracts, varying pay levels or benefits, different civil service regulations in the constituent entities, and differing ranks and position classifications for similar positions. For those employees who are members of a bargaining unit certified by the Public Employees Relations Commission, the requirements of chapter 447 apply.

(9) ~~(i)~~ EFFECT ON DEBTS, LIABILITIES, AND OBLIGATIONS.—

(a) ~~1.~~ All valid and lawful debts and liabilities existing against a merged independent district, or which may arise or accrue against the merged independent district, which but for merger would be valid and lawful debts or liabilities against one or more of the component independent special districts, are debts against or liabilities of the merged independent district and accordingly shall be defrayed and answered to by the merged independent district to the same extent, and no further than, the component independent special districts would have been bound if a merger had not taken place.

(b) ~~2.~~ The rights of creditors and all liens upon the property of any of the component independent special districts shall be preserved unimpaired. The respective component districts shall be deemed to continue in existence to preserve such rights and liens, and all debts, liabilities, and duties of any of the component districts attach to the merged independent district.

(c) ~~3.~~ All bonds, contracts, and obligations of the component independent special districts which exist as legal obligations are obligations of the merged independent district, and all such obligations shall be issued or entered into by and

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in the name of the merged independent district.

(10) ~~(j)~~ EFFECT ON ACTIONS AND PROCEEDINGS.—In any action or proceeding pending on the effective date of merger to which a component independent special district is a party, the merged independent district may be substituted in its place, and the action or proceeding may be prosecuted to judgment as if merger had not taken place. Suits may be brought and maintained against a merged independent district in any state court in the same manner as against any other independent special district.

(11) ~~(k)~~ EFFECT ON ANNEXATION.—Chapter 171 continues to apply to all annexations by a city within the component independent special districts' boundaries after merger occurs. Any moneys owed to a component independent special district pursuant to s. 171.093, or any interlocal service boundary agreement as a result of annexation predating the merger, shall be paid to the merged independent district after merger.

(12) ~~(l)~~ EFFECT ON MILLAGE CALCULATIONS.—The merged independent special district is authorized to continue or conclude procedures under chapter 200 on behalf of the component independent special districts. The merged independent special district shall make the calculations required by chapter 200 for each component individual special district separately.

(13) ~~(m)~~ DETERMINATION OF RIGHTS.—If any right, title, interest, or claim arises out of a merger or by reason thereof which is not determinable by reference to this subsection, the joint merger plan or elector-initiated merger plan, as appropriate, or otherwise under the laws of this state, the governing body of the merged independent district may provide therefor in a manner conforming to law.

(14) ~~(n)~~ EXEMPTION.—This section ~~subsection~~ does not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district.

(15) ~~(o)~~ PREEMPTION.—This section ~~subsection~~ preempts any special act to the contrary.

Section 22. Subsection (6) of section 189.4042, Florida Statutes, is transferred, renumbered as section 189.075, Florida Statutes, and amended to read:

189.075 ~~189.4042~~ Involuntary merger of independent special districts ~~Merger and dissolution procedures~~.—

~~(6) INVOLUNTARY MERGER OF INDEPENDENT SPECIAL DISTRICTS.—~~

(1) ~~(a)~~ INDEPENDENT SPECIAL DISTRICTS CREATED BY SPECIAL ACT.—In order for the Legislature to merge an active independent special district or districts created and operating pursuant to a special act, the special act merging the active independent special district or districts must be approved at separate referenda of the impacted local governments by a majority of the resident electors or, for districts in which a majority of governing body ~~board~~ members are elected by landowners, a majority of the landowners voting in the same manner by which each independent special district's governing body is elected. The special act merging the districts must include a plan of merger that addresses transition issues such as the effective date of the merger, governance, administration, powers, pensions, and assumption of all assets and liabilities. If a local general-purpose government passes an ordinance or resolution in support of the merger of an active independent special district, the local general-purpose government must pay

any expenses associated with the referendum required under this subsection ~~paragraph~~.

(2)~~(b)~~ INDEPENDENT SPECIAL DISTRICTS CREATED BY A COUNTY OR MUNICIPALITY.—A county or municipality may merge an independent special district created by the county or municipality pursuant to a referendum or any other procedure by which the independent special district was created. However, if the independent special district has ad valorem taxation powers, the same procedure required to grant the independent special district ad valorem taxation powers is required to merge the district. The political subdivisions proposing the involuntary merger of an active independent special district must pay any expenses associated with the referendum required under this subsection ~~paragraph~~.

(3)~~(c)~~ INACTIVE INDEPENDENT SPECIAL DISTRICTS.—An independent special district that meets any criteria for being declared inactive, or that has already been declared inactive, pursuant to s. 189.062 ~~189.4044~~ may be merged by special act without a referendum.

Section 23. Subsection (7) of section 189.4042, Florida Statutes, is transferred, renumbered as section 189.0761, Florida Statutes, and amended to read:

189.0761 ~~189.4042 Merger and dissolution procedures.—~~

~~(7)~~ Exemptions.—This part ~~section~~ does not apply to community development districts implemented pursuant to chapter 190 or to water management districts created and operated pursuant to chapter 373.

Section 24. Section 189.4044, Florida Statutes, is transferred and renumbered as section 189.062, Florida Statutes,

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subsections (1) and (3) of that section are amended, and subsections (5) and (6) are added to that section, to read:

189.062 ~~189.4044~~ Special procedures for inactive districts.—

(1) The department shall declare inactive any special district in this state by documenting that:

(a) The special district meets one of the following criteria:

1. The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has taken no action for 2 or more years.~~;~~

2. ~~Following an inquiry from the department,~~ The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has not had a governing body ~~board~~ or a sufficient number of governing body ~~board~~ members to constitute a quorum for 2 or more years.

3. ~~or~~ The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government fails to respond to an ~~the department's~~ inquiry from the department within 21 days.~~;~~

4.~~3.~~ The department determines, pursuant to s. 189.067 ~~189.421~~, that the district has failed to file any of the reports listed in s. 189.066. ~~189.419;~~

5.~~4.~~ The district has not had a registered office and agent on file with the department for 1 or more years.~~; or~~

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6.5. The governing body of a special district provides documentation to the department that it has unanimously adopted a resolution declaring the special district inactive. The special district shall be responsible for payment of any expenses associated with its dissolution. A special district declared inactive pursuant to this subparagraph may be dissolved without a referendum.

(b) The department, special district, or local general-purpose government published a notice of proposed declaration of inactive status in a newspaper of general circulation in the county or municipality in which the territory of the special district is located and sent a copy of such notice by certified mail to the registered agent or chair of the governing body board, if any. Such notice must include the name of the special district, the law under which it was organized and operating, a general description of the territory included in the special district, and a statement that any objections must be filed pursuant to chapter 120 within 21 days after the publication date; and

(c) Twenty-one days have elapsed from the publication date of the notice of proposed declaration of inactive status and no administrative appeals were filed.

(3) In the case of a district created by special act of the Legislature, the department shall send a notice of declaration of inactive status to the Speaker of the House of Representatives, and the President of the Senate, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, and the

Legislative Auditing Committee. The notice of declaration of inactive status shall reference each known special act creating or amending the charter of any special district declared to be inactive under this section. The declaration of inactive status shall be sufficient notice as required by s. 10, Art. III of the State Constitution to authorize the Legislature to repeal any special laws so reported. In the case of a district created by one or more local general-purpose governments, the department shall send a notice of declaration of inactive status to the chair of the governing body of each local general-purpose government that created the district. In the case of a district created by interlocal agreement, the department shall send a notice of declaration of inactive status to the chair of the governing body of each local general-purpose government which entered into the interlocal agreement.

(5) A special district declared inactive under this section may not collect taxes, fees, or assessments unless the declaration is:

(a) Withdrawn or revoked by the department; or

(b) Invalidated in proceedings initiated by the special district within 30 days after the date written notice of the declaration was provided to the special district governing body by physical or electronic delivery, receipt confirmed. The special district governing body may initiate invalidation proceedings within the period authorized in this paragraph by:

1. Filing with the department a petition for an administrative hearing pursuant to s. 120.569; or

2. Filing an action for declaratory and injunctive relief under chapter 86 in the circuit court of the judicial circuit in

which the majority of the geographic area of the district is located.

(6) If the governing body of a special district that is declared inactive pursuant to this section does not initiate a timely challenge to such declaration or if the department prevails in a proceeding initiated under subsection (5), the department may enforce the prohibitions in subsection (5) by filing a petition for enforcement with the circuit court in and for Leon County. The petition may request declaratory, injunctive, or other equitable relief, including the appointment of a receiver, and any forfeiture or other remedy provided by law. The prevailing party shall be awarded costs of litigation and reasonable attorney fees in any proceeding brought under this subsection and subsection (5).

Section 25. Section 189.4045, Florida Statutes, is transferred and renumbered as section 189.076, Florida Statutes.

Section 26. Section 189.4047, Florida Statutes, is transferred and renumbered as section 189.021, Florida Statutes.

Section 27. Subsections (1), (2), (3), (4), (6), and (7) of section 189.405, Florida Statutes, are transferred and renumbered as subsections (1) through (6) of section 189.04, Florida Statutes, respectively, and present subsection (1), paragraph (c) of present subsection (2), and present subsections (3), (4), and (7) of that section are amended, to read:

189.04 ~~189.405~~ Elections; general requirements and procedures~~; education programs~~.—

(1) If a dependent special district has an elected governing body ~~board~~, elections shall be conducted by the supervisor of elections of the county wherein the district is

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located in accordance with the Florida Election Code, chapters 97-106.

(2)

(c) A candidate for a position on a governing body ~~board~~ of a single-county special district that has its elections conducted by the supervisor of elections shall qualify for the office with the county supervisor of elections in whose jurisdiction the district is located. Elections for governing body ~~board~~ members elected by registered electors shall be nonpartisan, except when partisan elections are specified by a district's charter. Candidates shall qualify as directed by chapter 99. The qualifying fee shall be remitted to the general revenue fund of the qualifying officer to help defray the cost of the election.

(3)(a) If a multicounty special district has a popularly elected governing body ~~board~~, elections for the purpose of electing members to such governing body ~~board~~ shall conform to the Florida Election Code, chapters 97-106.

(b) With the exception of those districts conducting elections on a one-acre/one-vote basis, qualifying for multicounty special district governing body ~~board~~ positions shall be coordinated by the Department of State. Elections for governing body ~~board~~ members elected by registered electors shall be nonpartisan, except when partisan elections are specified by a district's charter. Candidates shall qualify as directed by chapter 99. The qualifying fee shall be remitted to the Department of State.

(4) With the exception of elections of special district governing body ~~board~~ members conducted on a one-acre/one-vote

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basis, in any election conducted in a special district the decision made by a majority of those voting shall prevail, except as otherwise specified by law.

(6)~~(7)~~ Nothing in this act requires that a special district governed by an appointed governing body ~~board~~ convert to an elected governing body ~~board~~.

Section 28. Subsection (5) of section 189.405, Florida Statutes, is transferred, renumbered as section 189.063, Florida Statutes, and amended to read:

189.063 ~~189.405~~ Education programs for new members of district governing bodies ~~Elections; general requirements and procedures; education programs~~.—

(1)~~(5)(a)~~ The department may provide, contract for, or assist in conducting education programs, as its budget permits, for all newly elected or appointed members of district governing bodies ~~boards~~. The education programs shall include, but are not limited to, courses on the code of ethics for public officers and employees, public meetings and public records requirements, public finance, and parliamentary procedure. ~~Course content may be offered by means of the following: videotapes, live seminars, workshops, conferences, teleconferences, computer-based training, multimedia presentations, or other available instructional methods.~~

(2)~~(b)~~ An individual district governing body ~~board~~, at its discretion, may bear the costs associated with educating its members. Governing body ~~Board~~ members of districts which have qualified for a zero annual fee for the most recent invoicing period pursuant to s. 189.018 are ~~189.427 shall~~ not ~~be~~ required to pay a fee for any education program the department provides,

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contracts for, or assists in conducting.

Section 29. Section 189.4051, Florida Statutes, is transferred, renumbered as section 189.041, Florida Statutes, and amended to read:

189.041 ~~189.4051~~ Elections; special requirements and procedures for districts with governing bodies ~~boards~~ elected on a one-acre/one-vote basis.—

(1) DEFINITIONS.—As used in this section:

(a) "Qualified elector" means any person at least 18 years of age who is a citizen of the United States, a permanent resident of Florida, and a freeholder or freeholder's spouse and resident of the district who registers with the supervisor of elections of a county within which the district lands are located when the registration books are open.

(b) "Urban area" means a contiguous developed and inhabited urban area within a district with a minimum average resident population density of at least 1.5 persons per acre as defined by the latest official census, special census, or population estimate or a minimum density of one single-family home per 2.5 acres with access to improved roads or a minimum density of one single-family home per 5 acres within a recorded plat subdivision. Urban areas shall be designated by the governing body ~~board~~ of the district with the assistance of all local general-purpose governments having jurisdiction over the area within the district.

(c) "Governing body ~~board~~ member" means any duly elected member of the governing body ~~board~~ of a special district elected pursuant to this section, provided that a ~~any board~~ member elected by popular vote shall be a qualified district elector

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and a ~~any board~~ member elected on a one-acre/one-vote basis shall meet the requirements of s. 298.11 for election to the governing body ~~board~~.

(d) "Contiguous developed urban area" means any reasonably compact urban area located entirely within a special district. The separation of urban areas by a publicly owned park, right-of-way, highway, road, railroad, canal, utility, body of water, watercourse, or other minor geographical division of a similar nature shall not prevent such areas from being defined as urban areas.

(2) POPULAR ELECTIONS; REFERENDUM; DESIGNATION OF URBAN AREAS.—

(a) *Referendum.*—

1. A referendum shall be called by the governing body ~~board~~ of a special district where the governing body ~~board~~ is elected on a one-acre/one-vote basis on the question of whether certain members of a district governing body ~~board~~ should be elected by qualified electors, provided each of the following conditions has been satisfied at least 60 days before ~~prior to~~ the general or special election at which the referendum is to be held:

a. The district shall have a total population, according to the latest official state census, a special census, or a population estimate, of at least 500 qualified electors.

b. A petition signed by 10 percent of the qualified electors of the district shall have been filed with the governing body ~~board~~ of the district. The petition shall be submitted to the supervisor of elections of the county or counties in which the lands are located. The supervisor shall, within 30 days after the receipt of the petitions, certify to

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the governing body ~~board~~ the number of signatures of qualified electors contained on the petition.

2. Upon verification by the supervisor or supervisors of elections of the county or counties within which district lands are located that 10 percent of the qualified electors of the district have petitioned the governing body ~~board~~, a referendum election shall be called by the governing body ~~board~~ at the next regularly scheduled election of governing body ~~board~~ members occurring at least 30 days after verification of the petition or within 6 months of verification, whichever is earlier.

3. If the qualified electors approve the election procedure described in this subsection, the governing body ~~board~~ of the district shall be increased to five members and elections shall be held pursuant to the criteria described in this subsection beginning with the next regularly scheduled election of governing body ~~board~~ members or at a special election called within 6 months following the referendum and final unappealed approval of district urban area maps as provided in paragraph (b), whichever is earlier.

4. If the qualified electors of the district disapprove the election procedure described in this subsection, elections of the members of the governing body ~~board~~ shall continue as described by s. 298.12 or the enabling legislation for the district. No further referendum on the question shall be held for a minimum period of 2 years following the referendum.

(b) *Designation of urban areas.*—

1. Within 30 days after approval of the election process described in this subsection by qualified electors of the district, the governing body ~~board~~ shall direct the district

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staff to prepare and present maps of the district describing the extent and location of all urban areas within the district. Such determination shall be based upon the criteria contained within paragraph (1)(b).

2. Within 60 days after approval of the election process described in this subsection by qualified electors of the district, the maps describing urban areas within the district shall be presented to the governing body ~~board~~.

3. Any district landowner or elector may contest the accuracy of the urban area maps prepared by the district staff within 30 days after submission to the governing body ~~board~~. Upon notice of objection to the maps, the governing body ~~board~~ shall request the county engineer to prepare and present maps of the district describing the extent and location of all urban areas within the district. Such determination shall be based upon the criteria contained within paragraph (1)(b). Within 30 days after the governing body ~~board~~ request, the county engineer shall present the maps to the governing body ~~board~~.

4. Upon presentation of the maps by the county engineer, the governing body ~~board~~ shall compare the maps submitted by both the district staff and the county engineer and make a determination as to which set of maps to adopt. Within 60 days after presentation of all such maps, the governing body ~~board~~ may amend and shall adopt the official maps at a regularly scheduled meeting of the governing body ~~board meeting~~.

5. Any district landowner or qualified elector may contest the accuracy of the urban area maps adopted by the governing body ~~board~~ within 30 days after adoption by petition to the circuit court with jurisdiction over the district. Accuracy

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shall be determined pursuant to paragraph (1)(b). Any petitions so filed shall be heard expeditiously, and the maps shall either be approved or approved with necessary amendments to render the maps accurate and shall be certified to the governing body ~~board~~.

6. Upon adoption by the governing body ~~board~~ or certification by the court, the district urban area maps shall serve as the official maps for determination of the extent of urban area within the district and the number of governing body ~~board~~ members to be elected by qualified electors and by the one-acre/one-vote principle at the next regularly scheduled election of governing body ~~board~~ members.

7. Upon a determination of the percentage of urban area within the district as compared with total area within the district, the governing body ~~board~~ shall order elections in accordance with the percentages pursuant to paragraph (3)(a). The landowners' meeting date shall be designated by the governing body ~~board~~.

8. The maps shall be updated and readopted every 5 years or sooner in the discretion of the governing body ~~board~~.

(3) GOVERNING BODY ~~BOARD~~.—

(a) *Composition ~~of board~~.*—

1. Members of the governing body ~~board~~ of the district shall be elected in accordance with the following determinations of urban area:

a. If urban areas constitute 25 percent or less of the district, one governing body ~~board~~ member shall be elected by the qualified electors and four governing body ~~board~~ members shall be elected in accordance with the one-acre/one-vote

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principle contained within s. 298.11 or the district-enabling legislation.

b. If urban areas constitute 26 percent to 50 percent of the district, two governing body ~~board~~ members shall be elected by the qualified electors and three governing body ~~board~~ members shall be elected in accordance with the one-acre/one-vote principle contained within s. 298.11 or the district-enabling legislation.

c. If urban areas constitute 51 percent to 70 percent of the district, three governing body ~~board~~ members shall be elected by the qualified electors and two governing body ~~board~~ members shall be elected in accordance with the one-acre/one-vote principle contained within s. 298.11 or the district-enabling legislation.

d. If urban areas constitute 71 percent to 90 percent of the district, four governing body ~~board~~ members shall be elected by the qualified electors and one governing body ~~board~~ member shall be elected in accordance with the one-acre/one-vote principle contained within s. 298.11 or the district-enabling legislation.

e. If urban areas constitute 91 percent or more of the district, all governing body ~~board~~ members shall be elected by the qualified electors.

2. All governing body ~~board~~ members elected by qualified electors shall be elected at large.

(b) *Term of office.*—All governing body ~~board~~ members elected by qualified electors shall have a term of 4 years except for governing body ~~board~~ members elected at the first election and the first landowners' meeting following the

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referendum prescribed in paragraph (2)(a). Governing body ~~board~~ members elected at the first election and the first landowners' meeting following the referendum shall serve as follows:

1. If one governing body ~~board~~ member is elected by the qualified electors and four are elected on a one-acre/one-vote basis, the governing body ~~board~~ member elected by the qualified electors shall be elected for a period of 4 years. Governing body ~~board~~ members elected on a one-acre/one-vote basis shall be elected for periods of 1, 2, 3, and 4 years, respectively, as prescribed by ss. 298.11 and 298.12.

2. If two governing body ~~board~~ members are elected by the qualified electors and three are elected on a one-acre/one-vote basis, the governing body ~~board~~ members elected by the electors shall be elected for a period of 4 years. Governing body ~~board~~ members elected on a one-acre/one-vote basis shall be elected for periods of 1, 2, and 3 years, respectively, as prescribed by ss. 298.11 and 298.12.

3. If three governing body ~~board~~ members are elected by the qualified electors and two are elected on a one-acre/one-vote basis, two of the governing body ~~board~~ members elected by the electors shall be elected for a term of 4 years and the other governing body ~~board~~ member elected by the electors shall be elected for a term of 2 years. Governing body ~~board~~ members elected on a one-acre/one-vote basis shall be elected for terms of 1 and 2 years, respectively, as prescribed by ss. 298.11 and 298.12.

4. If four governing body ~~board~~ members are elected by the qualified electors and one is elected on a one-acre/one-vote basis, two of the governing body ~~board~~ members elected by the

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electors shall be elected for a term of 2 years and the other two for a term of 4 years. The governing body ~~board~~ member elected on a one-acre/one-vote basis shall be elected for a term of 1 year as prescribed by ss. 298.11 and 298.12.

5. If five governing body ~~board~~ members are elected by the qualified electors, three shall be elected for a term of 4 years and two for a term of 2 years.

6. If any vacancy occurs in a seat occupied by a governing body ~~board~~ member elected by the qualified electors, the remaining members of the governing body ~~board~~ shall, within 45 days after the vacancy occurs, appoint a person who would be eligible to hold the office to the unexpired term.

(c) *Landowners' meetings.*—

1. An annual landowners' meeting shall be held pursuant to s. 298.11 and at least one governing body ~~board~~ member shall be elected on a one-acre/one-vote basis pursuant to s. 298.12 for so long as 10 percent or more of the district is not contained in an urban area. In the event all district governing body ~~board~~ members are elected by qualified electors, there shall be no further landowners' meetings.

2. At any landowners' meeting called pursuant to this section, 50 percent of the district acreage shall not be required to constitute a quorum and each governing body ~~board~~ member shall be elected by a majority of the acreage represented either by owner or proxy present and voting at said meeting.

3. All landowners' meetings of districts operating pursuant to this section shall be set by the governing body ~~board~~ within the month preceding the month of the election of the governing body ~~board~~ members by the electors.

4. Vacancies on the governing body ~~board~~ shall be filled pursuant to s. 298.12 except as otherwise provided in subparagraph (b)6.

(4) QUALIFICATIONS.—Elections for governing body ~~board~~ members elected by qualified electors shall be nonpartisan. Qualifications shall be pursuant to the Florida Election Code and shall occur during the qualifying period established by s. 99.061. Qualification requirements shall only apply to those governing body ~~board~~ member candidates elected by qualified electors. Following the first election pursuant to this section, elections to the governing body ~~board~~ by qualified electors shall occur at the next regularly scheduled election closest in time to the expiration date of the term of the elected governing body ~~board~~ member. If the next regularly scheduled election is beyond the normal expiration time for the term of an elected governing body ~~board~~ member, the governing body ~~board~~ member shall hold office until the election of a successor.

(5) Those districts established as single-purpose water control districts, and which continue to act as single-purpose water control districts, pursuant to chapter 298, pursuant to a special act, pursuant to a local government ordinance, or pursuant to a judicial decree, shall be exempt from the provisions of this section. All other independent special districts with governing bodies ~~boards~~ elected on a one-acre/one-vote basis shall be subject to the provisions of this section.

(6) The provisions of this section shall not apply to community development districts established pursuant to chapter 190.

Section 30. Section 189.4065, Florida Statutes, is transferred and renumbered as section 189.05, Florida Statutes.

Section 31. Section 189.408, Florida Statutes, is transferred and renumbered as section 189.042, Florida Statutes.

Section 32. Section 189.4085, Florida Statutes, is transferred and renumbered as section 189.051, Florida Statutes.

Section 33. Section 189.412, Florida Statutes, is transferred and renumbered as section 189.064, Florida Statutes, and amended to read:

189.064 ~~189.412~~ Special District Accountability ~~Information~~ Program; duties and responsibilities.—The Special District Accountability ~~Information~~ Program of the department ~~of Economic Opportunity is created and~~ has the following ~~special~~ duties:

(1) Electronically publishing ~~The collection and maintenance of~~ special district noncompliance status reports from the department ~~of Management Services~~, the Department of Financial Services, the Division of Bond Finance of the State Board of Administration, the Auditor General, and the Legislative Auditing Committee, for the reporting required in ss. 112.63, 218.32, 218.38, and 218.39. The noncompliance reports must list those special districts that did not comply with the statutory reporting requirements and be made available to the public electronically.

(2) Maintaining the official list of special districts ~~The maintenance of a master list of independent and dependent special districts which shall be available on the department's website~~.

(3) ~~The~~ Publishing and updating ~~of~~ a "Florida Special District Handbook" that contains, at a minimum:

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(a) A section that specifies definitions of special districts and status distinctions in the statutes.

(b) A section or sections that specify current statutory provisions for special district creation, implementation, modification, dissolution, and operating procedures.

(c) A section that summarizes the reporting requirements applicable to all types of special districts as provided in ss. 189.015 and 189.016 ~~189.417 and 189.418~~.

~~(4) When feasible, securing and maintaining access to special district information collected by all state agencies in existing or newly created state computer systems~~.

(4)~~(5)~~ Coordinating and communicating ~~The facilitation of coordination and communication~~ among state agencies regarding special districts ~~district information~~.

~~(6) The conduct of studies relevant to special districts.~~

(5)~~(7)~~ Providing technical advisory ~~The provision of~~ assistance ~~related~~ to special districts regarding the ~~and appropriate in the performance of~~ requirements specified in this chapter which duty may be performed by the department or by a qualified third-party vendor pursuant to a contract entered into in accordance with applicable bidding requirements~~, including assisting with an annual conference sponsored by the Florida Association of Special Districts or its successor~~.

(6)~~(8)~~ Providing assistance to local general-purpose governments and ~~certain~~ state agencies in collecting delinquent reports or information.~~,~~

(7) Helping special districts comply with reporting requirements.~~,~~

(8) Declaring special districts inactive when ~~appropriate,~~

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~~and, when~~ directed by the Legislative Auditing Committee or required by this chapter.~~,~~

(9) Initiating enforcement proceedings ~~provisions~~ as provided in ss. 189.062, 189.066, and 189.067 ~~189.4044, 189.419, and 189.421~~.

Section 34. Section 189.413, Florida Statutes, is transferred and renumbered as section 189.065, Florida Statutes, and amended to read:

189.065 ~~189.413~~ Special districts; oversight of state funds use.—Any state agency administering funding programs for which special districts are eligible shall be responsible for oversight of the use of such funds by special districts. The oversight responsibilities shall include, but not be limited to:

(1) Reporting the existence of the program to the Special District Accountability ~~Information~~ Program of the department.

(2) Submitting annually a list of special districts participating in a state funding program to the Special District Accountability ~~Information~~ Program of the department. This list must indicate the special districts, if any, that are not in compliance with state funding program requirements.

Section 35. Section 189.415, Florida Statutes, is transferred and renumbered as section 189.08, Florida Statutes.

Section 36. Section 189.4155, Florida Statutes, is transferred and renumbered as section 189.081, Florida Statutes.

Section 37. Section 189.4156, Florida Statutes, is transferred and renumbered as section 189.082, Florida Statutes.

Section 38. Section 189.416, Florida Statutes, is transferred and renumbered as section 189.014, Florida Statutes, and subsection (1) of that section is amended, to read:

189.014 ~~189.416~~ Designation of registered office and agent.—

(1) Within 30 days after the first meeting of its governing body ~~board~~, each special district in the state shall designate a registered office and a registered agent and file such information with the local governing authority or authorities and with the department. The registered agent shall be an agent of the district upon whom any process, notice, or demand required or permitted by law to be served upon the district may be served. A registered agent shall be an individual resident of this state whose business address is identical with the registered office of the district. The registered office may be, but need not be, the same as the place of business of the special district.

Section 39. Section 189.417, Florida Statutes, is transferred and renumbered as section 189.015, Florida Statutes, and subsection (1) of that section is amended, to read:

189.015 ~~189.417~~ Meetings; notice; required reports.—

(1) The governing body of each special district shall file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. The schedule shall include the date, time, and location of each scheduled meeting. The schedule shall be published quarterly, semiannually, or annually in a newspaper of general paid circulation in the manner required in this subsection. The governing body of an independent special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before ~~prior to~~ such

meeting, in a newspaper of general paid circulation in the county or counties in which the special district is located, unless a bona fide emergency situation exists, in which case a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as it is subsequently ratified by the governing body ~~board~~. No approval of the annual budget shall be granted at an emergency meeting. The advertisement shall be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the county is published fewer than 5 days a week. The newspaper selected must be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50. Any other provision of law to the contrary notwithstanding, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication in a newspaper of general paid circulation in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no less than 7 days before such meeting.

Section 40. Section 189.418, Florida Statutes, is transferred and renumbered as section 189.016, Florida Statutes, and subsections (2) and (10) of that section are amended, to read:

189.016 ~~189.418~~ Reports; budgets; audits.—

(2) Any amendment, modification, or update of the document

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by which the district was created, including changes in boundaries, must be filed with the department within 30 days after adoption. The department may initiate proceedings against special districts as provided in s. 189.067 ~~189.421~~ for failure to file the information required by this subsection. However, for the purposes of this section and s. 175.101(1), the boundaries of a district shall be deemed to include an area that has been annexed until the completion of the 4-year period specified in s. 171.093(4) or other mutually agreed upon extension, or when a district is providing services pursuant to an interlocal agreement entered into pursuant to s. 171.093(3).

(10) All reports or information required to be filed with a local general-purpose government or governing authority under ss. 189.08, 189.014, and 189.015 ~~189.415, 189.416, and 189.417~~ and subsection (8) must:

(a) If the local general-purpose government or governing authority is a county, be filed with the clerk of the board of county commissioners.

(b) If the district is a multicounty district, be filed with the clerk of the county commission in each county.

(c) If the local general-purpose government or governing authority is a municipality, be filed at the place designated by the municipal governing body.

Section 41. Section 189.419, Florida Statutes, is transferred, renumbered as section 189.066, Florida Statutes, and amended to read:

189.066 ~~189.419~~ Effect of failure to file certain reports or information.—

(1) If an independent special district fails to file the

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reports or information required under s. 189.08, s. 189.014, s. 189.015, or s. 189.016(9) ~~189.415, s. 189.416, s. 189.417, or s. 189.418(9)~~ with the local general-purpose government or governments in which it is located, the person authorized to receive and read the reports or information or the local general-purpose government shall notify the district's registered agent. If requested by the district, the local general-purpose government shall grant an extension of up to 30 days for filing the required reports or information. If the governing body of the local general-purpose government or governments determines that there has been an unjustified failure to file these reports or information, it shall ~~may~~ notify the department, and the department may proceed pursuant to s. 189.067(1) ~~189.421(1)~~.

(2) If a dependent special district fails to file the reports or information required under s. 189.014, s. 189.015, or s. 189.016(9) ~~189.416, s. 189.417, or s. 189.418(9)~~ with the local governing authority to which it is dependent, the local governing authority shall take whatever steps it deems necessary to enforce the special district's accountability. Such steps may include, as authorized, withholding funds, removing governing body ~~board~~ members at will, vetoing the special district's budget, conducting the oversight review process set forth in s. 189.068 ~~189.428~~, or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.

(3) If a special district fails to file the reports or information required under s. 218.38 with the appropriate state agency, the agency shall notify the department, and the

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department shall send a certified technical assistance letter to the special district which summarizes the requirements and compels ~~encourages~~ the special district to take steps to prevent the noncompliance from reoccurring.

(4) If a special district fails to file the reports or information required under s. 112.63 with the appropriate state agency, the agency shall notify the department and the department shall proceed pursuant to s. 189.067(1) ~~189.421(1)~~.

(5) If a special district fails to file the reports or information required under s. 218.32 or s. 218.39 with the appropriate state agency or office, the state agency or office shall, and the Legislative Auditing Committee may, notify the department and the department shall proceed pursuant to s. 189.067 ~~189.421~~.

(6) If a special district created by special act of the Legislature fails to file the reports or information required under ss. 11.45(7), 218.32, s. 218.39, or 218.503 with the appropriate state agency or office, the Legislative Auditing Committee shall notify, in writing, the Speaker of the House of Representatives, the President of the Senate, and the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, pursuant to s. 189.034.

(7) If a special district created by ordinance fails to file the reports or information required under ss. 11.45(7), 218.32, 218.39, and 218.503 with the appropriate state agency or office, the Legislative Auditing Committee shall notify, in writing, the department and the chair or equivalent of the local

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general-purpose government that created the district, pursuant to s. 189.035.

Section 42. Section 189.420, Florida Statutes, is transferred and renumbered as section 189.052, Florida Statutes.

Section 43. Section 189.421, Florida Statutes, is transferred, renumbered as section 189.067, Florida Statutes, and amended to read:

189.067 ~~189.421~~ Failure of district to disclose financial reports.—

(1)(a) If notified pursuant to s. 189.066(1) ~~189.419(1)~~, (4), or (5), the department shall attempt to assist a special district in complying with its financial reporting requirements by sending a certified letter to the special district, and, if the special district is dependent, sending a copy of that letter to the chair of the local governing authority. The letter must include a description of the required report, including statutory submission deadlines, a contact telephone number for technical assistance to help the special district comply, a 60-day deadline for filing the required report with the appropriate entity, the address where the report must be filed, and an explanation of the penalties for noncompliance.

(b) A special district that is unable to meet the 60-day reporting deadline must provide written notice to the department before the expiration of the deadline stating the reason the special district is unable to comply with the deadline, the steps the special district is taking to prevent the noncompliance from reoccurring, and the estimated date that the special district will file the report with the appropriate agency. The district's written response does not constitute an

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extension by the department; however, the department shall forward the written response as follows ~~to~~:

1. If the written response refers to the reports required under s. 218.32 or s. 218.39, to the Legislative Auditing Committee for its consideration in determining whether the special district should be subject to further state action in accordance with s. 11.40(2)(b).

2. If the written response refers to the reports or information requirements listed in s. 189.066(1) ~~189.419(1)~~, to the local general-purpose government or governments for their consideration in determining whether the oversight review process set forth in s. 189.068 ~~189.428~~ should be undertaken.

3. If the written response refers to the reports or information required under s. 112.63, to the Department of Management Services for its consideration in determining whether the special district should be subject to further state action in accordance with s. 112.63(4)(d)2.

(2) Failure of a special district to comply with the actuarial and financial reporting requirements under s. 112.63, s. 218.32, or s. 218.39 after the procedures of subsection (1) are exhausted shall be deemed final action of the special district. The actuarial and financial reporting requirements are declared to be essential requirements of law. Remedies ~~Remedy~~ for noncompliance with ss. 218.32 and 218.39 shall be as provided in ss. 189.034 and 189.035. Remedies for noncompliance with s. 112.63 shall be as set forth in subsection (4) ~~by writ of certiorari as set forth in subsection (4)~~.

(3) Pursuant to s. 11.40(2)(b), the Legislative Auditing Committee may ~~shall~~ notify the department of those districts

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that fail to file the required reports. If the procedures described in subsection (1) have not yet been initiated, the department shall initiate such procedures upon receiving the notice from the Legislative Auditing Committee. Otherwise, within 60 days after receiving such notice, or within 60 days after the expiration of the 60-day deadline provided in subsection (1), whichever occurs later, the department, notwithstanding the provisions of chapter 120, shall file a petition for enforcement ~~writ of certiorari~~ with the circuit court. The petition may request declaratory, injunctive, any other equitable relief, or any remedy provided by law. Venue for all actions pursuant to this subsection is in Leon County. The court shall award the prevailing party reasonable attorney's fees and costs unless affirmatively waived by all parties. ~~A writ of certiorari shall be issued unless a respondent establishes that the notification of the Legislative Auditing Committee was issued as a result of material error. Proceedings under this subsection are otherwise governed by the Rules of Appellate Procedure.~~

(4) The department may enforce compliance with s. 112.63 by filing a petition for enforcement with the circuit court in and for Leon County. The petition may request declaratory, injunctive, or other equitable relief, including the appointment of a receiver, and any forfeiture or other remedy provided by law. ~~Pursuant to s. 112.63(4)(d)2., the Department of Management Services may notify the department of those special districts that have failed to file the required adjustments, additional information, or report or statement after the procedures of subsection (1) have been exhausted. Within 60 days after~~

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~~receiving such notice or within 60 days after the 60-day deadline provided in subsection (1), whichever occurs later, the department, notwithstanding chapter 120, shall file a petition for writ of certiorari with the circuit court. Venue for all actions pursuant to this subsection is in Leon County. The court shall award the prevailing party attorney's fees and costs unless affirmatively waived by all parties. A writ of certiorari shall be issued unless a respondent establishes that the notification of the Department of Management Services was issued as a result of material error. Proceedings under this subsection are otherwise governed by the Rules of Appellate Procedure.~~

Section 44. Section 189.4221, Florida Statutes, is transferred and renumbered as section 189.053, Florida Statutes.

Section 45. Section 189.423, Florida Statutes, is transferred and renumbered as section 189.054, Florida Statutes.

Section 46. Section 189.425, Florida Statutes, is transferred and renumbered as section 189.017, Florida Statutes.

Section 47. Section 189.427, Florida Statutes, is transferred and renumbered as section 189.018, Florida Statutes, and amended to read:

189.018 ~~189.427~~ Fee schedule; Operating ~~Grants and Donations~~ Trust Fund.—The department ~~of Economic Opportunity~~, by rule, shall establish a schedule of fees to pay one-half of the costs incurred by the department in administering this act, except that the fee may not exceed $175 per district per year. The fees collected under this section shall be deposited in the Operating ~~Grants and Donations~~ Trust Fund~~, which shall be~~ administered by the department ~~of Economic Opportunity~~. Any fee rule must consider factors such as the dependent and independent

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status of the district and district revenues for the most recent fiscal year as reported to the Department of Financial Services. The department may assess fines of not more than $25, with an aggregate total not to exceed $50, as penalties against special districts that fail to remit required fees to the department. It is the intent of the Legislature that general revenue funds will be made available to the department to pay one-half of the cost of administering this act.

Section 48. Section 189.428, Florida Statutes, is transferred and renumbered as section 189.068, Florida Statutes, and amended to read:

189.068 ~~189.428~~ Special districts; oversight review process.—

(1) The Legislature finds it to be in the public interest to establish an oversight review process for special districts wherein each special district in the state may be reviewed by the local general-purpose government in which the district exists. The Legislature further finds and determines that such law fulfills an important state interest. It is the intent of the Legislature that the oversight review process shall contribute to informed decisionmaking. These decisions may involve the continuing existence or dissolution of a district, the appropriate future role and focus of a district, improvements in the functioning or delivery of services by a district, and the need for any transition, adjustment, or special implementation periods or provisions. Any final recommendations from the oversight review process that are adopted and implemented by the appropriate level of government shall not be implemented in a manner that would impair the

obligation of contracts.

~~(2) It is the intent of the Legislature that any oversight review process be conducted in conjunction with special district public facilities reporting and the local government evaluation and appraisal report process described in s. 189.415(2).~~

~~(3) The order in which Special districts may be subject to oversight review shall be determined by the reviewer and shall occur as follows:~~

(2)~~(a)~~ All dependent special districts may be reviewed by the general-purpose local government to which they are dependent.

~~(b) All single-county independent special districts may be reviewed by a county or municipality in which they are located or the government that created the district. Any single-county independent district that serves an area greater than the boundaries of one general-purpose local government may only be reviewed by the county on the county's own initiative or upon receipt of a request from any municipality served by the special district.~~

~~(c) All multicounty independent special districts may be reviewed by the government that created the district. Any general-purpose local governments within the boundaries of a multicounty district may prepare a preliminary review of a multicounty special district for possible reference or inclusion in the full review report.~~

~~(d) Upon request by the reviewer, any special district within all or a portion of the same county as the special district being reviewed may prepare a preliminary review of the district for possible reference or inclusion in the full~~

~~oversight review report.~~

(3)~~(4)~~ All special districts, governmental entities, and state agencies shall cooperate with the Legislature and with any general-purpose local government seeking information or assistance with the oversight review process and with the preparation of an oversight review report.

(4)~~(5)~~ Those conducting the oversight review process shall, at a minimum, consider the listed criteria for evaluating the special district, but may also consider any additional factors relating to the district and its performance. If any of the listed criteria does not apply to the special district being reviewed, it need not be considered. The criteria to be considered by the reviewer include:

(a) The degree to which the service or services offered by the special district are essential or contribute to the well-being of the community.

(b) The extent of continuing need for the service or services currently provided by the special district.

(c) The extent of municipal annexation or incorporation activity occurring or likely to occur within the boundaries of the special district and its impact on the delivery of services by the special district.

(d) Whether there is a less costly alternative method of delivering the service or services that would adequately provide the district residents with the services provided by the district.

(e) Whether transfer of the responsibility for delivery of the service or services to an entity other than the special district being reviewed could be accomplished without

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jeopardizing the district's existing contracts, bonds, or outstanding indebtedness.

(f) Whether the Auditor General has notified the Legislative Auditing Committee that the special district's audit report, reviewed pursuant to s. 11.45(7), indicates that the district has met any of the conditions specified in s. 218.503(1) or that a deteriorating financial condition exists that may cause a condition described in s. 218.503(1) to occur if actions are not taken to address such condition.

(g) Whether the district is inactive according to the official list of special districts, and whether the district is meeting and discharging its responsibilities as required by its charter, as well as projected increases or decreases in district activity.

(h) Whether the special district has failed to comply with any of the reporting requirements in this chapter, including preparation of the public facilities report.

(i) Whether the special district has designated a registered office and agent as required by s. 189.014 ~~189.416~~, and has complied with all open public records and meeting requirements.

(5)~~(6)~~ Any special district may at any time provide the Legislature and the general-purpose local government conducting the review or making decisions based upon the final oversight review report with written responses to any questions, concerns, preliminary reports, draft reports, or final reports relating to the district.

~~(7) The final report of a reviewing government shall be filed with the government that created the district and shall~~

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~~serve as the basis for any modification to the district charter or dissolution or merger of the district.~~

~~(8) If legislative dissolution or merger of a district is proposed in the final report, the reviewing government shall also propose a plan for the merger or dissolution, and the plan shall address the following factors in evaluating the proposed merger or dissolution:~~

~~(a) Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger or dissolution is the best alternative for delivering services and facilities to the affected area.~~

~~(b) Whether the services and facilities to be provided pursuant to the merger or dissolution will be compatible with the capacity and uses of existing local services and facilities.~~

~~(c) Whether the merger or dissolution is consistent with applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive plans of the affected area.~~

~~(d) Whether the proposed merger adequately provides for the assumption of all indebtedness.~~

~~The reviewing government shall consider the report in a public hearing held within the jurisdiction of the district. If adopted by the governing board of the reviewing government, the request for legislative merger or dissolution of the district may proceed. The adopted plan shall be filed as an attachment to the economic impact statement regarding the proposed special act or general act of local application dissolving a district.~~

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(6)~~(9)~~ This section does not apply to a deepwater port listed in s. 311.09(1) which is in compliance with a port master plan adopted pursuant to s. 163.3178(2)(k), or to an airport authority operating in compliance with an airport master plan approved by the Federal Aviation Administration, or to any special district organized to operate health systems and facilities licensed under chapter 395, chapter 400, or chapter 429.

Section 49. Section 189.429, Florida Statutes, is transferred and renumbered as section 189.019, Florida Statutes, and subsection (1) of that section is amended, to read:

189.019 ~~189.429~~ Codification.—

(1) Each district, by December 1, 2004, shall submit to the Legislature a draft codified charter, at its expense, so that its special acts may be codified into a single act for reenactment by the Legislature, if there is more than one special act for the district. The Legislature may adopt a schedule for individual district codification. Any codified act relating to a district, which act is submitted to the Legislature for reenactment, shall provide for the repeal of all prior special acts of the Legislature relating to the district. The codified act shall be filed with the department pursuant to s. 189.016(2) ~~189.418(2)~~.

Section 50. Sections 189.430, 189.431, 189.432, 189.433, 189.434, 189.435, 189.436, 189.437, 189.438, 189.439, 189.440, 189.441, 189.442, 189.443, and 189.444, Florida Statutes, are repealed.

Section 51. Section 189.034, Florida Statutes, is created to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

189.034 Oversight of special districts created by special act of the Legislature.—

(1) This section applies to any special district created by special act of the Legislature.

(2) If a special district fails to file required reports or requested information with the appropriate state agency or office pursuant to ss. 11.45(7), 218.32, 218.39, and 218.503(3), the Legislative Auditing Committee or its designee shall provide written notice of the district's noncompliance to the Speaker of the House of Representatives, the President of the Senate, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, and the legislators who represent a portion of the geographical jurisdiction of the special district.

(3) The Legislative Auditing Committee may convene a public hearing on the issue of noncompliance, as well as general oversight of the district as provided in s. 189.068, at the direction of the Speaker of the House of Representatives and the President of the Senate.

(4) Before a public hearing as provided in subsection (3), the special district shall provide the following information at the request of the Legislative Auditing Committee:

(a) The district's annual financial report for the previous fiscal year.

(b) The district's audit report for the previous fiscal year.

(c) An annual report for the previous fiscal year providing a detailed review of the performance of the special district,

including the following information:

1. The purpose of the special district.

2. The sources of funding for the special district.

3. A description of the major activities, programs, and initiatives the special district undertook in the most recently completed fiscal year and the benchmarks or criteria under which the success or failure of the district was determined by its governing body.

4. Any challenges or obstacles faced by the special district in fulfilling its purpose and related responsibilities.

5. Ways the special district believes it could better fulfill its purpose and related responsibilities and a description of the actions that it intends to take during the ensuing fiscal year.

6. Proposed changes to the special act that established the special district and justification for such changes.

7. Any other information reasonably required to provide the Legislative Auditing Committee with an accurate understanding of the purpose for which the special district exists and how it is fulfilling its responsibilities to accomplish that purpose.

8. Any reasons for the district's noncompliance.

9. If the district is currently in compliance and plans to correct any recurring issues of noncompliance.

10. Efforts to promote transparency, including maintenance of the district's website in accordance with s. 189.069.

Section 52. Section 189.035, Florida Statutes, is created to read:

189.035 Oversight of special districts created by local ordinance.—

(1) If a special district created by local ordinance fails to file required reports or requested information under ss. 11.45(7), 218.32, 218.39, and 218.503(3), with the appropriate state agency, the Legislative Auditing Committee or its designee shall provide written notice of the district's noncompliance to the chair or equivalent of the local general-purpose government.

(2) The chair or equivalent of the local general-purpose government may convene a public hearing on the issue of noncompliance, as well as general oversight of the special district as provided in s. 189.068, within 6 months after receipt of notice of noncompliance from the Legislative Auditing Committee.

(3) Before the public hearing regarding the special district's noncompliance, the local general-purpose government may request the following information from the special district:

(a) The special district's annual financial report for the previous fiscal year.

(b) The special district's audit report for the previous fiscal year.

(c) An annual report for the previous fiscal year, which must provide a detailed review of the performance of the special district and include the following information:

1. The purpose of the special district.

2. The sources of funding for the special district.

3. A description of the major activities, programs, and initiatives the special district undertook in the most recently completed fiscal year and the benchmarks or criteria under which the success or failure of the special district was determined by its governing body.

4. Any challenges or obstacles faced by the special district in fulfilling its purpose and related responsibilities.

5. Ways the special district believes it could better fulfill its purpose and related responsibilities and a description of the actions that it intends to take during the ensuing fiscal year.

6. Proposed changes to the ordinance that established the special district and justification for such changes.

7. Any other information reasonably required to provide the reviewing entity with an accurate understanding of the purpose for which the special district exists and how it is fulfilling its responsibilities to accomplish that purpose.

8. Any reasons for the special district's noncompliance.

9. Whether the special district is currently in compliance.

10. Plans to correct any recurring issues of noncompliance.

11. Efforts to promote transparency, including maintenance of the special district's website in accordance with s. 189.069.

(4) The local general-purpose government shall report the findings of any public hearing conducted under this section to the department and the Legislative Auditing Committee within 6 months after the completion of such hearing.

Section 53. Section 189.055, Florida Statutes, is created to read:

189.055 Treatment of special districts.—For the purpose of s. 196.199(1), special districts shall be treated as municipalities.

Section 54. Section 189.069, Florida Statutes, is created to read:

189.069 Special districts; required reporting of

information; web-based public access.—

(1) By October 1, 2015, or by the end of the first full fiscal year after its creation, each special district shall establish and maintain an official Internet website containing the information required by this section in accordance with s. 189.016. Special districts shall submit their official Internet website addresses to the department.

(a) Independent special districts shall maintain a separate Internet website.

(b) Dependent special districts shall be prominently displayed on the homepage of the Internet website of the general-purpose government that created the special district with a hyperlink to such webpages as are necessary to provide the information required by this section. Dependent special districts may maintain a separate Internet website providing the information required by this section.

(2) A special district shall post the following information, at a minimum, on the district's official website:

(a) The full legal name of the special district.

(b) The public purpose of the special district.

(c) The name, address, e-mail address, and, if applicable, the term and appointing authority for each member of the governing body of the special district.

(d) The fiscal year of the special district.

(e) The full text of the special district's charter, the date the special district was established, the entity that established the special district, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was

established. Community development districts may reference chapter 190, as the uniform charter, but must include information relating to any grant of special powers.

(f) The mailing address, e-mail address, telephone number, and Internet website uniform resource locator of the special district.

(g) A description of the boundaries or service area of, and the services provided by, the special district.

(h) A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts charged for the fiscal year and the statutory authority for the levy of the tax, fee, or charge.

(i) The primary contact information for the special district for purposes of communication from the department.

(j) Any code of ethics that specifically applies to the special district.

(k) The budget of each special district, in addition to amendments in accordance with s. 189.418.

(l) The final, complete audit report for the most recent completed fiscal year, and audit reports required by law or authorized by the governing body of the special district.

(3) The department's Internet website list of special districts in the state required under s. 189.061 must include a link to the website of each special district that provides web-based access to the public for all information and documentation required for submission to the department under subsection (1).

Section 55. Paragraph (e) of subsection (1) and paragraph (c) of subsection (7) of section 11.45, Florida Statutes, are amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(e) "Local governmental entity" means a county agency, municipality, or special district as defined in s. 189.012 ~~189.403~~, but does not include any housing authority established under chapter 421.

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(c) The Auditor General shall provide annually a list of those special districts which are not in compliance with s. 218.39 to the Special District Accountability ~~Information~~ Program of the Department of Economic Opportunity.

Section 56. Paragraph (c) of subsection (4) of section 100.011, Florida Statutes, is amended to read:

100.011 Opening and closing of polls, all elections; expenses.—

(4)

(c) The provisions of any special law to the contrary notwithstanding, all independent and dependent special district elections, with the exception of community development district elections, shall be conducted in accordance with the requirements of ss. 189.04 and 189.041 ~~189.405 and 189.4051~~.

Section 57. Paragraph (f) of subsection (1) of section 101.657, Florida Statutes, is amended to read:

101.657 Early voting.—

(1)

(f) Notwithstanding the requirements of s. 189.04 ~~189.405~~, special districts may provide early voting in any district election not held in conjunction with county or state elections. If a special district provides early voting, it may designate as

many sites as necessary and shall conduct its activities in accordance with the provisions of paragraphs (a)-(c). The supervisor is not required to conduct early voting if it is provided pursuant to this subsection.

Section 58. Paragraph (a) of subsection (14) of section 112.061, Florida Statutes, is amended to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

(14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT SCHOOL BOARDS, SPECIAL DISTRICTS, AND METROPOLITAN PLANNING ORGANIZATIONS.—

(a) The following entities may establish rates that vary from the per diem rate provided in paragraph (6)(a), the subsistence rates provided in paragraph (6)(b), or the mileage rate provided in paragraph (7)(d) if those rates are not less than the statutorily established rates that are in effect for the 2005-2006 fiscal year:

1. The governing body of a county by the enactment of an ordinance or resolution;

2. A county constitutional officer, pursuant to s. 1(d), Art. VIII of the State Constitution, by the establishment of written policy;

3. The governing body of a district school board by the adoption of rules;

4. The governing body of a special district, as defined in s. 189.012 ~~189.403(1)~~, except those special districts that are subject to s. 166.021(9), by the enactment of a resolution; or

5. Any metropolitan planning organization created pursuant to s. 339.175 or any other separate legal or administrative

entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, by the enactment of a resolution.

Section 59. Paragraph (d) of subsection (4) of section 112.63, Florida Statutes, is amended to read:

112.63 Actuarial reports and statements of actuarial impact; review.—

(4) Upon receipt, pursuant to subsection (2), of an actuarial report, or, pursuant to subsection (3), of a statement of actuarial impact, the Department of Management Services shall acknowledge such receipt, but shall only review and comment on each retirement system's or plan's actuarial valuations at least on a triennial basis.

(d) In the case of an affected special district, the Department of Management Services shall also notify the Department of Economic Opportunity. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.067 ~~189.421~~.

1. Failure of a special district to provide a required report or statement, to make appropriate adjustments, or to provide additional material information after the procedures specified in s. 189.067(1) ~~189.421(1)~~ are exhausted shall be deemed final action by the special district.

2. The Department of Management Services may notify the Department of Economic Opportunity of those special districts that failed to come into compliance. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.067 ~~189.421(4)~~.

Section 60. Subsection (1) of section 112.665, Florida

Statutes, is amended to read:

112.665 Duties of Department of Management Services.—

(1) The Department of Management Services shall:

(a) Gather, catalog, and maintain complete, computerized data information on all public employee retirement systems or plans in the state based upon a review of audits, reports, and other data pertaining to the systems or plans;

(b) Receive and comment upon all actuarial reviews of retirement systems or plans maintained by units of local government;

(c) Cooperate with local retirement systems or plans on matters of mutual concern and provide technical assistance to units of local government in the assessment and revision of retirement systems or plans;

(d) Annually issue, by January 1, a report to the President of the Senate and the Speaker of the House of Representatives, which details division activities, findings, and recommendations concerning all governmental retirement systems. The report may include legislation proposed to carry out such recommendations;

(e) Provide a fact sheet for each participating local government defined benefit pension plan which summarizes the plan's actuarial status. The fact sheet should provide a summary of the plan's most current actuarial data, minimum funding requirements as a percentage of pay, and a 5-year history of funded ratios. The fact sheet must include a brief explanation of each element in order to maximize the transparency of the local government plans. The fact sheet must also contain the information specified in s. 112.664(1). These documents shall be posted on the department's website. Plan sponsors that have

websites must provide a link to the department's website;

(f) Annually issue, by January 1, a report to the Special District Accountability ~~Information~~ Program of the Department of Economic Opportunity which includes the participation in and compliance of special districts with the local government retirement system provisions in s. 112.63 and the state-administered retirement system provisions specified in part I of chapter 121; and

(g) Adopt reasonable rules to administer this part.

Section 61. Subsection (9) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(9) "Special district" means an independent special district as defined in s. 189.012 ~~189.403(3)~~.

Section 62. Paragraph (b) of subsection (2) of section 121.051, Florida Statutes, is amended to read:

121.051 Participation in the system.—

(2) OPTIONAL PARTICIPATION.—

(b)1. The governing body of any municipality, metropolitan planning organization, or special district in the state may elect to participate in the Florida Retirement System upon proper application to the administrator and may cover all of its units as approved by the Secretary of Health and Human Services and the administrator. The department shall adopt rules establishing procedures for the submission of documents necessary for such application. Before being approved for participation in the system, the governing body of a

municipality, metropolitan planning organization, or special district that has a local retirement system must submit to the administrator a certified financial statement showing the condition of the local retirement system within 3 months before the proposed effective date of membership in the Florida Retirement System. The statement must be certified by a recognized accounting firm that is independent of the local retirement system. All required documents necessary for extending Florida Retirement System coverage must be received by the department for consideration at least 15 days before the proposed effective date of coverage. If the municipality, metropolitan planning organization, or special district does not comply with this requirement, the department may require that the effective date of coverage be changed.

2. A municipality, metropolitan planning organization, or special district that has an existing retirement system covering the employees in the units that are to be brought under the Florida Retirement System may participate only after holding a referendum in which all employees in the affected units have the right to participate. Only those employees electing coverage under the Florida Retirement System by affirmative vote in the referendum are eligible for coverage under this chapter, and those not participating or electing not to be covered by the Florida Retirement System shall remain in their present systems and are not eligible for coverage under this chapter. After the referendum is held, all future employees are compulsory members of the Florida Retirement System.

3. At the time of joining the Florida Retirement System, the governing body of a municipality, metropolitan planning

organization, or special district complying with subparagraph 1. may elect to provide, or not provide, benefits based on past service of officers and employees as described in s. 121.081(1). However, if such employer elects to provide past service benefits, such benefits must be provided for all officers and employees of its covered group.

4. Once this election is made and approved it may not be revoked, except pursuant to subparagraphs 5. and 6., and all present officers and employees electing coverage and all future officers and employees are compulsory members of the Florida Retirement System.

5. Subject to subparagraph 6., the governing body of a hospital licensed under chapter 395 which is governed by the governing body ~~board~~ of a special district as defined in s. 189.012 ~~189.403~~ or by the board of trustees of a public health trust created under s. 154.07, hereinafter referred to as "hospital district," and which participates in the Florida Retirement System, may elect to cease participation in the system with regard to future employees in accordance with the following:

a. No more than 30 days and at least 7 days before adopting a resolution to partially withdraw from the system and establish an alternative retirement plan for future employees, a public hearing must be held on the proposed withdrawal and proposed alternative plan.

b. From 7 to 15 days before such hearing, notice of intent to withdraw, specifying the time and place of the hearing, must be provided in writing to employees of the hospital district proposing partial withdrawal and must be published in a

newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031. Proof of publication must be submitted to the Department of Management Services.

c. The governing body of a hospital district seeking to partially withdraw from the system must, before such hearing, have an actuarial report prepared and certified by an enrolled actuary, as defined in s. 112.625, illustrating the cost to the hospital district of providing, through the retirement plan that the hospital district is to adopt, benefits for new employees comparable to those provided under the system.

d. Upon meeting all applicable requirements of this subparagraph, and subject to subparagraph 6., partial withdrawal from the system and adoption of the alternative retirement plan may be accomplished by resolution duly adopted by the hospital district board. The hospital district board must provide written notice of such withdrawal to the division by mailing a copy of the resolution to the division, postmarked by December 15, 1995. The withdrawal shall take effect January 1, 1996.

6. Following the adoption of a resolution under sub-subparagraph 5.d., all employees of the withdrawing hospital district who were members of the system before January 1, 1996, shall remain as members of the system for as long as they are employees of the hospital district, and all rights, duties, and obligations between the hospital district, the system, and the employees remain in full force and effect. Any employee who is hired or appointed on or after January 1, 1996, may not participate in the system, and the withdrawing hospital district has no obligation to the system with respect to such employees.

Section 63. Subsection (1) of section 153.94, Florida

Statutes, is amended to read:

153.94 Applicability of other laws.—Except as expressly provided in this act:

(1) With respect to any wastewater facility privatization contract entered into under this act, a public entity is subject to s. 125.3401, s. 180.301, s. 189.054 ~~189.423~~, or s. 190.0125 but is not subject to the requirements of chapter 287.

Section 64. Paragraph (a) of subsection (2) of section 163.08, Florida Statutes, is amended to read:

163.08 Supplemental authority for improvements to real property.—

(2) As used in this section, the term:

(a) "Local government" means a county, a municipality, a dependent special district as defined in s. 189.012 ~~189.403~~, or a separate legal entity created pursuant to s. 163.01(7).

Section 65. Subsection (7) of section 165.031, Florida Statutes, is amended to read:

165.031 Definitions.—The following terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(7) "Special district" means a local unit of special government, as defined in s. 189.012 ~~189.403(1)~~. This term includes dependent special districts, as defined in s. 189.012 ~~189.403(2)~~, and independent special districts, as defined in s. 189.012 ~~189.403(3)~~. All provisions of s. 200.001(8)(d) and (e) shall be considered provisions of this chapter.

Section 66. Paragraph (b) of subsection (1) and subsections (8) and (16) of section 165.0615, Florida Statutes, are amended

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to read:

165.0615 Municipal conversion of independent special districts upon elector-initiated and approved referendum.—

(1) The qualified electors of an independent special district may commence a municipal conversion proceeding by filing a petition with the governing body of the independent special district proposed to be converted if the district meets all of the following criteria:

(b) It is designated as an improvement district and created pursuant to chapter 298 or is designated as a stewardship district and created pursuant to s. 189.031 ~~189.404~~.

(8) Notice of the final public hearing on the proposed elector-initiated combined municipal incorporation plan must be published pursuant to the notice requirements in s. 189.015 ~~189.417~~ and must provide a descriptive summary of the elector-initiated municipal incorporation plan and a reference to the public places within the independent special district where a copy of the plan may be examined.

(16) If the incorporation plan is approved by a majority of the votes cast in the independent special district, the district shall notify the special district accountability ~~information~~ program pursuant to s. 189.016(2) ~~189.418(2)~~ and the local general-purpose governments in which any part of the independent special district is situated pursuant to s. 189.016(7) ~~189.418(7)~~.

Section 67. Subsection (3) of section 171.202, Florida Statutes, is amended to read:

171.202 Definitions.—As used in this part, the term:

(3) "Independent special district" means an independent

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special district, as defined in s. 189.012 ~~189.403~~, which provides fire, emergency medical, water, wastewater, or stormwater services.

Section 68. Subsection (16) of section 175.032, Florida Statutes, is amended to read:

175.032 Definitions.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the following words and phrases have the following meanings:

(16) "Special fire control district" means a special district, as defined in s. 189.012 ~~189.403(1)~~, established for the purposes of extinguishing fires, protecting life, and protecting property within the incorporated or unincorporated portions of any county or combination of counties, or within any combination of incorporated and unincorporated portions of any county or combination of counties. The term does not include any dependent or independent special district, as defined in s. 189.012 ~~189.403(2) and (3), respectively~~, the employees of which are members of the Florida Retirement System pursuant to s. 121.051(1) or (2).

Section 69. Section 190.011, Florida Statutes, is amended to read:

190.011 General powers.—The district shall have, and the governing body ~~board~~ may exercise, the following powers:

(1) To sue and be sued in the name of the district; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire, by purchase, gift, devise, or otherwise, and to dispose of, real and personal property, or any estate

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therein; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(2) To apply for coverage of its employees under the state retirement system in the same manner as if such employees were state employees, subject to necessary action by the district to pay employer contributions into the state retirement fund.

(3) To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts shall be subject to public bidding or competitive negotiation requirements as set forth in s. 190.033.

(4) To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith; and to hold, use, and dispose of such moneys or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.

(5) To adopt rules and orders pursuant to the provisions of chapter 120 prescribing the powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of certificates evidencing tax liens and all other documents and records of the district. The board may also adopt administrative rules with respect to any of the projects of the district and define the area to be included therein. The board may also adopt resolutions which may be necessary for the conduct of district business.

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(6) To maintain an office at such place or places as it may designate within a county in which the district is located or within the boundaries of a development of regional impact or a Florida Quality Development, or a combination of a development of regional impact and a Florida Quality Development, which includes the district, which office must be reasonably accessible to the landowners. Meetings pursuant to s. 189.015(3) ~~189.417(3)~~ of a district within the boundaries of a development of regional impact or Florida Quality Development, or a combination of a development of regional impact and a Florida Quality Development, may be held at such office.

(7)(a) To hold, control, and acquire by donation, purchase, or condemnation, or dispose of, any public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this act and to make use of such easements, dedications, or reservations for any of the purposes authorized by this act.

(b) When real property in the district is owned by a governmental entity and subject to a ground lease as described in s. 190.003(14), to collect ground rent from landowners pursuant to a contract with such governmental entity and to contract with the county tax collector for collection of such ground rent using the procedures authorized in s. 197.3631, other than the procedures contained in s. 197.3632.

(8) To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district to carry out any of the purposes authorized by

this act.

(9) To borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness as hereinafter provided; to levy such tax and special assessments as may be authorized; and to charge, collect, and enforce fees and other user charges.

(10) To raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of the district activities and services and to enforce their receipt and collection in the manner prescribed by resolution not inconsistent with law.

(11) To exercise within the district, or beyond the district with prior approval by resolution of the governing body of the county if the taking will occur in an unincorporated area or with prior approval by resolution of the governing body of the municipality if the taking will occur within a municipality, the right and power of eminent domain, pursuant to the provisions of chapters 73 and 74, over any property within the state, except municipal, county, state, and federal property, for the uses and purposes of the district relating solely to water, sewer, district roads, and water management, specifically including, without limitation, the power for the taking of easements for the drainage of the land of one person over and through the land of another.

(12) To cooperate with, or contract with, other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.

(13) To assess and impose upon lands in the district ad

valorem taxes as provided by this act.

(14) To determine, order, levy, impose, collect, and enforce special assessments pursuant to this act and chapter 170. Such special assessments may, in the discretion of the district, be collected and enforced pursuant to the provisions of ss. 197.3631, 197.3632, and 197.3635, chapter 170, or chapter 173.

(15) To exercise all of the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.

(16) To exercise such special powers as may be authorized by this act.

Section 70. Subsection (8) of section 190.046, Florida Statutes, is amended to read:

190.046 Termination, contraction, or expansion of district.—

(8) In the event the district has become inactive pursuant to s. 189.062 ~~189.4044~~, the respective board of county commissioners or city commission shall be informed and it shall take appropriate action.

Section 71. Section 190.049, Florida Statutes, is amended to read:

190.049 Special acts prohibited.—Pursuant to s. 11(a)(21), Art. III of the State Constitution, there shall be no special law or general law of local application creating an independent special district which has the powers enumerated in two or more of the paragraphs contained in s. 190.012, unless such district is created pursuant to the provisions of s. 189.031 ~~189.404~~.

Section 72. Subsection (5) of section 191.003, Florida

Statutes, is amended to read:

191.003 Definitions.—As used in this act:

(5) "Independent special fire control district" means an independent special district as defined in s. 189.012 ~~189.403~~, created by special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district. The term does not include a municipality, a county, a dependent special district as defined in s. 189.012 ~~189.403~~, a district providing primarily emergency medical services, a community development district established under chapter 190, or any other multiple-power district performing fire suppression and related services in addition to other services.

Section 73. Paragraph (a) of subsection (1) and subsection (8) of section 191.005, Florida Statutes, are amended to read:

191.005 District boards of commissioners; membership, officers, meetings.—

(1)(a) With the exception of districts whose governing boards are appointed collectively by the Governor, the county commission, and any cooperating city within the county, the business affairs of each district shall be conducted and administered by a five-member board. All three-member boards existing on the effective date of this act shall be converted to five-member boards, except those permitted to continue as a three-member board by special act adopted in 1997 or thereafter. The board shall be elected in nonpartisan elections by the electors of the district. Except as provided in this act, such elections shall be held at the time and in the manner prescribed by law for holding general elections in accordance with s.

189.04(2)(a) ~~189.405(2)(a)~~ and (3), and each member shall be elected for a term of 4 years and serve until the member's successor assumes office. Candidates for the board of a district shall qualify as directed by chapter 99.

(8) All meetings of the board shall be open to the public consistent with chapter 286, s. 189.015 ~~189.417~~, and other applicable general laws.

Section 74. Subsection (2) of section 191.013, Florida Statutes, is amended to read:

191.013 Intergovernmental coordination.—

(2) Each independent special fire control district shall adopt a 5-year plan to identify the facilities, equipment, personnel, and revenue needed by the district during that 5-year period. The plan shall be updated in accordance with s. 189.08 ~~189.415~~ and shall satisfy the requirement for a public facilities report required by s. 189.08(2) ~~189.415(2)~~.

Section 75. Subsection (1) of section 191.014, Florida Statutes, is amended to read:

191.014 District creation and expansion.—

(1) New districts may be created only by the Legislature under s. 189.031 ~~189.404~~.

Section 76. Section 191.015, Florida Statutes, is amended to read:

191.015 Codification.—Each fire control district existing on the effective date of this section, by December 1, 2004, shall submit to the Legislature a draft codified charter, at its expense, so that its special acts may be codified into a single act for reenactment by the Legislature, if there is more than one special act for the district. The Legislature may adopt a

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schedule for individual district codification. Any codified act relating to a district, which act is submitted to the Legislature for reenactment, shall provide for the repeal of all prior special acts of the Legislature relating to the district. The codified act shall be filed with the Department of Economic Opportunity pursuant to s. 189.016(2) ~~189.418(2)~~.

Section 77. Paragraphs (c), (d), and (e) of subsection (8) of section 200.001, Florida Statutes, are amended to read:

200.001 Millages; definitions and general provisions.—

(8)

(c) "Special district" means a special district as defined in s. 189.012 ~~189.403(1)~~.

(d) "Dependent special district" means a dependent special district as defined in s. 189.012 ~~189.403(2)~~. Dependent special district millage, when added to the millage of the governing body to which it is dependent, shall not exceed the maximum millage applicable to such governing body.

(e) "Independent special district" means an independent special district as defined in s. 189.012 ~~189.403(3)~~, with the exception of a downtown development authority established prior to the effective date of the 1968 State Constitution as an independent body, either appointed or elected, regardless of whether or not the budget is approved by the local governing body, if the district levies a millage authorized as of the effective date of the 1968 State Constitution. Independent special district millage shall not be levied in excess of a millage amount authorized by general law and approved by vote of the electors pursuant to s. 9(b), Art. VII of the State Constitution, except for those independent special districts

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levying millage for water management purposes as provided in that section and municipal service taxing units as specified in s. 125.01(1)(q) and (r). However, independent special district millage authorized as of the date the 1968 State Constitution became effective need not be so approved, pursuant to s. 2, Art. XII of the State Constitution.

Section 78. Subsections (1), (5), (6), and (7) of section 218.31, Florida Statutes, are amended to read:

218.31 Definitions.—As used in this part, except where the context clearly indicates a different meaning:

(1) "Local governmental entity" means a county agency, a municipality, or a special district as defined in s. 189.012 ~~189.403~~. For purposes of s. 218.32, the term also includes a housing authority created under chapter 421.

(5) "Special district" means a special district as defined in s. 189.012 ~~189.403(1)~~.

(6) "Dependent special district" means a dependent special district as defined in s. 189.012 ~~189.403(2)~~.

(7) "Independent special district" means an independent special district as defined in s. 189.012 ~~189.403(3)~~.

Section 79. Paragraph (a) and (f) of subsection (1) and subsection (2) of section 218.32, Florida Statutes, are amended to read:

218.32 Annual financial reports; local governmental entities.—

(1)(a) Each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.012 ~~189.403~~, shall submit to the department a

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copy of its annual financial report for the previous fiscal year in a format prescribed by the department. The annual financial report must include a list of each local governmental entity included in the report and each local governmental entity that failed to provide financial information as required by paragraph (b). The chair of the governing body and the chief financial officer of each local governmental entity shall sign the annual financial report submitted pursuant to this subsection attesting to the accuracy of the information included in the report. The county annual financial report must be a single document that covers each county agency.

(f) If the department does not receive a completed annual financial report from a local governmental entity within the required period, it shall notify the Legislative Auditing Committee and the Special District Accountability ~~Information~~ Program of the Department of Economic Opportunity of the entity's failure to comply with the reporting requirements.

(2) The department shall annually by December 1 file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability ~~Information~~ Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report. The report must include, but is not limited to:

(a) The total revenues and expenditures of each local governmental entity that is a component unit included in the

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annual financial report of the reporting entity.

(b) The amount of outstanding long-term debt by each local governmental entity. For purposes of this paragraph, the term "long-term debt" means any agreement or series of agreements to pay money, which, at inception, contemplate terms of payment exceeding 1 year in duration.

Section 80. Paragraph (g) of subsection (1) of section 218.37, Florida Statutes, is amended to read:

218.37 Powers and duties of Division of Bond Finance; advisory council.—

(1) The Division of Bond Finance of the State Board of Administration, with respect to both general obligation bonds and revenue bonds, shall:

(g) By January 1 each year, provide the Special District Accountability ~~Information~~ Program of the Department of Economic Opportunity with a list of special districts that are not in compliance with the requirements in s. 218.38.

Section 81. Paragraph (j) of subsection (1) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $300,000. For electrical work, the local government must competitively award to an appropriately licensed

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contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $75,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(j) A county, municipality, special district as defined in s. 189.012 ~~189.403~~, or any other political subdivision of the state that owns or operates a public-use airport as defined in s. 332.004 is exempt from this section when performing repairs or maintenance on the airport's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

Section 82. Subsection (4) of section 298.225, Florida Statutes, is amended to read:

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298.225 Water control plan; plan development and amendment.—

(4) Information contained within a district's facilities plan prepared pursuant to s. 189.08 ~~189.415~~ which satisfies any of the provisions of subsection (3) may be used as part of the district water control plan.

Section 83. Subsection (7) of section 343.922, Florida Statutes, is amended to read:

343.922 Powers and duties.—

(7) The authority shall comply with all statutory requirements of general application which relate to the filing of any report or documentation required by law, including the requirements of ss. 189.015, 189.016, 189.051, and 189.08 ~~189.4085, 189.415, 189.417, and 189.418~~.

Section 84. Subsection (5) of section 348.0004, Florida Statutes, is amended to read:

348.0004 Purposes and powers.—

(5) Any authority formed pursuant to this act shall comply with all statutory requirements of general application which relate to the filing of any report or documentation required by law, including the requirements of ss. 189.015, 189.016, 189.051, and 189.08 ~~189.4085, 189.415, 189.417, and 189.418~~.

Section 85. Section 373.711, Florida Statutes, is amended to read:

373.711 Technical assistance to local governments.—The water management districts shall assist local governments in the development and future revision of local government comprehensive plan elements or public facilities report as required by s. 189.08 ~~189.415~~, related to water resource issues.

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Section 86. Paragraph (b) of subsection (3) of section 403.0891, Florida Statutes, is amended to read:

403.0891 State, regional, and local stormwater management plans and programs.—The department, the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.

(3)

(b) Local governments are encouraged to consult with the water management districts, the Department of Transportation, and the department before adopting or updating their local government comprehensive plan or public facilities report as required by s. 189.08 ~~189.415~~, whichever is applicable.

Section 87. Subsection (1) of section 582.32, Florida Statutes, is amended to read:

582.32 Effect of dissolution.—

(1) Upon issuance of a certificate of dissolution, s. 189.076(2) ~~189.4045(2)~~ applies and all land use regulations in effect within such districts are void.

Section 88. Paragraph (a) of subsection (3) of section 1013.355, Florida Statutes, is amended to read:

1013.355 Educational facilities benefit districts.—

(3)(a) An educational facilities benefit district may be created pursuant to this act and chapters 125, 163, 166, and 189. An educational facilities benefit district charter may be created by a county or municipality by entering into an interlocal agreement, as authorized by s. 163.01, with the district school board and any local general purpose government within whose jurisdiction a portion of the district is located

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and adoption of an ordinance that includes all provisions contained within s. 189.02 ~~189.4041~~. The creating entity shall be the local general purpose government within whose boundaries a majority of the educational facilities benefit district's lands are located.

Section 89. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

March 18, 2014

The Honorable Joe Negron
Senate Appropriations Committee, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I am respectfully requesting that SB 1632, related to *Special Districts*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Alicia Weiss/ AA

REPLY TO:
❒ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 15, 2014

The Honorable Joe Negron
Senate Appropriations Committee, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I am respectfully requesting that SB 698, related to *Sexual Misconduct with Students by Authority Figures*, SB 950, related to *Teacher Certification*, and SB 1512, related to *Students with Disabilities*, and SB 1632, related to *Special Districts*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Alicia Weiss/ AA

REPLY TO:
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Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1634
INTRODUCER:	Appropriations Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Commerce and Tourism Committee
SUBJECT:	Department of Economic Opportunity
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Siples	Hrdlicka		**CM SPB 7058 as introduced**
1.	Stearns	Yeatman	CA	**Favorable**
2.	Ryon	Ryon	MS	**Fav/CS**
3.	Pingree	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1634 modifies several activities under the jurisdiction of the Department of Economic Opportunity (DEO). The bill establishes requirements for the operation of all loan programs administered by the DEO to increase accountability and performance.

The bill clarifies that the Auditor General's annual audit of Triumph Gulf Coast, Inc., and the Recovery Fund is a performance audit. The audit by the retained independent certified public account is to be performed annually. The bill provides term limits for the initial appointments to the board of directors of Triumph Gulf Coast, Inc., and provides that those term limits begin after the Legislature appropriates funds to the Recovery Fund, and provides for term limits for the initial appointments.

The bill revises the Florida Small Cities Community Development Block Grant Act to streamline application procedures and competitive grant scoring criteria, provide rulemaking authority to the DEO, and streamline public hearing requirements.

The bill requires Space Florida to consult with the Florida Tourism Industry Marketing Corporation rather than Enterprise Florida, Inc., in developing a space marketing plan. The requirement that Space Florida develop a proposal to establish a Center for Excellence for Aerospace is repealed, and is instead made permissive. Space Florida is required to provide

support to universities in Florida that are members of the Federal Aviation Administration's Center of Excellence for Commercial Space Transportation.

The bill increases the amount of funds the Florida Defense Support Task Force may spend annually on staffing and administrative expenses.

The bill repeals the requirement for reemployment assistance claimants to complete an initial skills review and requires the DEO to develop a voluntary online assessment to identify an individual's skills, abilities, and career aptitude. The DEO, through the regional workforce boards and CareerSource Centers, must offer services and training to individuals that are consistent with the results of the online assessment.

The bill implements changes to the Short Time Compensation program to conform to federal law, including requiring an employer to describe how its plan will be implemented, requiring an employer to treat the fringe benefits of participants the same as if he or she was not a participant, and prohibiting the DEO from denying benefits due to an individual's participation in certain training programs.

The bill extends the ability of employers to make quarterly contributions to the Unemployment Compensation Trust Fund, rather than a single, annual payment. This provision was scheduled to sunset in 2014.

The bill requires the DEO to provide an alternate method for filing a reemployment assistance claim, such as by telephone, when it determines that the claims filing system is unavailable for individuals to use to file claims. The DEO must also provide public notice of such unavailability.

The bill rebrands "rural areas of critical economic concern" as "rural areas of opportunity."

The fiscal impact of the bill on the DEO is expected to be minimal and will be absorbed within existing resources. The Auditor General could incur additional indeterminate staffing costs. The bill could have a positive indeterminate fiscal impact on the private sector. See Section V.

II. Present Situation:

Economic Development Programs Evaluation

In 2013, the Legislature created the Economic Development Programs Evaluation to require the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to jointly evaluate economic development programs in a three year cycle.[1] Based on the findings, a report to the Governor and the Legislature is generated that details, among other things, economic benefits (return on

[1] Chapter 2013-39, L.O.F.

investment) and the effectiveness and value for Florida taxpayers. The report must also provide recommendations based on the evaluation.

Section 288.0001, F.S., provides a schedule for reviewing economic development programs on a three-year cycle. The first report was presented by January 1, 2014, and included a detailed analysis of the following:

- Capital Investment Tax Credits
- Qualified Target Industry Tax Refunds
- Brownfield Redevelopment Bonus Refunds
- High-Impact Business Performance Grants
- Quick Action Closing Fund
- Innovation Incentive Program
- Enterprise Zone Program Incentives

The programs listed above will be reviewed again by January 1, 2017.

By January 1, 2015, and every 3 years thereafter, EDR and the OPPAGA will prepare a detailed analysis of the following:

- Entertainment Industry Financial Incentive Program
- Entertainment Industry Sales Tax Exemption Program
- VISIT Florida, and all related programs
- Florida Sports Foundation, and all related programs

By January 1, 2016, and every three years thereafter, EDR and OPPAGA will prepare a detailed analysis of the following:

- Qualified Defense Contractor and Space Flight Business Tax Refunds
- Semiconductor, Defense, or Space Technology Sales Tax Exemptions
- Military Base Protection Program
- Manufacturing and Spaceport Investment Incentive Program
- Quick Response Training Program
- Incumbent Worker Training Program
- International Trade and Business Development Programs

Loan Programs Administered by the Department of Economic Opportunity

The Department of Economic Opportunity (DEO) administers the following loan programs under ch. 288, F.S.:

- Rural Development Revolving Loan Program;
- Economic Gardening Business Loan Pilot Program; and
- Black Business Loan Program.

Rural Community Development Revolving Loan Program

The Rural Community Development Revolving Loan Program[2] provides long-term loans, loan guarantees, and loan loss reserves to units of local governments or economic development organizations substantially underwritten by a unit of local government. Applicants must be within a county with a population of 75,000 or fewer; a county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, including those residing in incorporated areas and those residing in unincorporated areas of the county; or within a rural area of critical economic concern.[3]

Requests for loans must be made by application to the DEO and are made pursuant to agreements specifying the terms and conditions agreed to between the applicant and the DEO. All repayments of principal and interest must be returned to the loan fund and made available for loans to other applicants. However, upon approval by the DEO and in a rural area of critical economic concern, repayments of principal and interest may be retained by the applicant if such repayments are dedicated and matched to fund regionally-based economic development organizations representing the rural area of critical economic concern.[4]

The DEO is directed to manage the fund and establish loan practices that include procedures for establishing loan interest rates, uses of funding, application procedures, and application review procedures. The DEO is granted the authority for the final approval for any loan under the program.[5]

Economic Gardening Business Loan Pilot Program

The Economic Gardening Business Loan Pilot Program[6] provides low-interest, short-term loans to second-stage, high growth businesses. For eligibility in the loan program, a business must:[7]

- Be a for-profit, privately-held, investment-grade business that employs between 10 and 50 persons;
- Have maintained its principal place of business in Florida for at least the last two years;
- Generate between $1 million and $25 million in annual revenue;
- Be eligible for the Qualified Targeted Industry tax refund program pursuant to s. 288.106, F.S.;[8] and
- Have experienced steady growth in its gross revenues and employment in at least three of the preceding five years.

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[2] Section 288.065, F.S. *See also* DEO, Rural Revolving Loan Program, *available at* http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/economic-development/rural-revolving-loan-program (last visited March 10, 2014).
[3] Section 288.065(2)(a), F.S. The term "rural area of critical economic concern" is defined in s. 288.0656(2)(d), F.S.
[4] Section 288.065(2)(b) and (c), F.S.
[5] Section 288.065(3), F.S.
[6] Section 288.1081, F.S. See the DEO's website for more information about the pilot program and loans made, *available at* http://floridajobs.org/news-center/reports-and-legislative-presentations (last visited March 10, 2014).
[7] Sections 288.1081(3)(a), F.S., and 288.1082(4)(a), F.S.
[8] The qualified targeted industries are clean technology, life sciences, information technology, aviation/aerospace, homeland security/defense, and financial/professional services.

The maximum amount of the loan available for receipt under the pilot program is $250,000. The proceeds of the loan may be used for working capital purchases, employee training, or salaries for newly created jobs in the state. The loan period is four years.[9]

The DEO is authorized to designate one or more qualified entities to serve as loan administrators for the program. A loan administrator must be a Florida not-for-profit corporation that has its principal place of business in this state, and have at least five years of verifiable experience of lending to businesses in this state. [10]

The DEO, upon selection of a loan administrator, must enter into a grant agreement with the administrator to issue the available loans to eligible applicants. The grant agreement must specify the aggregate amount of the loans authorized for award by the loan administrator. The term of the grant agreement must be at least 4 years, except that the DEO may terminate the agreement earlier if the loan administrator fails to meet minimum performance standards set by the DEO. The grant agreement may be amended by mutual consent of both parties.[11]

A loan administrator is entitled to receive a loan origination fee, payable at closing, of 1 percent of each loan issued by the loan administrator and a servicing fee of 0.625 percent per annum of the loan's outstanding principal balance, payable monthly. During the first 12 months of the loan, the servicing fee must be paid from the disbursement from the Economic Development Trust Fund, and thereafter the loan administrator must collect the servicing fee from the payments made by the borrower, charging the fee against repayments of principal.[12]

The loan administrator, after collecting the servicing fee, must remit the borrower's collected interest, principal payments, and charges for late payments to the DEO on a quarterly basis. If the borrower defaults on the loan, the loan administrator must initiate collection efforts to seek repayment of the loan. Upon collecting payments for a defaulted loan, the loan administrator, must remit the payments to the DEO; but, to the extent authorized in the grant agreement, may deduct the costs of the administrator's collection efforts. The DEO must deposit all funds received under this provision into the General Revenue Fund.[13]

The loan administrator is required to submit quarterly reports to the DEO, which must include the information required in the grant agreement, including the number of full-time equivalent jobs created as a result of the loans, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the borrowers.[14]

The DEO contracted with the Black Business Investment Fund to administer the pilot program in 2009, and received an initial appropriation of $8.5 million.[15] No additional funds have been appropriated to the program.

[9] Section 288.1081(4), F.S.
[10] Section 288.1081(5), F.S.
[11] Section 288.1081(5)(b), F.S.
[12] Section 288.1081(5)(d), F.S.
[13] Section 288.1081(5)(e), F.S.
[14] Section 288.1081(5)(f), F.S.
[15] Chapter 2009-1, L.O.F.

The program expires July 1, 2016.[16]

Black Business Loan Program

Under the Black Business Loan Program,[17] the DEO annually certifies entities to provide loans, loan guarantees, or investments to black business enterprises that cannot obtain capital through conventional lending institutions but could otherwise compete successfully in the private sector.[18]

The program is subject to annual legislative appropriation. If the Black Business Loan Program is appropriated any funding in a fiscal year, the DEO must distribute an equal amount of the appropriation to each eligible entity, calculated as the total annual appropriation divided by the total number of eligible entities certified on or before July 31 of that fiscal year.[19]

An entity submitting an initial application for certification must demonstrate that it has:[20]

- A board of directors that includes citizens of the state experienced in the development of black business enterprises.
- A business plan that allows the recipient to operate in a manner consistent with the law and the DEO's rules for the program.
- The technical skills to analyze and evaluate applications by black business enterprises for loans, loan guarantees, or investments.
- Established viable partnerships with public and private funding sources, economic development agencies, and workforce development and job referral networks.
- The ability to provide a private match equal to 20 percent of the amount of funds provided by the DEO.

An eligible entity must be a corporation registered in this state. Existing certified entities must annually submit to the DEO a financial audit performed by an independent certified public accountant for the most recently completed fiscal year. The audit must not reveal any material weaknesses or instances of material noncompliance.[21]

Both existing and new entities must agree to maintain the books and records relating to funds received by the DEO according to generally accepted accounting principles and in accordance with the requirements of the Single Audit Act.[22] The entities must also agree to make those books and records available to the DEO for inspection upon reasonable notice.[23]

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[16] Section 288.1081(10), F.S.
[17] Section 288.7102, F.S. *See also* DEO, Minority-Owned Business Assistance, Black Business Loan Program, *available at* http://www.floridajobs.org/business-growth-and-partnerships/for-businesses-and-entrepreneurs/business-resources/minority-owned-business-assistance (last visited March 10, 2014).
[18] Section 288.7102(1), F.S.
[19] Section 288.7102(3), F.S.
[20] Section 288.7102(4)(c), F.S.
[21] Section 288.7102(4), F.S.
[22] *See* s. 215.97, F.S.
[23] Section 288.7102(4)(d), F.S.

Each eligible entity must meet the requirements of the loan program, the terms of the contract between the entity and the DEO, and any other applicable state or federal laws. An entity may not receive funds unless the entity meets annual certification requirements.[24]

For Fiscal Year 2013-14, there are 6 certified entities and the amount appropriated was $2.225 million.[25]

Triumph Gulf Coast, Inc.

In 2013, the Legislature created Triumph Gulf Coast, Inc., a nonprofit corporation administratively housed within the DEO, to administer and invest 75 percent of all funds recovered by the Attorney General for economic damages to the state resulting from the Deepwater Horizon oil spill.[26] Triumph Gulf Coast, Inc., is governed by a 5-member board of directors, with each member serving a term of 4 years.[27] The initial appointments to the board of directors have been made.[28]

Florida Small Cities Community Development Block Grant Program

The Community Development Block Grant (CDBG) Program is a federally funded housing and community development program that targets assistance to low and moderate income populations. Administered by the U.S. Department of Housing and Urban Development (HUD), the program provides annual grants on a formula basis to units of local government and states. The Federal CDBG regulations set forth eligible activities and the three national objectives that each activity must meet.[29] Every CDBG-funded activity must meet one of the following three national program objectives:

- Benefiting low-and moderate-income persons,
- Preventing or eliminating slums or blight, or
- Meeting urgent needs (other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs).

As recipients of CDBG funds, grantees are charged with ensuring that these requirements are met. States are given "maximum feasible deference" in the administration of the program.[30]

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[24] Section 288.7102(5), F.S.
[25] Chapter 2012-118, L.O.F.
[26] Chapter 2013-39, L.O.F. The Attorney General's Office filed its lawsuit on April 20, 2013. *See* Press Release, Florida Office of the Attorney General, *Attorney General Pam Bondi Sues BP on Three-Year Anniversary of Deepwater Horizon Oil Spill* (Apr. 30, 2013), *available at* http://myfloridalegal.com/__852562220065EE67.nsf/0/D37C3803876F7AF285257B5300516938?Open&Highlight=0,horizon (last visited Apr. 21, 2014).
[27] Each trustee of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives each appoint one member. The initial terms of the appointments by the President of the Senate and the Speaker of the House of Representatives is 2 years in order to achieve staggered terms.
[28] *Regional Economic Development in Florida*, 850 Magazine, (Apr.-May 2014), *available at* http://www.850businessmagazine.com/Regional-Economic-Development-in-Northwest-Florida/ (last visited Apr. 21, 2014).
[29] The regulations implementing the CDBG Program are found at 24 C.F.R. Part 570.
[30] U.S. Department of Housing and Urban Development, Office of Block Grant Assistance, "Basically CDBG Guide," (July 2012), *available at* https://www.onecpd.info/resources/documents/BasicallyCDBG_Guidebook.pdf (last visited March 10, 2014). "Maximum feasible deference" provides for minimal regulation beyond the statute; and states can adopt more

Eligible program activities include housing rehabilitation and preservation, special economic development activities, and water and sewer facilities construction.

Local governments in urban areas apply for and receive funds directly from HUD.[31] Rural or smaller area governments also receive grants but these funds are first funneled through the state. In Florida, this competitive rural distribution mechanism is known as the Florida Small Cities Community Block Grant Program (Small Cities CDBG), which is administered by the DEO. The Small Cities CDBG program grants assistance to non-entitlement communities within the state (i.e., cities with fewer than 50,000 residents and counties with fewer than 200,000 residents). The state annually develops funding priorities and criteria for selecting projects.[32]

Established in 1983, the intent of Florida's Small Cities CDBG program, outlined in s. 290.0411, F.S., is consistent with the federal CDBG legislation. The primary purposes of the program include community development and project planning activities to maintain viable communities, revitalize existing communities, expand economic development and employment opportunities, and improve housing conditions and expand housing opportunities, providing direct benefit to persons of low or moderate income.
Communities in the state with populations below the entitlement thresholds must compete for funding by submitting applications through the Small Cities CDBG programs. There are 246 communities eligible to participate in the program for the Federal Fiscal Year 2013 funding cycle.[33] The DEO annually develops funding priorities and criteria for selecting Small Cities CDBG projects subject to statutory provisions and applicable rules.[34]

While federal regulations "give maximum feasible deference to the state's interpretation of the statutory requirements" of CDBG, Florida's Small Cities CDBG is bound by the national objectives and eligible activities of the federal act.[35]

Small Cities CDBG HUD Allocation

HUD determines the amount of the Small Cities CDBG funding allocation using a formula comprised of several measures of community need, including the extent of poverty, population, housing overcrowding, age of housing, and population growth lag in relationship to other

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restrictive requirements, but may not contradict or be inconsistent with the Housing and Community Development Act of 1974.

[31] *Id.* This is referred to as the "Entitlement Program" and to be eligible an entity must be a city in a metropolitan area with a population of 50,000 or more, a principal city of a metropolitan area, or an urban county with a population of at least 200,000.

[32] 24 C.F.R. Part 91 requires states to submit a consolidated plan 45 days before the start of its program year. The plan must include the objectives and outcomes identified in the plan, as well as an evaluation of past performance. The plan must also include a housing and homeless needs assessment, housing market analysis, a strategic plan for addressing identified needs and how the allocation of funds will resolve needs across income categories, an action plan, certain certifications, and a plan for monitoring the activities carried out under the program.

[33] The DEO, "State of Florida Annual Action Plan for Programs Funded by the U.S. Department of Housing and Urban Development, Federal Fiscal Year 2013," 10-12, *available at* http://www.floridajobs.org/fhcd/cdbg/Files/ConsolidatedPlan/FINALAnnualActionPlan2013.pdf (last visited March 10, 2014).

[34] Small Cities CDBG is administered in accordance with ss. 290.0401-290.048, F.S., ch. 73C-23, F.A.C., (formerly 9B-43), and 24 C.F.R. 570, Subpart I.

[35] 24 C.F.R. s. 570.480(c).

states.[36] Each year since 1983, Florida has received between $18 and $35 million from HUD for the program.[37] Florida's Federal Fiscal Year 2013 allocation is $22,887,374.[38]

Categories of Funding

Section 290.044, F.S., specifies certain grant program categories for the Small Cities CDBG and allows the DEO to define the broad community objectives served by each category. Major grant categories and the DEO's defined objectives are:[39]

- Commercial Revitalization – The objective of this category is to revitalize commercial areas that are showing signs of decline by addressing problems causing deterioration or decline. Activities that achieve this objective include installing or reconstructing necessary public improvements, and repairing and rehabilitating building facades.
- Economic Development – Economic development objectives include promoting investment of private capital, retaining local economic enterprises, and providing long-term jobs with growth potential primarily for very low-, low-, and moderate-income persons. Activities that achieve this objective include acquiring, constructing, or rehabilitating commercial and industrial buildings, and activities designed to provide job training and job placement. Eligible local governments may apply up to three times in any annual funding cycle for an Economic Development grant. Applicants may have up to two open Economic Development grants.[40]
- Housing Rehabilitation – The objective of this category is to improve housing conditions and expand housing opportunities for very low-, low- and moderate-income persons. Activities that achieve this objective include rehabilitating housing or publicly owned or acquired properties, and weatherization and energy-efficiency improvements.
- Neighborhood Revitalization – The objective of this category is to revitalize declining neighborhoods and improve infrastructure. Activities that may achieve this objective may involve street paving, construction, or rehabilitation of neighborhood facilities that provide health, social, or recreational services.

Beyond the major funding categories, s. 290.044, F.S., also permits the DEO to annually set aside a portion of Small Cities CDBG funding for use in emergencies or natural disasters that have been declared by executive order. Funds not allocated under the emergency-related set-aside by the last quarter of the state Fiscal Year are distributed to unfunded applications from the other categories.

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[36] HUD, "Community Development Block Grant – CDBG," *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs (last visited March 10, 2014).
[37] DEO, "Florida Small Cities Community Development Block Grant Program," *available at* http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/florida-small-cities-community-development-block-grant-program (last visited March 10, 2013).
[38] The DEO, "State of Florida Annual Action Plan" at 5. Pending Congressional action on funding for federal fiscal year 2013, the Plan uses the federal fiscal year 2012 funding levels.
[39] The DEO, "State of Florida Annual Action Plan."
[40] Rule 73C-23.0041(6)(f), F.A.C., stipulates that an economic development project must meet a national objective through the creation or retention of jobs, of which 51 percent must be jobs for persons from low to moderate-income households and must provide a public benefit by creating or retaining a number of full time equivalent jobs that divided into the subgrant amount results in a cost per job of under $35,000.

Local governments applying for Small Cities CDBG funds must consider national and state goals and objectives when developing applications for funding. Applications may reflect more than one activity, but each eligible activity must meet at least one of the three national objectives (i.e., benefit low- and moderate-income persons, eliminate slum or blight, or meet an urgent need).

Grant Selection Criteria and Process

Upon receipt of an application, an initial review is conducted by the DEO to determine if threshold criteria have been met. This review is used as a screening method to ensure compliance with minimum application requirements. Specific criteria established by s. 290.0475, F.S., govern whether the DEO may reject an application without regard to scoring. These criteria are:

- The application is not received by the specified deadline date;
- The proposed project activities fail to meet one of the three national objectives;
- The proposed activities are not eligible;
- The proposed activities are not in compliance with the adopted local comprehensive plan;
- The applicant has an open Housing, Neighborhood or Commercial Revitalization CDBG;
- The local government is not in compliance with citizen participation requirements; or
- Information provided in the application that affects eligibility or scoring is misrepresented.

Section 290.046(3), F.S., establishes grant application ranking components and their respective score weighting:

- Community need (25 percent) measures the extent of poverty in the community and the condition of physical structures. Each application, regardless of program category is scored on the same community need criteria.[41]
- Project impact (65 percent) measures the direct benefit received by persons of low and moderate income, the extent to which the problem identified is addressed by the proposed activities, and the extent to which resources other than the funds being applied for are being used to carry out the proposed activities. Project impact criteria are unique to each program category.[42]
- Equal opportunity employment and housing performance (10 percent) measures outstanding efforts in this area.

While the Small Cities CDBG Program does not require local governments to provide matching funds, the competitive scoring criteria do favor applications that leverage other funds. Local government general revenue, as well as other loan and grant funds, may be counted as leveraged funds.

The DEO may not award a grant until it has determined, based upon a site visit, that a project or activities are eligible, in accordance with the description contained in the application.[43]

[41] Rule 73C-23.0041(10)(b)4., F.A.C., specifies three factors to determine community need: 1) the number of low and moderate income persons, 2) the number of persons below poverty level, and 3) the number of year-round housing units with 1.01 or more persons per room.
[42] Section 290.046(3)(d), F.S., further provides that the criteria used to measure the direct benefit to persons of low income and persons of moderate income shall represent no less than 42 percent of the points assigned to the program impact factor.
[43] Section 290.046(2)(d), F.S.

Local Government Citizen Participation Requirements

Section 290.046, F.S., and federal regulations, set out the requirements local governments must follow to obtain citizen input for Small Cities CDBGs. Local governments submitting a CDBG application must comply with citizen participation requirements as provided in the Housing and Community Development Act of 1974, and the DEO's rules. To ensure compliance, these provisions are incorporated in grant applications, the scoring system and award agreements.[44] Prior to submitting an application for funding, a local government must:

- Publicize information concerning the amount of funds available to the local government and the range of activities that may be undertaken.
- Hold at least one public hearing to obtain citizens' views on community development needs.
- Publish a notice concerning the proposed application advising citizens of the application's location and notifying them that it is available for inspection and comment.
- Publicly state its plans to assist displaced persons should displacement occur.
- Hold at least one public hearing on the proposed application prior to its submission to the state.
- If appropriate, modify the proposed application to respond to citizens' comments.[45]

In addition, a Citizen's Advisory Task Force must be established to provide input throughout the project process.[46] At least three of the task force members are required to be residents of the jurisdiction where the proposed project or activities are to be implemented. No task force members may be elected officials and only one may be an employee of the local government.[47] Failure to meet these or any other citizen participation requirements will result in the rejection of an application pursuant to s. 290.0475(6), F.S.

DEO Recommendation on Small Cities CDBG: January 2012

Chapter 2011-142 L.O.F., directed the DEO to provide recommendations for further reorganization and streamlining that improve the effectiveness and operation of economic development and workforce programs. In January of 2012, the DEO released the "Report on Further Streamlining & Reorganization of Florida's Economic Development & Workforce Functions."[48] As one of its recommendations, the DEO suggested revisions to the Florida Small Cities Community Development Block Grant Act set forth in ch. 290, F.S.

The DEO's explanation for this recommendation included the following:

> The Florida Small Cities Community Development Block Grant Act currently contains a number of provisions that restrict the program's ability to be flexible, agile or foster DEO's economic development emphasis. Revisions to the Act would allow DEO greater latitude to craft the program toward a more effective economic development outcome and

[44] The DEO, "State of Florida Annual Action Plan" at 22-23.
[45] Section 290.046(5), F.S.
[46] Section 290.046(6), F.S.
[47] *See* Rule 73C-23.0041(3)(b), F.A.C.
[48] This report is available at http://www.floridajobs.org/about%20awi/12.31.2011%20-%20DEO%20Streamlining%20Report%20Jan%202012.pdf (last visited March 10, 2014).

would remove burdensome and unnecessary requirements beyond those required in the Code of Federal Regulations.

The desired outcome is to remove unnecessary regulation and competitive CDBG grant scoring criteria from statute and to put more of the framework of the CDBG grant scoring criteria in rule so that DEO has more agility and flexibility to work with our stakeholders to put more of an economic development focus on the Small Cities CDBG program and streamline the process for the other grant categories as well.

Space Florida

Space Florida[49] was created as an independent special district to "foster the growth and development of a sustainable and world-leading aerospace industry in this state." Space Florida is required to promote aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs.

Space Florida's duties, among other things, include developing a business plan to stimulate the growth and development of the aerospace industry, creating a marketing campaign to help attract, develop, and retain aerospace research and technology, as well as other related activities. It is also charged with developing a space tourism marketing plan in consultation with Enterprise Florida, Inc.[50]

FAA Center of Excellence for Commercial Space Transportation

In 2010, the Federal Aviation Administration (FAA) established the Air Transportation Center of Excellence for Commercial Space Transportation (Center of Excellence for CST). The Center of Excellence for CST is a partnership of academia, industry, and government, developed for the purpose of creating a world-class consortium that will address current and future challenges for commercial space transportation. There are nine member universities representing the entire commercial space transportation industry that bring in over 50 other government, industry and academic organizations as research partners.[51] Florida's representation in the Center of Excellence for CST is significant in that 4 of the 9 university members are Florida universities – Florida Institute of Technology, Florida State University, University of Central Florida, and University of Florida.[52]

[49] Space Florida was created by ch. 2006-60, L.O.F., and codified in part II, ch. 331, F.S.
[50] Section 331.3051, F.S.
[51] FAA. "Overview of the Federal Aviation Administration Center of Excellence for Commercial Space Transportation." October 2011. Available at: http://www.coe-cst.org/publication/overview_of_the_federal_aviation_administration_center_of_excellence_for_commercial_space_transporta/index.html (last visited March 26, 2014).
[52] The other member universities of the Center of Excellence for CST include New Mexico Institute of Mining and Technology, New Mexico State University, Stanford University, University of Colorado at Boulder, and University of Texas Medical Branch at Galveston.

Background on Reemployment Assistance

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet the requirements of state law.[53] Individual states collect payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).[54] FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. In addition, the FUTA pays one-half the cost of extended unemployment benefits (during periods of high unemployment) and provides a fund from which states may borrow, if necessary, to pay benefits.[55]

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with the FUTA or the Social Security Act requirements. Florida's unemployment insurance program was created by the Legislature in 1937.[56] The program was rebranded as the "reemployment assistance program" in 2012.[57] The DEO is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division for Workforce Services. The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.[58]

A qualified claimant may receive RA benefits equal to 25 percent of wages, not to exceed $6,325 in a benefit year.[59] Benefits range from a minimum of $32 per week to a maximum weekly benefit amount of $275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned, and the unemployment rate.[60]

To receive RA benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

[53] USDOL, Employment and Training Administration, State Unemployment Insurance Benefits, available at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited March 10, 2014).
[54] FUTA is codified at 26 U.S.C.
[55] USDOL, Employment and Training Administration, Unemployment Insurance Tax Topic, available at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited March 10, 2014).
[56] Chapter 18402, L.O.F.
[57] Chapter 2012-30, L.O.F.
[58] Section 443.1316, F.S.
[59] Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.
[60] Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum number of weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent.

Initial Skills Review

Florida requires claimants to participate in an initial skills review (ISR) in order to be eligible to receive RA benefits.[61] The initial skills review must be completed within 14 days of filing of a benefits claim; if it is not completed during that time, benefits may be denied. The initial skills review is an online training program that is approved by the DEO and is designed to measure an individual's mastery level of workplace skills.[62] The program takes approximately 30-45 minutes to complete. The administrator or operator of the online education or training program is required to report to the DEO that an individual has taken the initial skills test for benefit eligibility purposes, and to the regional workforce board or CareerSource Center, the results of the initial skills review for purposes of reemployment services. The regional workforce board is required to develop a plan to use the initial skills review to refer individuals to training and employment opportunities.[63]

An individual may take the initial skills review at the assessment center or online at any location with Internet access. The assessment measures general skills necessary for most jobs in three areas: locating information, reading, and applied math. All the questions are based on workplace scenarios. After taking the initial skills review, an individual may take additional course material to try to improve his or her skills.[64] In Fiscal Year 2012-13, 424,886 individuals completed the initial skills review, and 61,676 individuals were denied for failure to timely complete the initial skills review.[65]

In 2012, the USDOL Civil Rights Center issued an initial determination as a result of a discrimination complaint filed by the Miami Workers Center that found that the initial skills review might violate federal disability law in one of two ways.[66] It opined that the initial skills review, as implemented, had the tendency to screen out persons with disabilities from fully and equally enjoying the benefits of the RA program. Specifically, it was noted that the website required use of certain technology that could not easily be made accessible to persons with disabilities and no alternative method for completing the initial skills assessment was offered. Second, it found that the DEO did not effectively communicate to applicants that exemptions to the ISR were available to those with disabilities.

The DEO objected to the findings and there has been no resolution to date.

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[61] Individuals who are not Florida residents, temporarily laid off, union members who customarily obtain employment through a union hiring hall, claiming benefits under a short-time compensation plan, or unable to complete the ISR due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or language impediment are exempt from the ISR requirement.

[62] Section 443.036(26), F.S.

[63] Section 443.091(1)(c), F.S.

[64] Florida Department of Economic Opportunity, Division of Workforce Services, "Report on the Use, Effectiveness and Costs Associated with Training Opportunities and Related Services Provided to Reemployment Assistance Claimants As Required by Chapter 2012-30, Laws of Florida," 6-7 (Dec. 28, 2012), *available at* http://www.floridajobs.org/about%20awi/open_government/2013_Chapter2012-30LawsofFloridareportReemploymentAssistanceProgram.pdf (last visited March 10, 2014).

[65] E-mail from Audra Wiggins, Operations Manager, Reemployment Assistance Program, Division of Workforce Services, Department of Economic Opportunity (Aug. 16, 2013) (on file with the Senate Commerce and Tourism Committee).

[66] USDOL, Civil Rights Center, "Initial Determination," (Apr. 5, 2013), *available at* http://www.floridajobs.org/about%20awi/docs/media_InitialDetermination.pdf (last visited March 10, 2014).

Installment Plans

In Florida, RA benefits are financed solely through taxes paid by employers on the first $8,000 of each employee's wages.[67] The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's unemployment "experience" (as former employees collect RA benefits, these benefits are charged to the employer), the balance of the Unemployment Compensation Trust Fund, and other factors.

Since 2010, state law has allowed employers to elect to make quarterly contributions to the UC Trust Fund, instead of making a single, annual contribution.[68] Employers electing to pay quarterly are assessed an annual administrative fee of $5. This fee is deposited into the DOR's Operating Trust Fund. This option is currently set to expire in 2014.[69]

Short Time Compensation Program

Short Time Compensation[70] (STC) is a voluntary program that allows employers to retain trained employees during a slow down or disruption to regular business activity by reducing the hours of work for an entire group of affected employees rather than laying off some while continuing others in full-time employment. An employer wishing to participate in the STC program must submit a signed, written short time compensation plan to the DEO for approval.[71] The DEO must approve the plan if:

- The plan applies to and identifies each specific unit affected;
- The individuals in the affected unit are identified by name and social security number;
- The normal weekly hours of work for individuals in the affected unit are reduced by at least 10 percent but not more than 40 percent;
- The plan includes a certified statement by the employer that the aggregate reduction in work hours is in lieu of temporary layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours;
- The plan applies to at least 10 percent of the employees in the affected unit;
- The plan has written approval of all collective bargaining groups covering individuals in the affected unit;
- The plan does not serve to subsidize seasonal employees during the off-season or subsidize employers who traditionally use part-time employees; and
- The plan certifies the manner in which the employer will treat fringe benefits[72] of the individuals in the affected unit if the hours of the individuals are reduced to less than their normal weekly hours.

[67] Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. State and local governments are reimbursing employers. Most employers are contributory employers. In January 2015, the "wage base" will be reduced to $7,000. See s. 443.1217(2)(a), F.S.
[68] Section 443.141(1)(d), F.S.
[69] Section 443.141(1)(f), F.S.
[70] Section 443.1116, F.S.
[71] Section 443.1116(2), F.S.
[72] Fringe benefits include, but are not limited to, health insurance, retirement benefits under defined benefit pension plans, paid vacation and holidays, and sick leave.

To be eligible to receive benefits under an approved STC plan, an employee must:

- Be employed as a member of an affected unit in an approved plan;
- Be able to work and available to work additional hours or full-time with the short-time employer; and
- Have had work hours reduced by at least 10 percent but no more than 40 percent, with a corresponding reduction in wages.

In 2012, the Middle Class Tax Relief and Job Creation Act of 2012, passed by the U.S. Congress, made several changes to the STC program.[73] States are not required to enact an STC program, but must conform to the new law in order to continue to offer an STC program.[74]

Rural Areas of Critical Economic Concern

The Rural Economic Development Initiative (REDI), housed within the DEO, is a multi-agency endeavor that coordinates the efforts of state and regional agencies to address the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.[75] The REDI works with local governments, community-based organizations, and private organizations that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs and economic development.

A rural area of critical economic concern (RACEC) is a community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, a natural disaster, or that presents a unique economic development opportunity of regional impact.[76]

Upon a recommendation from the REDI, the Governor may designate up to three RACEC areas. This designation allows these areas to receive priority assignments for the REDI, and allows the Governor, acting through the REDI, to waive criteria, requirements, or similar provisions of any economic development incentive. Currently, there are three designated RACEC areas consisting of the following counties and communities:

- Northwest RACEC - Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County.
- South Central RACEC – DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the Cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County).
- North Central RACEC – Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.[77]

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[73] Pub. Law No. 112-96, H.R. 3630, 112th Cong. (Feb. 22, 2012).
[74] USDOL, Employment and Training Administration, UIPL No. 22-12 (Jun. 18, 2012), *available at* http://wdr.doleta.gov/directives/attach/UIPL/UIPL_22_12_Acc.pdf (last visited March 10, 2014).
[75] Section 288.0656(3), F.S.
[76] Section 288.0656(2)(d), F.S.
[77] The DEO, Annual Report 2012-2013 (October 2013), 37, *available at* http://sitefinity.floridajobs.org/about%20awi/open_government/2013_DEOAnnualReport.pdf (last visited March 10, 2014).

In 2012, Enterprise Florida, Inc., commissioned a study to help develop an economic development strategic plan for rural Florida.[78] The study found that:

- Florida has a fragmented framework for addressing rural economic development;
- Although rural Florida is perceived to be distressed and an "an area of critical economic concern," it has greater assets than its potential competition in other southeastern states; and
- The name "Rural Areas of Critical Economic Concern," may be counterproductive when seeking positive attention from economic development interests. One of the strategic recommendations is to change the RACEC name.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3202, F.S., to correct a cross-reference that inadvertently left newly-created cities out of the requirement to update their land development regulations.

Section 2 amends s. 288.0001, F.S., to require the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to include the New Markets Development Program established under ss. 288.991-288.9922, F.S., as part of the Economic Development Programs Evaluation that will be conducted by January 1, 2017.

Loan Programs

Section 3 amends s. 288.005, F.S., to provide definitions for loan administrator and loan program. The bill defines "loan administrator" as a statutorily eligible recipient of state funds authorized by the Department of Economic Opportunity (DEO) to make loans under a loan program. "Loan program" is defined as a program established under ch. 288, F.S., that provides appropriated funds to an eligible entity to further a specific state purpose for a limited time with a requirement that the funds be returned to the state. The term loan program also includes "loan fund" or "loan pilot program."

Section 4 creates s. 288.006, F.S., which outlines the procedure and requirements for operating all loan programs under ch. 288, F.S.

The bill provides that state funds appropriated for loan programs may only be used by an eligible recipient or loan administrator and these funds may only be used to carry out the specific state purpose of the loan program, subject to any compensation due to a loan administrator. The DEO may award state funds directly to an eligible recipient or to a loan administrator. All state funds, including any accrued interest, remain state funds unless statutory requirements of the loan program state otherwise.

Upon termination of a loan program, all appropriated funds will revert to the General Revenue Fund, minus any outstanding administrative expenses due. Upon termination of a contract between the DEO and an eligible recipient or loan administrator, any remaining funds will revert to the fund from which the appropriation was made. The DEO will become the successor entity for any outstanding loans and is directed to pay the former loan administrator for any allowable

[78] Enterprise Florida, Inc., "Florida Rural Economic Development Study," (December 2012), *available at* http://www.enterpriseflorida.com/wp-content/uploads/12.31.2012-Rural-Strategy-Deliverable-Presentation.pdf (last visited March 10, 2014).

administrative expenses due to the loan administrator. However, this does not apply when the contract is terminated for fraud or a finding that the recipient or loan administrator was not meeting the terms of the program. The former loan administrator or recipient must execute all appropriate instruments to reconcile any remaining accounts associated with the terminated loan program or contract.

An eligible recipient or loan administrator must avoid any potential conflicts of interest regarding the use of loan program funds. Loan administrators, as well as their board members, employees, agents, or any immediate family members thereof, are not allowed to have a financial interest in an entity that is an eligible recipient of the loan program. "Immediate family" includes a parent, spouse, child, sibling, grandparent, or grandchild related by blood or marriage. The bill prohibits loans from being awarded to a person or entity if there is a conflict of interest between the parties involved.

To determine eligibility as a recipient or as a loan administrator for a loan program, an applicant must submit an application to the DEO. The DEO must evaluate the applicant's business practices, financial stability, past performance in other state programs, and ability to meet the statutory requirements of the loan program. An applicant's eligibility may be conditionally granted or denied if the DEO determines that the entity is not compliant with any law, rule, or program requirement.

Revolving loans or new negotiable instruments using appropriated state funds that have been repaid to a loan administrator may be entered into when a loan program's statutory structure permits. However, all revolving loans or new negotiable instruments made by a loan administrator remain subject to the loan program requirements and compensation to a recipient or administrator is prohibited from exceeding the provisions that are permitted under ch. 288, F.S.

The bill authorizes the Auditor General to perform audits to verify that loan funds are expended by eligible recipients and loan administrators as required for each loan program. If the Auditor General determines that the funds are not expended as required, DEO must be notified so that it may pursue recovery of the funds. However, this authority will not prevent DEO from pursuing recovery of program funds to protect the funds or as permitted by law. DEO is authorized to adopt rules to implement the provisions of the bill.

Triumph Gulf Coast, Inc.

Section 5 amends s. 288.8013, F.S., to clarify that the audit of Triumph Gulf Coast, Inc., required to be conducted by the Auditor General is a performance audit.

Section 6 amends s. 288.8014, F.S., to provide that the terms of the initial board of directors for Triumph Gulf Coast, Inc., begin upon a legislative appropriation of funds to the Recovery Fund. The bill also provides that the initial appointments to the board of directors by the President of the Senate and the Speaker of the House of Representatives will be for a term of 5 years to achieve staggered terms. The remaining initial appointments will each serve a 4-year term. The bill provides that the certified public accountant that Triumph Gulf Coast, Inc., retains must *annually* audit its financial records.

Florida Defense Support Task

Section 7 amends s. 288.987, F.S., to increase the amount of funds that the Florida Defense Support Task Force may spend on staffing and administrative expenses of the task force, from $200,000 to $250,000 annually.

Florida Small Cities Community Development Block Grant Program

Section 8 amends s. 290.0411, F.S., to reflect that the legislative intent and purpose of the Small Cities Community Development Block Grant Program Act also includes economic need as one of the factors to make a Florida community eligible to participate in the program and economic development programs as an activity for such communities to undertake.

Section 9 amends s. 290.044, F.S., to provide the DEO rule-making authority to establish guidelines to distribute the Small Cities Community Development Block Grant (Small Cities CDBG) Program funds through a competitive selection process. Applicants will compete against each other in four grant program categories: housing rehabilitation, economic development, neighborhood revitalization, and commercial revitalization. The amendment deletes one program category: project planning and design. The DEO is directed to define broad community development objectives for the distribution of Community Development Block Grant funds that are consistent with the national objectives, as established by federal law.

Section 10 amends s. 290.046, F.S., to substantially revise the application procedures for the Florida Small Cities CDBG Program. Eligible local governments may only submit one application for a noneconomic development project during an application cycle. An eligible local government may apply for an economic development grant up to three times each annual funding cycle but may only receive one such grant per annual funding cycle. A local government is permitted to have more than one open economic development grant.

A grant may not be awarded until the DEO has completed a site visit to verify the information contained in the award application.

The DEO must rank each application received based on criteria established by rule. The rankings must incorporate a procedure intended to reduce or eliminate any population-related bias that places exceptionally small communities at a competitive disadvantage. The bill repeals some specific criteria and procedures for scoring applications that currently exist in statute.

Project funding must be determined by the rankings established in each application cycle. If, at the conclusion of a funding cycle, economic development funding remains, those funds will be awarded to eligible projects on a first-come, first-served basis until funding for this category is fully obligated.

The application's program impact score, equal employment opportunity and fair housing score, and the communitywide needs score may take into consideration scoring factors that include: unemployment, poverty levels, benefits to low- and moderate-income residents, use of minority-

owned or woman-owned businesses in previous grants, health and safety issues, and the condition of physical structures.

The bill makes the requirement that a local government establish a Citizen's Advisory Task Force permissive. Local government citizen participation requirements are also substantially revised. An applicant must make information about the amount of funds available for various activities and the range of activities that may be undertaken available to the public. An applicant is also required to hold a minimum of two public meetings to solicit public input before submitting the final application. The applicant must conduct an initial hearing to solicit public input about community needs, to inform the public about funding opportunities to address those needs, and to discuss activities that may be undertaken. Prior to the second public hearing, the local government must publish a summary of the proposed application to give citizens the opportunity to review the contents of the application. A second public hearing must be held to obtain public comment about the proposed application and make appropriate modifications.

Section 11 amends s. 290.047, F.S., to provide that the maximum amount of block grant funds that may be spent on administrative costs under the economic development program category is $120,000.[79] The maximum amount of block grant funds that may be spent on engineering and architectural costs for any grant must be in accordance with a method adopted by the DEO by rule.

Section 12 amends s. 290.0475, F.S., to update references to statutes and department rules.

Section 13 repeals s. 290.048(5), F.S., which grants the DEO the power to adopt and enforce requirements concerning an applicant's written description of a service area and required the inclusion of maps illustrating the proposed service area. This repeal is related to the substantial revisions to the application process.

Space Florida

Section 14 amends s. 331.3051, F.S., to require Space Florida to consult with the Florida Tourism Industry Marketing Corporation (VISIT Florida) in developing a space tourism marketing plan, and allows Space Florida and VISIT Florida to enter into a mutually beneficial agreement to implement the plan. VISIT Florida replaces Enterprise Florida, Inc., as Space Florida's partner in developing a space tourism marketing plan.

The bill repeals the requirement that Space Florida develop a proposal to establish a Center of Excellence for Aerospace and instead makes this task permissive. The bill also requires Space Florida to provide support to universities in Florida that are members of the FAA's Center of Excellence for Commercial Space Transportation.

[79] Under current law, the maximum Small Cities CDBG administration costs are capped at 15 percent for housing grants and 8 percent for all other program category grants. A schedule of maximum percentages used for engineering costs is adopted by the DEO consistent with the schedule used by the U.S. Farmers Home Administration or another comparable schedule. See s. 290.047, F.S.

Reemployment Assistance

Initial Skills Review

Section 15 repeals s. 443.036(26), F.S., which provides a definition for "initial skills review."

Section 16 amends s. 443.091, F.S., to repeal the requirement that applicants for reemployment assistance must complete an initial skills review to receive benefits. The bill directs the DEO to offer a voluntary online assessment that will identify an individual's skills, abilities, and career aptitude. The assessment must be made available to any person seeking services from a regional workforce board or CareerSource Center. The results of the online assessment must be made available to the claimant, the regional workforce board, and the CareerSource Center. The individual must be informed of and encouraged to participate in services, including career counseling, provision of skill match and job market information, skills upgrade, and other training opportunities offered at no cost to the individual through the CareerSource Center delivery service.

Aggregate data on the assessment outcomes may also be made available to Workforce Florida, Inc., also known as CareerSource Florida, and Enterprise Florida, Inc., for use in developing policies related to education and training programs to ensure that businesses in this state have access to a skilled and competent workforce.

The bill authorizes the DEO to competitively procure an online assessment system that will work seamlessly with the CONNECT system.[80]

Short Time Compensation (STC)

Section 17 amends s. 443.1116, F.S., to bring Florida in conformity with federal law. As a part of its STC plan, the employer must certify that if fringe benefits are provided to an employee whose workweek is reduced under the program, the employer will continue to provide the fringe benefits while the employee is participating in the STC program under the same terms and conditions as if the employee were not a participant or to the same extent as other employees not participating in the STC program.

The STC plan must also describe the manner in which it will be implemented, including the provision of notice and an estimate of layoffs that would have occurred in the absence of the ability to participate in the STC program. The employer's written plan and its implementation must be consistent with the employer's obligations under applicable state and federal law.

The bill prohibits the DEO from denying STC benefits to an individual who is otherwise eligible due to her or his participation in employer-sponsored training or a training program under the Workforce Investment Act to improve job skills when the training is approved by the DEO. The bill defines "employer-sponsored training" as training sponsored by an employer to improve the skills of the employer's workers.

[80] The CONNECT system is DEO's Reemployment Assistance Claims and Benefits Information System.

Installment Plans

Section 18 amends s. 443.141, F.S., to make the reemployment assistance contribution installment plans a permanent option. Employers will continue to have the option of making quarterly contributions to the Unemployment Compensation Trust Fund for an annual administrative fee of $5.

Filing Claims

Section 19 amends s. 443.151, F.S., to require the DEO to provide an alternate method of filing claims for reemployment assistance when it determines that the online claim system (CONNECT) is unavailable for the filing of claims. The DEO must provide public notice of the system's unavailability.

Sections 41 and 42 amend ss. 215.425 and 443.1216, F.S., to update statutory citations to conform to changes made by this bill.

Rural Areas of Critical Economic Concern

Sections 20 through 40 amend ss. 125.271, 163.3177, 163.3187, 163.3246, 211.3103, 212.098, 218.67, 288.018, 288.065, 288.0655, 288.0656, 288.1088, 288.1089, 290.0055, 339.2819, 339.63, 373.4595, 380.06, 380.0651, 985.686, and 1011.76, F.S., to replace the phrase rural area of "critical economic concern" with rural area of "opportunity."

Section 43 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Continuing the installment plan option for reemployment assistance (RA) contributions may have an indeterminate negative impact on the balance of the Unemployment Compensation Trust Fund that could increase RA contribution rates assessed against employers.

B. Private Sector Impact:

The availability of the Short Time Compensation program allows employers to avoid layoffs while retaining skilled employees.

For those employers that may experience difficulty in remitting an annual lump sum payment of RA contributions, continuing the installment plan option will provide an alternative means of payment and possibly reduce the risk of delinquency.

The rebranding of "rural areas of critical economic concern" to "rural areas of opportunity" may have a positive economic effect on these communities.

C. Government Sector Impact:

DEO anticipates that any administrative costs resulting from the bill will be absorbed through current resources.[81]

The Auditor General could incur additional indeterminate staffing costs if the Auditor General exercises the new authority to audit DEO loan programs when necessary.[82]

The bill provides that the Florida Defense Support Task Force may spend up to $250,000 on staffing and administrative expenses, which raises the current statutory limit by $50,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DEO to adopt rules relating to the general operation of loan programs and the Small Cities CDBG program.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.271, 163.3177, 163.3187, 163.3202, 163.3246, 211.3103, 212.098, 215.425, 218.67, 288.0001, 288.005, 288.06, 288.018, 288.065, 288.0655, 288.0656, 288.1088, 288.1089, 288.8013, 288.8014, 288.987, 290.0055, 290.0411, 290.044, 290.046, 290.047, 290.0475, 290.048, 331.3051, 339.2819, 339.63, 373.4595, 380.06, 380.0651, 443.091, 443.1116, 443.1216, 443.141, 443.151, 985.686, and 1011.76.

This bill creates section 288.006 of the Florida Statutes.

[81] DEO Agency Analysis. SB 1634. March 14, 2014. (On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee.)
[82] Florida Auditor General Analysis. SB 1634. March 12, 2014. (On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee.)

This bill repeals section 443.036(26) of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 22, 2014:
The committee substitute:

- Clarifies that the Auditor General's annual audit of the Recovery Fund and Triumph Gulf Coast, Inc., is a performance audit.
- Provides that the initial appointments to the board of directors of Triumph Gulf Coast, Inc., begin after the Legislature appropriates funds to the Recovery Fund.
- Provides that the initial appointments to the board of directors of Triumph Gulf Coast, Inc., by the President of the Senate and the Speaker of the House of Representatives will serve for 5 years in order to the stagger the terms among the members.
- Provides that the audit performed by the retained independent certified public accountant is to be an annual audit.
- Increases the amount of funds that the Florida Defense Support Task Force may use for staffing and administration from $200,000 to $250,000.
- Requires the Department of Economic Opportunity to provide an alternative method for filing reemployment assistance claims when it determines that the online claims and benefits system (CONNECT) is unavailable for filing claims and to provide notice when the system is not available.

CS by Military and Veterans Affairs, Space, and Domestic Security on March 25, 2014:
The committee substitute:

- Requires the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to evaluate the New Markets Development Program as part of the Economic Development Programs Evaluation;
- Further clarifies prohibited conflicts of interest regarding the use of loan program funds;
- Provides that provisions in the bill will not prevent DEO from pursuing recovery of loan program funds when necessary.
- Provides Space Florida the option to develop a proposal to establish a Center of Excellence for Aerospace; and
- Requires Space Florida to provide support to universities in Florida that are members of the FAA's Center of Excellence for Commercial Space Transportation.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 220 and 221
insert:

Section 5. Subsection (6) of section 288.8013, Florida Statutes, is amended to read:

288.8013 Triumph Gulf Coast, Inc.; Recovery Fund; creation; investment.—

(6) The Auditor General shall conduct a performance ~~an~~ audit of the Recovery Fund and Triumph Gulf Coast, Inc.,

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annually. Triumph Gulf Coast, Inc., shall provide to the Auditor General any detail or supplemental data required.

Section 6. Paragraph (a) of subsection (9) and subsection (3) of section 288.8014, Florida Statutes, are amended to read:

288.8014 Triumph Gulf Coast, Inc.; organization; board of directors.—

(3) Notwithstanding s. 20.052(4)(c), each initial appointment to the board of directors by the Trustees of the State Board of Administration shall serve for a term that ends 4 years after the Legislature appropriates funds to the Recovery Fund. To achieve staggered terms among the members of the board, each initial appointment to the board of directors by the President of the Senate and the Speaker of the House of Representatives shall serve for a term that ends 5 years after the Legislature appropriates funds to the Recovery Fund. Thereafter, each member of the board of directors shall serve for a term of 4 years~~, except that initially the appointments of the President of the Senate and the Speaker of the House of Representatives each shall serve a term of 2 years to achieve staggered terms among the members of the board~~. A member is not eligible for reappointment to the board, except, however, any member appointed to fill a vacancy for a term of 2 years or less may be reappointed for an additional term of 4 years. The initial appointments to the board must be made by November 15, 2013. Vacancies on the board of directors shall be filled by the officer who originally appointed the member. A vacancy that occurs before the scheduled expiration of the term of the member shall be filled for the remainder of the unexpired term.

(9)(a) Triumph Gulf Coast, Inc., is permitted to hire or

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contract for all staff necessary to the proper execution of its powers and duties to implement this act. The corporation is required to retain:

1. An independent certified public accountant licensed in this state pursuant to chapter 473 to inspect the records of and to annually audit the expenditure of the earnings and available principal disbursed by Triumph Gulf Coast, Inc.

2. An independent financial advisor to assist Triumph Gulf Coast, Inc., in the development and implementation of a strategic plan consistent with the requirements of this act.

3. An economic advisor who will assist in the award process, including the development of priorities, allocation decisions, and the application and process; will assist the board in determining eligibility of award applications and the evaluation and scoring of applications; and will assist in the development of award documentation.

4. A legal advisor with expertise in not-for-profit investing and contracting and who is a member of The Florida Bar to assist with contracting and carrying out the intent of this act.

Section 7. Subsection (7) of section 288.987, Florida Statutes, is amended to read:

288.987 Florida Defense Support Task Force.—

(7) The department shall contract with the task force for expenditure of appropriated funds, which may be used by the task force for economic and product research and development, joint planning with host communities to accommodate military missions and prevent base encroachment, advocacy on the state’s behalf with federal civilian and military officials, assistance to

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school districts in providing a smooth transition for large numbers of additional military-related students, job training and placement for military spouses in communities with high proportions of active duty military personnel, and promotion of the state to military and related contractors and employers. The task force may annually spend up to $250,000 ~~$200,000~~ of funds appropriated to the department for the task force for staffing and administrative expenses of the task force, including travel and per diem costs incurred by task force members who are not otherwise eligible for state reimbursement.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 15

and insert:

adopt rules; amending s. 288.8013, F.S.; clarifying that the Auditor General's annual audit of the Recovery Fund and Triumph Gulf Coast, Inc., is a performance audit; amending s. 288.8014, F.S.; providing that terms of the initial appointments to the board of directors of Triumph Gulf Coast, Inc., begin after the Legislature appropriates funds to the Recovery Fund; providing initial appointment term limits; providing that the audit by the retained independent certified public accountant is annual; amending 288.987, F.S.; increasing the amount of funds that may be spent on staffing and administrative expenses of the Florida Defense Support Task Force; amending 290.0411, F.S.; revising

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 220 and 221
insert:

Section 5. Paragraph (c) of subsection (3) of section 288.9914, Florida Statutes, is amended to read:

288.9914 Certification of qualified investments; investment issuance reporting.—

(3) REVIEW.—

(c) The department may not approve a cumulative amount of

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qualified investments that may result in the claim of more than $227.55 ~~$178.8~~ million in tax credits during the existence of the program or more than $46.6 ~~$36.6~~ million in tax credits in a single state fiscal year. However, the potential for a taxpayer to carry forward an unused tax credit may not be considered in calculating the annual limit.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 15

and insert:

adopt rules; amending s. 288.9914, F.S.; revising limits on tax credits that may be approved by the Department of Economic Opportunity under the New Markets Development Program; amending s. 290.0411, F.S.; revising

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 840 and 841
insert:

Section 16. Paragraph (a) of subsection (2) of section 443.151, Florida Statutes, is amended to read:

443.151 Procedure concerning claims.—

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.—

(a) *In general.*—Initial and continued claims for benefits

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must be made by approved electronic or alternate means and in accordance with rules adopted by the Department of Economic Opportunity. The department must provide alternative means, such as telephone, for filing initial and continued claims when the department determines access to the approved electronic means is or will be unavailable and must provide public notice of such unavailability. The department must notify claimants and employers regarding monetary and nonmonetary determinations of eligibility. Investigations of issues raised in connection with a claimant which may affect a claimant's eligibility for benefits or charges to an employer's employment record shall be conducted by the department through written, telephonic, or electronic means as prescribed by rule.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 76 and 77

insert:

amending 443.151, F.S.; requiring the department to provide an alternate means for filing claims when the approved electronic method is unavailable;

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LEGISLATIVE ACTION

Senate	.	House
Comm: TP	.	
04/23/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 1745 and 1746
insert:

Section 39. (1) Any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2014, through January 1, 2016, is extended and renewed for a period of 2 years after its previously scheduled date of expiration. This

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extension includes any local government-issued development order or building permit including certificates of levels of service. This section does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension. Extensions granted pursuant to this section; s. 14 of chapter 2009-96, Laws of Florida, as reauthorized by s. 47 of chapter 2010-147, Laws of Florida; s. 46 of chapter 2010-147, Laws of Florida; s. 73 or s. 79 of chapter 2011-139, Laws of Florida; or s. 24 of chapter 2012-205, Laws of Florida, may not exceed 4 years in total. Further, specific development order extensions granted pursuant to s. 380.06(19)(c)2., Florida Statutes, may not be further extended by this section.

(2) The commencement and completion dates for any required mitigation associated with a phased construction project are extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

(3) The holder of a valid permit or other authorization that is eligible for the 2-year extension must notify the authorizing agency in writing by December 31, 2014, identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.

(4) The extension provided in subsection (1) does not apply to:

(a) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

(b) A permit or other authorization held by an owner or

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operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.

(c) A permit or other authorization, if granted an extension that would delay or prevent compliance with a court order.

(5) Permits extended under this section shall continue to be governed by the rules in effect at the time the permit was issued unless it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit which lessens the environmental impact, except that any such modification does not extend the time limit beyond 2 additional years.

(6) This section does not impair the authority of a county or municipality to require the owner of a property who has notified the county or municipality of the owner's intent to receive the extension of time granted pursuant to this section to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 84

and insert:

cross-references to changes made by the act; extending

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and renewing building permits and certain permits issued by the Department of Environmental Protection or a water management district, including any local government-issued development order or building permit issued pursuant thereto; limiting certain permit extensions to a specified period of time; extending commencement and completion dates for required mitigation associated with a phased construction project; requiring the holder of an extended permit or authorization to provide notice to the authorizing agency; providing exceptions to the extension and renewal of such permits; providing that extended permits are governed by certain rules; providing applicability; providing

By the Committees on Military and Veterans Affairs, Space, and Domestic Security; and Commerce and Tourism

583-03193-14 20141634c1

A bill to be entitled

An act relating to the Department of Economic Opportunity; amending s. 163.3202, F.S.; requiring each county and municipality to adopt and enforce land development regulations in accordance with the submitted comprehensive plan; amending s. 288.0001, F.S.; requiring an analysis of the New Markets Development Program in the Economic Development Programs Evaluation; amending s. 288.005, F.S.; defining terms; creating s. 288.006, F.S.; providing requirements for loan programs relating to accountability and proper stewardship of funds; authorizing the Auditor General to conduct audits for a specified purpose; authorizing the department to adopt rules; amending s. 290.0411, F.S.; revising legislative intent for purposes of the Florida Small Cities Community Development Block Grant Program; amending s. 290.044, F.S.; requiring the Department of Economic Opportunity to adopt rules establishing a competitive selection process for loan guarantees and grants awarded under the block grant program; revising the criteria for the award of grants; amending s. 290.046, F.S.; revising limits on the number of grants that an applicant may apply for and receive; revising the requirement that the department conduct a site visit before awarding a grant; requiring the department to rank applications according to criteria established by rule and to distribute funds according to the rankings; revising scoring factors to consider

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

583-03193-14 20141634c1

in ranking applications; revising requirements for public hearings; providing that the creation of a citizen advisory task force is discretionary, rather than required; deleting a requirement that a local government obtain consent from the department for an alternative citizen participation plan; amending s. 290.047, F.S.; revising the maximum amount and percentage of block grant funds that may be spent on certain costs and expenses; amending s. 290.0475, F.S.; conforming provisions to changes made by the act; amending s. 290.048, F.S.; deleting a provision authorizing the department to adopt and enforce strict requirements concerning an applicant's written description of a service area; amending s. 331.3051, F.S.; requiring Space Florida to consult with the Florida Tourism Industry Marketing Corporation, rather than with Enterprise Florida, Inc., in developing a space tourism marketing plan; authorizing Space Florida to enter into an agreement with the corporation, rather than with Enterprise Florida, Inc., for a specified purpose; revising the research and development duties of Space Florida; repealing s. 443.036(26), F.S., relating to the definition of the term "initial skills review"; amending s. 443.091, F.S.; deleting the requirement that an unemployed individual take an initial skill review before he or she is eligible to receive reemployment assistance benefits; requiring the department to make available for such individual a voluntary online assessment that

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

identifies an individual's skills, abilities, and career aptitude; requiring information from such assessment to be made available to certain groups; revising the requirement that the department offer certain training opportunities; amending s. 443.1116, F.S.; defining the term "employer sponsored training"; revising the requirements for a short-term compensation plan to be approved by the department; revising the treatment of fringe benefits in such plan; requiring an employer to describe the manner in which the employer will implement the plan; requiring the director to approve the plan if it is consistent with employer obligations under law; prohibiting the department from denying short-time compensation benefits to certain individuals; amending s. 443.141, F.S.; providing an employer payment schedule for specified years' contributions to the Unemployment Compensation Trust Fund; providing applicability; amending ss. 125.271, 163.3177, 163.3187, 163.3246, 211.3103, 212.098, 218.67, 288.018, 288.065, 288.0655, 288.0656, 288.1088, 288.1089, 290.0055, 339.2819, 339.63, 373.4595, 380.06, 380.0651, 985.686, and 1011.76, F.S.; renaming "rural areas of critical economic concern" as "rural areas of opportunity"; amending ss. 215.425 and 443.1216, F.S.; conforming cross-references to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 163.3202, Florida Statutes, is amended to read:

163.3202 Land development regulations.—

(1) Within 1 year after submission of its comprehensive plan or revised comprehensive plan for review pursuant to s. 163.3191 ~~s. 163.3167(2)~~, each county and each municipality shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.

Section 2. Paragraph (a) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(a) By January 1, 2014, and every 3 years thereafter, an analysis of the following:

1. The capital investment tax credit established under s. 220.191.

2. The qualified target industry tax refund established under s. 288.106.

3. The brownfield redevelopment bonus refund established under s. 288.107.

4. High-impact business performance grants established under s. 288.108.

5. The Quick Action Closing Fund established under s. 288.1088.

6. The Innovation Incentive Program established under s. 288.1089.

7. Enterprise Zone Program incentives established under ss. 212.08(5) and (15), 212.096, 220.181, and 220.182.

8. The New Markets Development Program established under ss. 288.991-288.9922.

Section 3. Subsections (5) and (6) are added to section 288.005, Florida Statutes, to read:

288.005 Definitions.—As used in this chapter, the term:

(5) "Loan administrator" means an entity statutorily eligible to receive state funds and authorized by the department to make loans under a loan program.

(6) "Loan program" means a program established in this chapter to provide appropriated funds to an eligible entity to further a specific state purpose for a limited period of time and with a requirement that such appropriated funds be repaid to the state. The term includes a "loan fund" or "loan pilot program" administered by the department under this chapter.

Section 4. Section 288.006, Florida Statutes, is created to read:

288.006 General operation of loan programs.—

(1) The Legislature intends to promote the goals of accountability and proper stewardship by recipients of loan program funds. This section applies to all loan programs established under this chapter.

(2) State funds appropriated for a loan program may be used only by an eligible recipient or loan administrator, and the use of such funds is restricted to the specific state purpose of the loan program, subject to any compensation due to a loan administrator as provided under this chapter. State funds may be awarded directly by the department to an eligible recipient or awarded by the department to a loan administrator. All state funds, including any interest earned, remain state funds unless otherwise stated in the statutory requirements of the loan program.

(3)(a) Upon termination of a loan program by the Legislature or by statute, all appropriated funds shall revert to the General Revenue Fund. The department shall pay the entity for any allowable administrative expenses due to the loan administrator as provided under this chapter, unless otherwise required by law.

(b) Upon termination of a contract between the department and an eligible recipient or loan administrator, all remaining appropriated funds shall revert to the fund from which the appropriation was made. The department shall become the successor entity for any outstanding loans. Except in the case of the termination of a contract for fraud or a finding that the loan administrator was not meeting the terms of the program, the department shall pay the entity for any allowable administrative expenses due to the loan administrator as provided under this chapter.

(c) The eligible recipient or loan administrator to which this subsection applies shall execute all appropriate instruments to reconcile any remaining accounts associated with

a terminated loan program or contract. The entity shall execute all appropriate instruments to ensure that the department is authorized to collect all receivables for outstanding loans, including, but not limited to, assignments of promissory notes and mortgages.

(4) An eligible recipient or loan administrator must avoid any potential conflict of interest regarding the use of appropriated funds for a loan program. An eligible recipient or loan administrator or a board member, employee, or agent thereof, or an immediate family member of a board member, employee, or agent, may not have a financial interest in an entity that is awarded a loan under a loan program. A loan may not be made to a person or entity if a conflict of interest exists between the parties involved. As used in this subsection, the term "immediate family" means a parent, spouse, child, sibling, grandparent, or grandchild related by blood or marriage.

(5) In determining eligibility for an entity applying for the award of funds directly by the department or applying for selection as a loan administrator for a loan program, the department shall evaluate each applicant's business practices, financial stability, and past performance in other state programs, in addition to the loan program's statutory requirements. Eligibility of an entity applying to be a recipient or loan administrator may be conditionally granted or denied outright if the department determines that the entity is noncompliant with any law, rule, or program requirement.

(6) Recurring use of state funds, including revolving loans or new negotiable instruments, which have been repaid to the

loan administrator may be made if the loan program's statutory structure permits. However, any use of state funds made by a loan administrator remains subject to subsections (2) and (3), and compensation to a loan administrator may not exceed any limitation provided by this chapter.

(7) The Auditor General may conduct audits as provided in s. 11.45 to verify that the appropriations under each loan program are expended by the eligible recipient or loan administrator as required for each program. If the Auditor General determines that the appropriations are not expended as required, the Auditor General shall notify the department, which may pursue recovery of the funds. This section does not prevent the department from pursuing recovery of the appropriated loan program funds when necessary to protect the funds or when authorized by law.

(8) The department may adopt rules under ss. 120.536(1) and 120.54 as necessary to carry out this section.

Section 5. Section 290.0411, Florida Statutes, is amended to read:

290.0411 Legislative intent and purpose of ss. 290.0401-290.048.—It is the intent of the Legislature to provide the necessary means to develop, preserve, redevelop, and revitalize Florida communities exhibiting signs of decline, ~~or~~ distress, or economic need by enabling local governments to undertake the necessary community and economic development programs. The overall objective is to create viable communities by eliminating slum and blight, fortifying communities in urgent need, providing decent housing and suitable living environments, and expanding economic opportunities, principally for persons of low

or moderate income. The purpose of ss. 290.0401-290.048 is to assist local governments in carrying out effective community and economic development and project planning and design activities to arrest and reverse community decline and restore community vitality. Community and economic development and project planning activities to maintain viable communities, revitalize existing communities, expand economic development and employment opportunities, and improve housing conditions and expand housing opportunities, providing direct benefit to persons of low or moderate income, are the primary purposes of ss. 290.0401-290.048. The Legislature, therefore, declares that the development, redevelopment, preservation, and revitalization of communities in this state and all the purposes of ss. 290.0401-290.048 are public purposes for which public money may be borrowed, expended, loaned, pledged to guarantee loans, and granted.

Section 6. Section 290.044, Florida Statutes, is amended to read:

290.044 Florida Small Cities Community Development Block Grant Program Fund; administration; distribution.—

(1) The Florida Small Cities Community Development Block Grant Program Fund is created. All revenue designated for deposit in such fund shall be deposited by the appropriate agency. The department shall administer this fund as a grant and loan guarantee program for carrying out the purposes of ss. 290.0401-290.048.

(2) The department shall distribute such funds as loan guarantees and grants to eligible local governments on the basis of a competitive selection process established by rule.

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(3) The department shall require applicants for grants to compete against each other in the following grant program categories:

(a) Housing rehabilitation.

(b) Economic development.

(c) Neighborhood revitalization.

(d) Commercial revitalization.

(4) ~~(3)~~ The department shall define ~~the~~ broad community development objectives ~~objective~~ to be achieved by the activities in each of the ~~following~~ grant program categories with the use of funds from the Florida Small Cities Community Development Block Grant Program Fund. Such objectives shall be designed to meet at least one of the national objectives provided in the Housing and Community Development Act of 1974~~, and require applicants for grants to compete against each other in these grant program categories:~~

~~(a) Housing.~~

~~(b) Economic development.~~

~~(c) Neighborhood revitalization.~~

~~(d) Commercial revitalization.~~

~~(e) Project planning and design~~.

(5) ~~(4)~~ The department may set aside an amount of up to 5 percent of the funds annually for use in any eligible local government jurisdiction for which an emergency or natural disaster has been declared by executive order. Such funds may only be provided to a local government to fund eligible emergency-related activities for which no other source of federal, state, or local disaster funds is available. The department may provide for such set-aside by rule. In the last

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quarter of the state fiscal year, any funds not allocated under the emergency-related set-aside shall be distributed to unfunded applications from the most recent funding cycle.

(6) ~~(5)~~ The department shall establish a system of monitoring grants, including site visits, to ensure the proper expenditure of funds and compliance with the conditions of the recipient's contract. The department shall establish criteria for implementation of internal control, to include, but not be limited to, the following measures:

(a) Ensuring that subrecipient audits performed by a certified public accountant are received and responded to in a timely manner.

(b) Establishing a uniform system of monitoring that documents appropriate followup as needed.

(c) Providing specific justification for contract amendments that takes into account any change in contracted activities and the resultant cost adjustments which shall be reflected in the amount of the grant.

Section 7. Section 290.046, Florida Statutes, is amended to read:

290.046 Applications for grants; procedures; requirements.—

(1) In applying for a grant under a specific program category, an applicant shall propose eligible activities that directly address the objectives ~~objective~~ of that program category.

(2)(a) Except for applications for economic development grants as provided in subparagraph (b)1. ~~paragraph (c)~~, an ~~each~~ eligible local government may submit one ~~an~~ application for a grant ~~under either the housing program category or the~~

~~neighborhood revitalization program category~~ during each application ~~annual funding~~ cycle. ~~An applicant may not receive more than one grant in any state fiscal year from any of the following categories: housing, neighborhood revitalization, or commercial revitalization.~~

(b)1. An ~~Except as provided in paragraph (c), each~~ eligible local government may apply up to three times in any one annual funding cycle for an economic development ~~a~~ grant ~~under the economic development program category~~ but may not ~~shall~~ receive ~~no~~ more than one such grant per annual funding cycle. A local government may have more than one open economic development grant ~~Applications for grants under the economic development program category may be submitted at any time during the annual funding cycle, and such grants shall be awarded no less frequently than three times per funding cycle~~.

2. The department shall establish minimum criteria pertaining to the number of jobs created for persons of low or moderate income, the degree of private sector financial commitment, and the economic feasibility of the proposed project and shall establish any other criteria the department deems appropriate. Assistance to a private, for-profit business may not be provided from a grant award unless sufficient evidence exists to demonstrate that without such public assistance the creation or retention of such jobs would not occur.

(c)1. A local government ~~governments~~ with an open housing rehabilitation, neighborhood revitalization, or commercial revitalization contract is ~~shall~~ not ~~be~~ eligible to apply for another housing rehabilitation, neighborhood revitalization, or commercial revitalization grant until administrative closeout of

its ~~their~~ existing contract. The department shall notify a local government of administrative closeout or of any outstanding closeout issues within 45 days after ~~of~~ receipt of a closeout package from the local government. A local government ~~governments~~ with an open housing rehabilitation, neighborhood revitalization, or commercial revitalization community development block grant contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may apply for an economic development grant.

2. A local government ~~governments~~ with an open economic development community development block grant contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may apply for a housing rehabilitation, ~~or~~ neighborhood revitalization, or ~~and a~~ commercial revitalization community development block grant. A local government ~~governments~~ with an open economic development contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may receive no more than one additional economic development grant in each fiscal year.

(d) ~~Beginning October 1, 1988,~~ The department may not ~~shall~~ award a ~~no~~ grant until it ~~the department~~ has conducted ~~determined, based upon~~ a site visit to verify the information contained in the local government's application~~, that the proposed area matches and adheres to the written description contained within the applicant's request. If, based upon review of the application or a site visit, the department determines that any information provided in the application which affects~~

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~~eligibility or scoring has been misrepresented, the applicant's request shall be rejected by the department pursuant to s. 290.0475(7). Mathematical errors in applications which may be discovered and corrected by readily computing available numbers or formulas provided in the application shall not be a basis for such rejection~~.

(3)(a) The department shall rank each application received during the application cycle according to criteria established by rule. The ranking system shall include a procedure to eliminate or reduce any population-related bias that places exceptionally small communities at a disadvantage in the competition for funds ~~Each application shall be ranked competitively based on community need and program impact. Community need shall be weighted 25 percent. Program impact shall be weighted 65 percent. Outstanding performance in equal opportunity employment and housing shall be weighted 10 percent~~.

(b) Funds shall be distributed according to the rankings established in each application cycle. If economic development funds remain available after the application cycle closes, the remaining funds shall be awarded to eligible projects on a first-come, first-served basis until such funds are fully obligated ~~The criteria used to measure community need shall include, at a minimum, indicators of the extent of poverty in the community and the condition of physical structures. Each application, regardless of the program category for which it is being submitted, shall be scored competitively on the same community need criteria. In recognition of the benefits resulting from the receipt of grant funds, the department shall provide for the reduction of community need scores for specified~~

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~~increments of grant funds provided to a local government since the state began using the most recent census data. In the year in which new census data are first used, no such reduction shall occur~~.

(c) The application's program impact score, equal employment opportunity and fair housing score, and communitywide needs score may take into consideration scoring factors, including, but not limited to, unemployment, poverty levels, low-income and moderate-income populations, benefits to low-income and moderate-income residents, use of minority-owned and woman-owned business enterprises in previous grants, health and safety issues, and the condition of physical structures ~~The criteria used to measure the impact of an applicant's proposed activities shall include, at a minimum, indicators of the direct benefit received by persons of low income and persons of moderate income, the extent to which the problem identified is addressed by the proposed activities, and the extent to which resources other than the funds being applied for under this program are being used to carry out the proposed activities~~.

~~(d) Applications shall be scored competitively on program impact criteria that are uniquely tailored to the community development objective established in each program category. The criteria used to measure the direct benefit to persons of low income and persons of moderate income shall represent no less than 42 percent of the points assigned to the program impact factor. For the housing and neighborhood revitalization categories, the department shall also include the following criteria in the scoring of applications:~~

~~1. The proportion of very-low-income and low-income~~

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~~households served.~~

~~2. The degree to which improvements are related to the health and safety of the households served.~~

~~(4) An applicant for a neighborhood revitalization or commercial revitalization grant shall demonstrate that its activities are to be carried out in distinct service areas which are characterized by the existence of slums or blighted conditions, or by the concentration of persons of low or moderate income.~~

(4)~~(5)~~ In order to provide citizens with information concerning an applicant's proposed project, the applicant shall make available to the public information concerning the amounts of funds available for various activities and the range of activities that may be undertaken. In addition, the applicant shall hold a minimum of two public hearings in the local jurisdiction within which the project is to be implemented to obtain the views of citizens before submitting the final application to the department. The applicant shall conduct the initial hearing to solicit public input concerning community needs, inform the public about funding opportunities available to address community needs, and discuss activities that may be undertaken. Before a second public hearing is held, the applicant must publish a summary of the proposed application that provides citizens with an opportunity to examine the contents of the application and to submit comments. The applicant shall conduct a second hearing to obtain comments from citizens concerning the proposed application and to modify the proposed application if appropriate ~~program before an application is submitted to the department, the applicant shall:~~

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~~(a) Make available to the public information concerning the amounts of funds available for various activities and the range of activities that may be undertaken~~.

~~(b) Hold at least one public hearing to obtain the views of citizens on community development needs.~~

~~(c) Develop and publish a summary of the proposed application that will provide citizens with an opportunity to examine its contents and submit their comments.~~

~~(d) Consider any comments and views expressed by citizens on the proposed application and, if appropriate, modify the proposed application.~~

~~(e) Hold at least one public hearing in the jurisdiction within which the project is to be implemented to obtain the views of citizens on the final application prior to its submission to the department.~~

(5) ~~(6)~~ The local government may ~~shall~~ establish a citizen advisory task force composed of citizens in the jurisdiction in which the proposed project is to be implemented to provide input relative to all phases of the project process. ~~The local government must obtain consent from the department for any other type of citizen participation plan upon a showing that such plan is better suited to secure citizen participation for that locality.~~

(6) ~~(7)~~ The department shall, before ~~prior to~~ approving an application for a grant, determine that the applicant has the administrative capacity to carry out the proposed activities and has performed satisfactorily in carrying out past activities funded by community development block grants. The evaluation of past performance shall take into account procedural aspects of

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previous grants as well as substantive results. If the department determines that any applicant has failed to accomplish substantially the results it proposed in its last previously funded application, it may prohibit the applicant from receiving a grant or may penalize the applicant in the rating of the current application. An ~~No~~ application for grant funds may not be denied solely upon the basis of the past performance of the eligible applicant.

Section 8. Subsections (3) and (6) of section 290.047, Florida Statutes, are amended to read:

290.047 Establishment of grant ceilings and maximum administrative cost percentages; elimination of population bias; loans in default.—

(3) The maximum percentage of block grant funds that can be spent on administrative costs by an eligible local government shall be 15 percent for the housing rehabilitation program category, 8 percent for both the neighborhood and the commercial revitalization program categories, and 8 percent for the economic development program category. The maximum amount of block grant funds that may be spent on administrative costs by an eligible local government for the economic development program category is $120,000. The purpose of the ceiling is to maximize the amount of block grant funds actually going toward the redevelopment of the area. The department will continue to encourage eligible local governments to consider ways to limit the amount of block grant funds used for administrative costs, consistent with the need for prudent management and accountability in the use of public funds. However, this subsection does ~~shall~~ not ~~be construed, however, to~~ prohibit

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eligible local governments from contributing their own funds or making in-kind contributions to cover administrative costs which exceed the prescribed ceilings, provided that all such contributions come from local government resources other than Community Development Block Grant funds.

(6) The maximum amount ~~percentage~~ of block grant funds that may be spent on engineering and architectural costs by an eligible local government shall be determined in accordance with a method ~~schedule~~ adopted by the department by rule. Any such method ~~schedule~~ so adopted shall be consistent with the schedule used by the United States Farmer's Home Administration as applied to projects in Florida or another comparable schedule as amended.

Section 9. Section 290.0475, Florida Statutes, is amended to read:

290.0475 Rejection of grant applications; penalties for failure to meet application conditions.—Applications are ineligible ~~received~~ for funding if ~~under all program categories shall be rejected without scoring only in the event that~~ any of the following circumstances arise:

(1) The application is not received by the department by the application deadline;~~.~~

(2) The proposed project does not meet one of the three national objectives as contained in federal and state legislation;~~.~~

(3) The proposed project is not an eligible activity as contained in the federal legislation;~~.~~

(4) The application is not consistent with the local government's comprehensive plan adopted pursuant to s.

163.3184;~~.~~

(5) The applicant has an open community development block grant, except as provided in s. 290.046(2)(b) and (c) and department rules; ~~290.046(2)(c).~~

(6) The local government is not in compliance with the citizen participation requirements prescribed in ss. 104(a)(1) and (2) and 106(d)(5)(c) of Title I of the Housing and Community Development Act of 1984, s. 290.046(4), and department rules; or~~.~~

(7) Any information provided in the application that affects eligibility or scoring is found to have been misrepresented, and the information is not a mathematical error which may be discovered and corrected by readily computing available numbers or formulas provided in the application.

Section 10. Subsection (5) of section 290.048, Florida Statutes, is amended to read:

290.048 General powers of department under ss. 290.0401-290.048.—The department has all the powers necessary or appropriate to carry out the purposes and provisions of the program, including the power to:

~~(5) Adopt and enforce strict requirements concerning an applicant's written description of a service area. Each such description shall contain maps which illustrate the location of the proposed service area. All such maps must be clearly legible and must:~~

~~(a) Contain a scale which is clearly marked on the map.~~

~~(b) Show the boundaries of the locality.~~

~~(c) Show the boundaries of the service area where the activities will be concentrated.~~

~~(d) Display the location of all proposed area activities.~~

~~(c) Include the names of streets, route numbers, or easily identifiable landmarks where all service activities are located.~~

Section 11. Subsections (5) and (8) of section 331.3051, Florida Statutes, are amended to read:

331.3051 Duties of Space Florida.—Space Florida shall:

(5) Consult with the Florida Tourism Industry Marketing Corporation ~~Enterprise Florida, Inc.,~~ in developing a space tourism marketing plan. Space Florida and the Florida Tourism Industry Marketing Corporation ~~Enterprise Florida, Inc.,~~ may enter into a mutually beneficial agreement that provides funding to the corporation ~~Enterprise Florida, Inc.,~~ for its services to implement this subsection.

(8) Carry out its responsibility for research and development by:

(a) Contracting for the operations of the state's Space Life Sciences Laboratory.

(b) Working in collaboration with one or more public or private universities and other public or private entities to ~~develop a proposal for a Center of Excellence for Aerospace that will~~ foster and promote the research necessary to develop commercially promising, advanced, and innovative science and technology and ~~will~~ transfer those discoveries to the commercial sector. This may include developing a proposal to establish a Center of Excellence for Aerospace.

(c) Supporting universities in this state that are members of the Federal Aviation Administration's Center of Excellence for Commercial Space Transportation to assure a safe, environmentally compatible, and efficient commercial space

transportation system in this state.

Section 12. Subsection (26) of section 443.036, Florida Statutes, is repealed.

Section 13. Paragraph (c) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules~~, and participating in an initial skills review, as directed by the department~~. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must, at a minimum, include the name, address, and telephone number of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d).

2. The department must offer an online assessment that serves to identify an individual's skills, abilities, and career aptitude. The skills assessment must be voluntary, and the department must allow a claimant to choose whether to take the skills assessment. The online assessment shall be made available to any person seeking services from a regional workforce board or a one-stop career center ~~The administrator or operator of the initial skills review shall notify the department when the~~

~~individual completes the initial skills review and report the results of the review to the regional workforce board or the one-stop career center as directed by the workforce board~~. ~~The department shall prescribe a numeric score on the initial skills review that demonstrates a minimal proficiency in workforce skills.~~

a. If the claimant chooses to take the online assessment, the outcome of the assessment must be made available to the claimant, regional workforce board, and one-stop career center. The department, workforce board, or one-stop career center shall use the assessment ~~initial skills review~~ to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to Workforce Florida, Inc., and Enterprise Florida, Inc., for use in the development of policies related to education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce ~~The failure of the individual to comply with this requirement will result in the individual being determined ineligible for benefits for the week in which the noncompliance occurred and for any subsequent week of unemployment until the requirement is satisfied~~. ~~However, this requirement does not apply if the individual is exempt from the work registration requirement as set forth in paragraph (b).~~

b.~~3.~~ Individuals ~~Any individual who falls below the minimal proficiency score prescribed by the department in subparagraph 2. on the initial skills review~~ shall be informed of and offered services through the one-stop delivery system, including career counseling, provision of skill match and job market information, and skills upgrade and other training opportunities, and shall

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be encouraged to participate in such services ~~training~~ at no cost to the individuals ~~individual in order to improve his or her workforce skills to the minimal proficiency level~~.

~~4.~~ The department shall coordinate with Workforce Florida, Inc., the workforce boards, and the one-stop career centers to identify, develop, and use ~~utilize~~ best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with an entity to create the online assessment in accordance with the competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System ~~and who have a minimal proficiency score below the score prescribed in subparagraph 2~~.

~~5. The department, in coordination with Workforce Florida, Inc., the workforce boards, and the one-stop career centers, shall evaluate the use, effectiveness, and costs associated with the training prescribed in subparagraph 3. and report its findings and recommendations for training and the use of best practices to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013.~~

Section 14. Subsections (1), (2), and (5) of section 443.1116, Florida Statutes, are amended to read:

443.1116 Short-time compensation.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Affected unit" means a specified plant, department, shift, or other definable unit of two or more employees designated by the employer to participate in a short-time compensation plan.

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(b) "Employer-sponsored training" means a training component sponsored by an employer to improve the skills of the employer's workers.

(c) ~~(b)~~ "Normal weekly hours of work" means the number of hours in a week that an individual would regularly work for the short-time compensation employer, not to exceed 40 hours, excluding overtime.

(d) ~~(c)~~ "Short-time compensation benefits" means benefits payable to individuals in an affected unit under an approved short-time compensation plan.

(e) ~~(d)~~ "Short-time compensation employer" means an employer with a short-time compensation plan in effect.

(f) ~~(e)~~ "Short-time compensation plan" or "plan" means an employer's written plan for reducing unemployment under which an affected unit shares the work remaining after its normal weekly hours of work are reduced.

(2) APPROVAL OF SHORT-TIME COMPENSATION PLANS.—An employer wishing to participate in the short-time compensation program must submit a signed, written, short-time plan to the Department of Economic Opportunity for approval. The director or his or her designee shall approve the plan if:

(a) The plan applies to and identifies each specific affected unit;

(b) The individuals in the affected unit are identified by name and social security number;

(c) The normal weekly hours of work for individuals in the affected unit are reduced by at least 10 percent and by not more than 40 percent;

(d) The plan includes a certified statement by the employer

that the aggregate reduction in work hours is in lieu of ~~temporary~~ layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours;

(e) The plan applies to at least 10 percent of the employees in the affected unit;

(f) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any individual in the affected unit;

(g) The plan does not serve as a subsidy to seasonal employers during the off-season or as a subsidy to employers who traditionally use part-time employees; ~~and~~

(h) The plan certifies that, if the employer provides fringe benefits to any employee whose workweek is reduced under the program, the fringe benefits will continue to be provided to the employee participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program ~~the manner in which the employer will treat fringe benefits of the individuals in the affected unit if the hours of the individuals are reduced to less than their normal weekly hours of work~~. As used in this paragraph, the term "fringe benefits" includes, but is not limited to, health insurance, retirement benefits under defined benefit pension plans as defined in subsection 35 of s. 1002 of the Employee Retirement Income Security Act of 1974, 29 U.S.C., contributions under a defined contribution plan as defined in s. 414(i) of the Internal Revenue Code, paid vacation and holidays, and sick

leave;.

(i) The plan describes the manner in which the requirements of this subsection will be implemented, including a plan for giving notice, if feasible, to an employee whose workweek is to be reduced, together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation; and

(j) The terms of the employer's written plan and implementation are consistent with employer obligations under applicable federal laws and laws of this state.

(5) ELIGIBILITY REQUIREMENTS FOR SHORT-TIME COMPENSATION BENEFITS.—

(a) Except as provided in this subsection, an individual is eligible to receive short-time compensation benefits for any week only if she or he complies with this chapter and the Department of Economic Opportunity finds that:

1. The individual is employed as a member of an affected unit in an approved plan that was approved before the week and is in effect for the week;

2. The individual is able to work and is available for additional hours of work or for full-time work with the short-time employer; and

3. The normal weekly hours of work of the individual are reduced by at least 10 percent but not by more than 40 percent, with a corresponding reduction in wages.

(b) The department may not deny short-time compensation benefits to an individual who is otherwise eligible for these benefits for any week by reason of the application of any provision of this chapter relating to availability for work,

active search for work, or refusal to apply for or accept work from other than the short-time compensation employer of that individual.

(c) The department may not deny short-time compensation benefits to an individual who is otherwise eligible for these benefits for any week because such individual is participating in an employer-sponsored training or a training under the Workforce Investment Act to improve job skills when the training is approved by the department.

(d)~~(c)~~ Notwithstanding any other provision of this chapter, an individual is deemed unemployed in any week for which compensation is payable to her or him, as an employee in an affected unit, for less than her or his normal weekly hours of work in accordance with an approved short-time compensation plan in effect for the week.

Section 15. Paragraph (f) of subsection (1) of section 443.141, Florida Statutes, is amended to read:

443.141 Collection of contributions and reimbursements.—

(1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT, ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

(f) *Payments for ~~2012, 2013, and 2014~~ contributions.*—For an annual administrative fee not to exceed $5, a contributing employer may pay its quarterly contributions due for wages paid in the first three quarters of each year ~~of 2012, 2013, and 2014~~ in equal installments if those contributions are paid as follows:

1. For contributions due for wages paid in the first quarter of each year, one-fourth of the contributions due must be paid on or before April 30, one-fourth must be paid on or

before July 31, one-fourth must be paid on or before October 31, and one-fourth must be paid on or before December 31.

2. In addition to the payments specified in subparagraph 1., for contributions due for wages paid in the second quarter of each year, one-third of the contributions due must be paid on or before July 31, one-third must be paid on or before October 31, and one-third must be paid on or before December 31.

3. In addition to the payments specified in subparagraphs 1. and 2., for contributions due for wages paid in the third quarter of each year, one-half of the contributions due must be paid on or before October 31, and one-half must be paid on or before December 31.

4. The annual administrative fee assessed for electing to pay under the installment method shall be collected at the time the employer makes the first installment payment each year. The fee shall be segregated from the payment and deposited into the Operating Trust Fund of the Department of Revenue.

5. Interest does not accrue on any contribution that becomes due for wages paid in the first three quarters of each year if the employer pays the contribution in accordance with subparagraphs 1.-4. Interest and fees continue to accrue on prior delinquent contributions and commence accruing on all contributions due for wages paid in the first three quarters of each year which are not paid in accordance with subparagraphs 1.-3. Penalties may be assessed in accordance with this chapter. The contributions due for wages paid in the fourth quarter ~~of 2012, 2013, and 2014~~ are not affected by this paragraph and are due and payable in accordance with this chapter.

Section 16. Paragraph (a) of subsection (1) of section

125.271, Florida Statutes, is amended to read:

125.271 Emergency medical services; county emergency medical service assessments.—

(1) As used in this section, the term “county” means:

(a) A county that is within a rural area of opportunity ~~critical economic concern~~ as designated by the Governor pursuant to s. 288.0656;

Once a county has qualified under this subsection, it always retains the qualification.

Section 17. Paragraphs (a), (b), and (e) of subsection (7) of section 163.3177, Florida Statutes, are amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(7)(a) The Legislature finds that:

1. There are a number of rural agricultural industrial centers in the state that process, produce, or aid in the production or distribution of a variety of agriculturally based products, including, but not limited to, fruits, vegetables, timber, and other crops, and juices, paper, and building materials. Rural agricultural industrial centers have a significant amount of existing associated infrastructure that is used for processing, producing, or distributing agricultural products.

2. Such rural agricultural industrial centers are often located within or near communities in which the economy is largely dependent upon agriculture and agriculturally based products. The centers significantly enhance the economy of such communities. However, these agriculturally based communities are

often socioeconomically challenged and designated as rural areas of opportunity ~~critical economic concern~~. If such rural agricultural industrial centers are lost and not replaced with other job-creating enterprises, the agriculturally based communities will lose a substantial amount of their economies.

3. The state has a compelling interest in preserving the viability of agriculture and protecting rural agricultural communities and the state from the economic upheaval that would result from short-term or long-term adverse changes in the agricultural economy. To protect these communities and promote viable agriculture for the long term, it is essential to encourage and permit diversification of existing rural agricultural industrial centers by providing for jobs that are not solely dependent upon, but are compatible with and complement, existing agricultural industrial operations and to encourage the creation and expansion of industries that use agricultural products in innovative ways. However, the expansion and diversification of these existing centers must be accomplished in a manner that does not promote urban sprawl into surrounding agricultural and rural areas.

(b) As used in this subsection, the term "rural agricultural industrial center" means a developed parcel of land in an unincorporated area on which there exists an operating agricultural industrial facility or facilities that employ at least 200 full-time employees in the aggregate and process and prepare for transport a farm product, as defined in s. 163.3162, or any biomass material that could be used, directly or indirectly, for the production of fuel, renewable energy, bioenergy, or alternative fuel as defined by law. The center may

also include land contiguous to the facility site which is not used for the cultivation of crops, but on which other existing activities essential to the operation of such facility or facilities are located or conducted. The parcel of land must be located within, or within 10 miles of, a rural area of opportunity ~~critical economic concern~~.

(e) ~~Nothing in~~ This subsection does not ~~shall be construed to~~ confer the status of rural area of opportunity ~~critical economic concern~~, or any of the rights or benefits derived from such status, on any land area not otherwise designated as such pursuant to s. 288.0656(7).

Section 18. Subsection (3) of section 163.3187, Florida Statutes, is amended to read:

163.3187 Process for adoption of small-scale comprehensive plan amendment.—

(3) If the small scale development amendment involves a site within a rural area of opportunity ~~critical economic concern~~ as defined under s. 288.0656(2)(d) for the duration of such designation, the 10-acre limit listed in subsection (1) shall be increased by 100 percent to 20 acres. The local government approving the small scale plan amendment shall certify to the Office of Tourism, Trade, and Economic Development that the plan amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7), and the property subject to the plan amendment shall undergo public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met.

Section 19. Subsection (10) of section 163.3246, Florida

Statutes, is amended to read:

163.3246 Local government comprehensive planning certification program.—

(10) Notwithstanding subsections (2), (4), (5), (6), and (7), any municipality designated as a rural area of opportunity ~~critical economic concern~~ pursuant to s. 288.0656 which is located within a county eligible to levy the Small County Surtax under s. 212.055(3) shall be considered certified during the effectiveness of the designation of rural area of opportunity ~~critical economic concern~~. The state land planning agency shall provide a written notice of certification to the local government of the certified area, which shall be considered final agency action subject to challenge under s. 120.569. The notice of certification shall include the following components:

(a) The boundary of the certification area.

(b) A requirement that the local government submit ~~either~~ an annual or biennial monitoring report to the state land planning agency according to the schedule provided in the written notice. The monitoring report shall, at a minimum, include the number of amendments to the comprehensive plan adopted by the local government, the number of plan amendments challenged by an affected person, and the disposition of those challenges.

Section 20. Paragraph (a) of subsection (6) of section 211.3103, Florida Statutes, is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

(6)(a) Beginning July 1 of the 2011-2012 fiscal year, the proceeds of all taxes, interest, and penalties imposed under

this section are exempt from the general revenue service charge provided in s. 215.20, and such proceeds shall be paid into the State Treasury as follows:

1. To the credit of the Conservation and Recreation Lands Trust Fund, 25.5 percent.

2. To the credit of the General Revenue Fund of the state, 35.7 percent.

3. For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 12.8 percent. The department shall distribute this portion of the proceeds annually based on production information reported by the producers on the annual returns for the taxable year. Any such proceeds received by a county shall be used only for phosphate-related expenses.

4. For payment to counties that have been designated as a rural area of opportunity ~~critical economic concern~~ pursuant to s. 288.0656 in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 10.0 percent. The department shall distribute this portion of the proceeds annually based on production information reported by the producers on the annual returns for the taxable year. Payments under this subparagraph shall be made to the counties unless the Legislature by special act creates a local authority to promote and direct the economic development of the county. If such authority exists, payments shall be made to that authority.

5. To the credit of the Nonmandatory Land Reclamation Trust Fund, 6.2 percent.

6. To the credit of the Phosphate Research Trust Fund in the Division of Universities of the Department of Education, 6.2 percent.

7. To the credit of the Minerals Trust Fund, 3.6 percent.

Section 21. Paragraph (c) of subsection (1) of section 212.098, Florida Statutes, is amended to read:

212.098 Rural Job Tax Credit Program.—

(1) As used in this section, the term:

(c) "Qualified area" means any area that is contained within a rural area of opportunity ~~critical economic concern~~ designated under s. 288.0656, a county that has a population of fewer than 75,000 persons, or a county that has a population of 125,000 or less and is contiguous to a county that has a population of less than 75,000, selected in the following manner: every third year, the Department of Economic Opportunity shall rank and tier the state's counties according to the following four factors:

1. Highest unemployment rate for the most recent 36-month period.

2. Lowest per capita income for the most recent 36-month period.

3. Highest percentage of residents whose incomes are below the poverty level, based upon the most recent data available.

4. Average weekly manufacturing wage, based upon the most recent data available.

Section 22. Subsection (1) of section 218.67, Florida Statutes, is amended to read:

218.67 Distribution for fiscally constrained counties.—

(1) Each county that is entirely within a rural area of

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opportunity ~~critical economic concern~~ as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than $5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1, shall be considered a fiscally constrained county.

Section 23. Subsection (1) of section 288.018, Florida Statutes, is amended to read:

288.018 Regional Rural Development Grants Program.—

(1) The department shall establish a matching grant program to provide funding to regionally based economic development organizations representing rural counties and communities for the purpose of building the professional capacity of their organizations. Such matching grants may also be used by an economic development organization to provide technical assistance to businesses within the rural counties and communities that it serves. The department is authorized to approve, on an annual basis, grants to such regionally based economic development organizations. The maximum amount an organization may receive in any year will be $35,000, or $100,000 in a rural area of opportunity ~~critical economic concern~~ recommended by the Rural Economic Development Initiative and designated by the Governor, and must be matched each year by an equivalent amount of nonstate resources.

Section 24. Paragraphs (a) and (c) of subsection (2) of section 288.065, Florida Statutes, are amended to read:

288.065 Rural Community Development Revolving Loan Fund.—

(2)(a) The program shall provide for long-term loans, loan guarantees, and loan loss reserves to units of local

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governments, or economic development organizations substantially underwritten by a unit of local government, within counties with populations of 75,000 or fewer, or within any county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer, based on the most recent official population estimate as determined under s. 186.901, including those residing in incorporated areas and those residing in unincorporated areas of the county, or to units of local government, or economic development organizations substantially underwritten by a unit of local government, within a rural area of opportunity ~~critical economic concern~~.

(c) All repayments of principal and interest shall be returned to the loan fund and made available for loans to other applicants. However, in a rural area of opportunity ~~critical economic concern~~ designated by the Governor, and upon approval by the department, repayments of principal and interest may be retained by the applicant if such repayments are dedicated and matched to fund regionally based economic development organizations representing the rural area of opportunity ~~critical economic concern~~.

Section 25. Paragraphs (b), (c), and (e) of subsection (2) of section 288.0655, Florida Statutes, are amended to read:

288.0655 Rural Infrastructure Fund.—

(2)

(b) To facilitate access of rural communities and rural areas of opportunity ~~critical economic concern~~ as defined by the Rural Economic Development Initiative to infrastructure funding programs of the Federal Government, such as those offered by the United States Department of Agriculture and the United States

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Department of Commerce, and state programs, including those offered by Rural Economic Development Initiative agencies, and to facilitate local government or private infrastructure funding efforts, the department may award grants for up to 30 percent of the total infrastructure project cost. If an application for funding is for a catalyst site, as defined in s. 288.0656, the department may award grants for up to 40 percent of the total infrastructure project cost. Eligible projects must be related to specific job-creation or job-retention opportunities. Eligible projects may also include improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth or reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities. Eligible uses of funds shall include improvements to public infrastructure for industrial or commercial sites and upgrades to or development of public tourism infrastructure. Authorized infrastructure may include the following public or public-private partnership facilities: storm water systems; telecommunications facilities; broadband facilities; roads or other remedies to transportation impediments; nature-based tourism facilities; or other physical requirements necessary to facilitate tourism, trade, and economic development activities in the community. Authorized infrastructure may also include publicly or privately owned self-powered nature-based tourism facilities, publicly owned telecommunications facilities, and broadband facilities, and additions to the distribution facilities of the existing natural gas utility as defined in s. 366.04(3)(c), the existing electric utility as defined in s. 366.02, or the existing water or

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wastewater utility as defined in s. 367.021(12), or any other existing water or wastewater facility, which owns a gas or electric distribution system or a water or wastewater system in this state where:

1. A contribution-in-aid of construction is required to serve public or public-private partnership facilities under the tariffs of any natural gas, electric, water, or wastewater utility as defined herein; and

2. Such utilities as defined herein are willing and able to provide such service.

(c) To facilitate timely response and induce the location or expansion of specific job creating opportunities, the department may award grants for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities. Authorized grants shall be up to $50,000 for an employment project with a business committed to create at least 100 jobs; up to $150,000 for an employment project with a business committed to create at least 300 jobs; and up to $300,000 for a project in a rural area of opportunity ~~critical economic concern~~. Grants awarded under this paragraph may be used in conjunction with grants awarded under paragraph (b), provided that the total amount of both grants does not exceed 30 percent of the total project cost. In evaluating applications under this paragraph, the department shall consider the extent to which the application seeks to minimize administrative and consultant expenses.

(e) To enable local governments to access the resources available pursuant to s. 403.973(18), the department may award grants for surveys, feasibility studies, and other activities

related to the identification and preclearance review of land which is suitable for preclearance review. Authorized grants under this paragraph may ~~shall~~ not exceed $75,000 each, except in the case of a project in a rural area of opportunity ~~critical economic concern~~, in which case the grant may ~~shall~~ not exceed $300,000. Any funds awarded under this paragraph must be matched at a level of 50 percent with local funds, except that any funds awarded for a project in a rural area of opportunity ~~critical economic concern~~ must be matched at a level of 33 percent with local funds. If an application for funding is for a catalyst site, as defined in s. 288.0656, the requirement for local match may be waived pursuant to the process in s. 288.06561. In evaluating applications under this paragraph, the department shall consider the extent to which the application seeks to minimize administrative and consultant expenses.

Section 26. Paragraphs (a), (b), and (d) of subsection (2) and subsection (7) of section 288.0656, Florida Statutes, are amended to read:

288.0656 Rural Economic Development Initiative.—

(2) As used in this section, the term:

(a) "Catalyst project" means a business locating or expanding in a rural area of opportunity ~~critical economic concern~~ to serve as an economic generator of regional significance for the growth of a regional target industry cluster. The project must provide capital investment on a scale significant enough to affect the entire region and result in the development of high-wage and high-skill jobs.

(b) "Catalyst site" means a parcel or parcels of land within a rural area of opportunity ~~critical economic concern~~

that has been prioritized as a geographic site for economic development through partnerships with state, regional, and local organizations. The site must be reviewed by REDI and approved by the department for the purposes of locating a catalyst project.

(d) "Rural area of opportunity ~~critical economic concern~~" means a rural community, or a region composed of rural communities, designated by the Governor, which ~~that~~ has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

(7)(a) REDI may recommend to the Governor up to three rural areas of opportunity ~~critical economic concern~~. The Governor may by executive order designate up to three rural areas of opportunity ~~critical economic concern~~ which will establish these areas as priority assignments for REDI as well as to allow the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive. Such incentives shall include, but are not ~~be~~ limited to, ~~:~~ the Qualified Target Industry Tax Refund Program under s. 288.106, the Quick Response Training Program under s. 288.047, the Quick Response Training Program for participants in the welfare transition program under s. 288.047(8), transportation projects under s. 339.2821, the brownfield redevelopment bonus refund under s. 288.107, and the rural job tax credit program under ss. 212.098 and 220.1895.

(b) Designation as a rural area of opportunity ~~critical economic concern~~ under this subsection shall be contingent upon the execution of a memorandum of agreement among the department; the governing body of the county; and the governing bodies of

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any municipalities to be included within a rural area of opportunity ~~critical economic concern~~. Such agreement shall specify the terms and conditions of the designation, including, but not limited to, the duties and responsibilities of the county and any participating municipalities to take actions designed to facilitate the retention and expansion of existing businesses in the area, as well as the recruitment of new businesses to the area.

(c) Each rural area of opportunity ~~critical economic concern~~ may designate catalyst projects, provided that each catalyst project is specifically recommended by REDI, identified as a catalyst project by Enterprise Florida, Inc., and confirmed as a catalyst project by the department. All state agencies and departments shall use all available tools and resources to the extent permissible by law to promote the creation and development of each catalyst project and the development of catalyst sites.

Section 27. Paragraph (a) of subsection (3) of section 288.1088, Florida Statutes, is amended to read:

288.1088 Quick Action Closing Fund.—

(3)(a) The department and Enterprise Florida, Inc., shall jointly review applications pursuant to s. 288.061 and determine the eligibility of each project consistent with the criteria in subsection (2). Waiver of these criteria may be considered under the following criteria:

1. Based on extraordinary circumstances;

2. In order to mitigate the impact of the conclusion of the space shuttle program; or

3. In rural areas of opportunity ~~critical economic concern~~

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if the project would significantly benefit the local or regional economy.

Section 28. Paragraphs (b), (c), and (d) of subsection (4) of section 288.1089, Florida Statutes, are amended to read:

288.1089 Innovation Incentive Program.—

(4) To qualify for review by the department, the applicant must, at a minimum, establish the following to the satisfaction of the department:

(b) A research and development project must:

1. Serve as a catalyst for an emerging or evolving technology cluster.

2. Demonstrate a plan for significant higher education collaboration.

3. Provide the state, at a minimum, a cumulative break-even economic benefit within a 20-year period.

4. Be provided with a one-to-one match from the local community. The match requirement may be reduced or waived in rural areas of opportunity ~~critical economic concern~~ or reduced in rural areas, brownfield areas, and enterprise zones.

(c) An innovation business project in this state, other than a research and development project, must:

1.a. Result in the creation of at least 1,000 direct, new jobs at the business; or

b. Result in the creation of at least 500 direct, new jobs if the project is located in a rural area, a brownfield area, or an enterprise zone.

2. Have an activity or product that is within an industry that is designated as a target industry business under s. 288.106 or a designated sector under s. 288.108.

3.a. Have a cumulative investment of at least $500 million within a 5-year period; or

b. Have a cumulative investment that exceeds $250 million within a 10-year period if the project is located in a rural area, brownfield area, or an enterprise zone.

4. Be provided with a one-to-one match from the local community. The match requirement may be reduced or waived in rural areas of opportunity ~~critical economic concern~~ or reduced in rural areas, brownfield areas, and enterprise zones.

(d) For an alternative and renewable energy project in this state, the project must:

1. Demonstrate a plan for significant collaboration with an institution of higher education;

2. Provide the state, at a minimum, a cumulative break-even economic benefit within a 20-year period;

3. Include matching funds provided by the applicant or other available sources. The match requirement may be reduced or waived in rural areas of opportunity ~~critical economic concern~~ or reduced in rural areas, brownfield areas, and enterprise zones;

4. Be located in this state; and

5. Provide at least 35 direct, new jobs that pay an estimated annual average wage that equals at least 130 percent of the average private sector wage.

Section 29. Paragraph (d) of subsection (6) of section 290.0055, Florida Statutes, is amended to read:

290.0055 Local nominating procedure.—

(6)

(d)1. The governing body of a jurisdiction which has

nominated an application for an enterprise zone that is at least 15 square miles and less than 20 square miles and includes a portion of the state designated as a rural area of opportunity ~~critical economic concern~~ under s. 288.0656(7) may apply to the department to expand the boundary of the existing enterprise zone by not more than 3 square miles.

2. The governing body of a jurisdiction which has nominated an application for an enterprise zone that is at least 20 square miles and includes a portion of the state designated as a rural area of opportunity ~~critical economic concern~~ under s. 288.0656(7) may apply to the department to expand the boundary of the existing enterprise zone by not more than 5 square miles.

3. An application to expand the boundary of an enterprise zone under this paragraph must be submitted by December 31, 2013.

4. Notwithstanding the area limitations specified in subsection (4), the department may approve the request for a boundary amendment if the area continues to satisfy the remaining requirements of this section.

5. The department shall establish the initial effective date of an enterprise zone designated under this paragraph.

Section 30. Paragraph (c) of subsection (4) of section 339.2819, Florida Statutes, is amended to read:

339.2819 Transportation Regional Incentive Program.—

(4)

(c) The department shall give priority to projects that:

1. Provide connectivity to the Strategic Intermodal System developed under s. 339.64.

2. Support economic development and the movement of goods

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in rural areas of opportunity ~~critical economic concern~~ designated under s. 288.0656(7).

3. Are subject to a local ordinance that establishes corridor management techniques, including access management strategies, right-of-way acquisition and protection measures, appropriate land use strategies, zoning, and setback requirements for adjacent land uses.

4. Improve connectivity between military installations and the Strategic Highway Network or the Strategic Rail Corridor Network.

The department shall also consider the extent to which local matching funds are available to be committed to the project.

Section 31. Paragraph (b) of subsection (5) of section 339.63, Florida Statutes, is amended to read:

339.63 System facilities designated; additions and deletions.—

(5)

(b) A facility designated part of the Strategic Intermodal System pursuant to paragraph (a) that is within the jurisdiction of a local government that maintains a transportation concurrency system shall receive a waiver of transportation concurrency requirements applicable to Strategic Intermodal System facilities in order to accommodate any development at the facility which occurs pursuant to a building permit issued on or before December 31, 2017, but only if such facility is located:

1. Within an area designated pursuant to s. 288.0656(7) as a rural area of opportunity ~~critical economic concern~~;

2. Within a rural enterprise zone as defined in s.

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290.004(5); or

3. Within 15 miles of the boundary of a rural area of opportunity ~~critical economic concern~~ or a rural enterprise zone.

Section 32. Paragraph (c) of subsection (3) of section 373.4595, Florida Statutes, is amended to read:

373.4595 Northern Everglades and Estuaries Protection Program.—

(3) LAKE OKEECHOBEE WATERSHED PROTECTION PROGRAM.—A protection program for Lake Okeechobee that achieves phosphorus load reductions for Lake Okeechobee shall be immediately implemented as specified in this subsection. The program shall address the reduction of phosphorus loading to the lake from both internal and external sources. Phosphorus load reductions shall be achieved through a phased program of implementation. Initial implementation actions shall be technology-based, based upon a consideration of both the availability of appropriate technology and the cost of such technology, and shall include phosphorus reduction measures at both the source and the regional level. The initial phase of phosphorus load reductions shall be based upon the district's Technical Publication 81-2 and the district's WOD program, with subsequent phases of phosphorus load reductions based upon the total maximum daily loads established in accordance with s. 403.067. In the development and administration of the Lake Okeechobee Watershed Protection Program, the coordinating agencies shall maximize opportunities provided by federal cost-sharing programs and opportunities for partnerships with the private sector.

(c) *Lake Okeechobee Watershed Phosphorus Control Program.*—

The Lake Okeechobee Watershed Phosphorus Control Program is designed to be a multifaceted approach to reducing phosphorus loads by improving the management of phosphorus sources within the Lake Okeechobee watershed through implementation of regulations and best management practices, development and implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and utilization of alternative technologies for nutrient reduction. The coordinating agencies shall facilitate the application of federal programs that offer opportunities for water quality treatment, including preservation, restoration, or creation of wetlands on agricultural lands.

1. Agricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Watershed Protection Program, shall be implemented on an expedited basis. The coordinating agencies shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the coordinating agencies during any best management practice reevaluation performed pursuant to sub-subparagraph d. The department shall use best professional judgment in making the initial determination of best management practice effectiveness.

a. As provided in s. 403.067(7)(c), the Department of Agriculture and Consumer Services, in consultation with the

department, the district, and affected parties, shall initiate rule development for interim measures, best management practices, conservation plans, nutrient management plans, or other measures necessary for Lake Okeechobee watershed total maximum daily load reduction. The rule shall include thresholds for requiring conservation and nutrient management plans and criteria for the contents of such plans. Development of agricultural nonpoint source best management practices shall initially focus on those priority basins listed in subparagraph (b)1. The Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall conduct an ongoing program for improvement of existing and development of new interim measures or best management practices for the purpose of adoption of such practices by rule. The Department of Agriculture and Consumer Services shall work with the University of Florida's Institute of Food and Agriculture Sciences to review and, where appropriate, develop revised nutrient application rates for all agricultural soil amendments in the watershed.

b. Where agricultural nonpoint source best management practices or interim measures have been adopted by rule of the Department of Agriculture and Consumer Services, the owner or operator of an agricultural nonpoint source addressed by such rule shall either implement interim measures or best management practices or demonstrate compliance with the district's WOD program by conducting monitoring prescribed by the department or the district. Owners or operators of agricultural nonpoint sources who implement interim measures or best management practices adopted by rule of the Department of Agriculture and

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Consumer Services shall be subject to the provisions of s. 403.067(7). The Department of Agriculture and Consumer Services, in cooperation with the department and the district, shall provide technical and financial assistance for implementation of agricultural best management practices, subject to the availability of funds.

c. The district or department shall conduct monitoring at representative sites to verify the effectiveness of agricultural nonpoint source best management practices.

d. Where water quality problems are detected for agricultural nonpoint sources despite the appropriate implementation of adopted best management practices, the Department of Agriculture and Consumer Services, in consultation with the other coordinating agencies and affected parties, shall institute a reevaluation of the best management practices and make appropriate changes to the rule adopting best management practices.

2. Nonagricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Watershed Protection Program, shall be implemented on an expedited basis. The department and the district shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the department and the district during any best management practice reevaluation performed pursuant to sub-subparagraph d.

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a. The department and the district are directed to work with the University of Florida's Institute of Food and Agricultural Sciences to develop appropriate nutrient application rates for all nonagricultural soil amendments in the watershed. As provided in s. 403.067(7)(c), the department, in consultation with the district and affected parties, shall develop interim measures, best management practices, or other measures necessary for Lake Okeechobee watershed total maximum daily load reduction. Development of nonagricultural nonpoint source best management practices shall initially focus on those priority basins listed in subparagraph (b)1. The department, the district, and affected parties shall conduct an ongoing program for improvement of existing and development of new interim measures or best management practices. The district shall adopt technology-based standards under the district's WOD program for nonagricultural nonpoint sources of phosphorus. Nothing in this sub-subparagraph shall affect the authority of the department or the district to adopt basin-specific criteria under this part to prevent harm to the water resources of the district.

b. Where nonagricultural nonpoint source best management practices or interim measures have been developed by the department and adopted by the district, the owner or operator of a nonagricultural nonpoint source shall implement interim measures or best management practices and be subject to the provisions of s. 403.067(7). The department and district shall provide technical and financial assistance for implementation of nonagricultural nonpoint source best management practices, subject to the availability of funds.

c. The district or the department shall conduct monitoring

at representative sites to verify the effectiveness of nonagricultural nonpoint source best management practices.

d. Where water quality problems are detected for nonagricultural nonpoint sources despite the appropriate implementation of adopted best management practices, the department and the district shall institute a reevaluation of the best management practices.

3. The provisions of subparagraphs 1. and 2. may ~~shall~~ not preclude the department or the district from requiring compliance with water quality standards or with current best management practices requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted ~~promulgated~~ by the department that are necessary to maintain a federally delegated or approved program.

4. Projects that reduce the phosphorus load originating from domestic wastewater systems within the Lake Okeechobee watershed shall be given funding priority in the department's revolving loan program under s. 403.1835. The department shall coordinate and provide assistance to those local governments seeking financial assistance for such priority projects.

5. Projects that make use of private lands, or lands held in trust for Indian tribes, to reduce nutrient loadings or concentrations within a basin by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, increasing aquifer recharge, or protecting range and timberland from conversion to development, are eligible for

grants available under this section from the coordinating agencies. For projects of otherwise equal priority, special funding priority will be given to those projects that make best use of the methods outlined above that involve public-private partnerships or that obtain federal match money. Preference ranking above the special funding priority will be given to projects located in a rural area of opportunity ~~critical economic concern~~ designated by the Governor. Grant applications may be submitted by any person or tribal entity, and eligible projects may include, but are not limited to, the purchase of conservation and flowage easements, hydrologic restoration of wetlands, creating treatment wetlands, development of a management plan for natural resources, and financial support to implement a management plan.

6.a. The department shall require all entities disposing of domestic wastewater residuals within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Glades, and Hendry Counties to develop and submit to the department an agricultural use plan that limits applications based upon phosphorus loading. By July 1, 2005, phosphorus concentrations originating from these application sites may ~~shall~~ not exceed the limits established in the district's WOD program. After December 31, 2007, the department may not authorize the disposal of domestic wastewater residuals within the Lake Okeechobee watershed unless the applicant can affirmatively demonstrate that the phosphorus in the residuals will not add to phosphorus loadings in Lake Okeechobee or its tributaries. This demonstration shall be based on achieving a net balance between phosphorus imports relative to exports on the permitted

application site. Exports shall include only phosphorus removed from the Lake Okeechobee watershed through products generated on the permitted application site. This prohibition does not apply to Class AA residuals that are marketed and distributed as fertilizer products in accordance with department rule.

b. Private and government-owned utilities within Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Okeechobee, Highlands, Hendry, and Glades Counties that dispose of wastewater residual sludge from utility operations and septic removal by land spreading in the Lake Okeechobee watershed may use a line item on local sewer rates to cover wastewater residual treatment and disposal if such disposal and treatment is done by approved alternative treatment methodology at a facility located within the areas designated by the Governor as rural areas of opportunity ~~critical economic concern~~ pursuant to s. 288.0656. This additional line item is an environmental protection disposal fee above the present sewer rate and may ~~shall~~ not be considered a part of the present sewer rate to customers, notwithstanding provisions to the contrary in chapter 367. The fee shall be established by the county commission or its designated assignee in the county in which the alternative method treatment facility is located. The fee shall be calculated to be no higher than that necessary to recover the facility's prudent cost of providing the service. Upon request by an affected county commission, the Florida Public Service Commission will provide assistance in establishing the fee. Further, for utilities and utility authorities that use the additional line item environmental protection disposal fee, such fee may ~~shall~~ not be considered a rate increase under the rules

of the Public Service Commission and shall be exempt from such rules. Utilities using the provisions of this section may immediately include in their sewer invoicing the new environmental protection disposal fee. Proceeds from this environmental protection disposal fee shall be used for treatment and disposal of wastewater residuals, including any treatment technology that helps reduce the volume of residuals that require final disposal, but such proceeds may ~~shall~~ not be used for transportation or shipment costs for disposal or any costs relating to the land application of residuals in the Lake Okeechobee watershed.

c. No less frequently than once every 3 years, the Florida Public Service Commission or the county commission through the services of an independent auditor shall perform a financial audit of all facilities receiving compensation from an environmental protection disposal fee. The Florida Public Service Commission or the county commission through the services of an independent auditor shall also perform an audit of the methodology used in establishing the environmental protection disposal fee. The Florida Public Service Commission or the county commission shall, within 120 days after completion of an audit, file the audit report with the President of the Senate and the Speaker of the House of Representatives and shall provide copies to the county commissions of the counties set forth in sub-subparagraph b. The books and records of any facilities receiving compensation from an environmental protection disposal fee shall be open to the Florida Public Service Commission and the Auditor General for review upon request.

7. The Department of Health shall require all entities disposing of septage within the Lake Okeechobee watershed to develop and submit to that agency an agricultural use plan that limits applications based upon phosphorus loading. By July 1, 2005, phosphorus concentrations originating from these application sites may ~~shall~~ not exceed the limits established in the district's WOD program.

8. The Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the Lake Okeechobee watershed which land-apply animal manure to develop resource management system level conservation plans, according to United States Department of Agriculture criteria, which limit such application. Such rules may include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, and recordkeeping requirements.

9. The district, the department, or the Department of Agriculture and Consumer Services, as appropriate, shall implement those alternative nutrient reduction technologies determined to be feasible pursuant to subparagraph (d)6.

Section 33. Paragraph (e) of subsection (2) and paragraph (b) of subsection (26) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.—

(2) STATEWIDE GUIDELINES AND STANDARDS.—

(e) With respect to residential, hotel, motel, office, and retail developments, the applicable guidelines and standards shall be increased by 50 percent in urban central business districts and regional activity centers of jurisdictions whose

local comprehensive plans are in compliance with part II of chapter 163. With respect to multiuse developments, the applicable individual use guidelines and standards for residential, hotel, motel, office, and retail developments and multiuse guidelines and standards shall be increased by 100 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163, if one land use of the multiuse development is residential and amounts to not less than 35 percent of the jurisdiction's applicable residential threshold. With respect to resort or convention hotel developments, the applicable guidelines and standards shall be increased by 150 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163 and where the increase is specifically for a proposed resort or convention hotel located in a county with a population greater than 500,000 and the local government specifically designates that the proposed resort or convention hotel development will serve an existing convention center of more than 250,000 gross square feet built before ~~prior to~~ July 1, 1992. The applicable guidelines and standards shall be increased by 150 percent for development in any area designated by the Governor as a rural area of opportunity ~~critical economic concern~~ pursuant to s. 288.0656 during the effectiveness of the designation.

(26) ABANDONMENT OF DEVELOPMENTS OF REGIONAL IMPACT.—

(b) Upon receipt of written confirmation from the state land planning agency that any required mitigation applicable to

completed development has occurred, an industrial development of regional impact located within the coastal high-hazard area of a rural area of opportunity ~~county of economic concern~~ which was approved before ~~prior to~~ the adoption of the local government's comprehensive plan required under s. 163.3167 and which plan's future land use map and zoning designates the land use for the development of regional impact as commercial may be unilaterally abandoned without the need to proceed through the process described in paragraph (a) if the developer or owner provides a notice of abandonment to the local government and records such notice with the applicable clerk of court. Abandonment shall be deemed to have occurred upon the recording of the notice. All development following abandonment shall be fully consistent with the current comprehensive plan and applicable zoning.

Section 34. Paragraph (g) of subsection (3) of section 380.0651, Florida Statutes, is amended to read:

380.0651 Statewide guidelines and standards.—

(3) The following statewide guidelines and standards shall be applied in the manner described in s. 380.06(2) to determine whether the following developments shall be required to undergo development-of-regional-impact review:

(g) *Residential development.*—A ~~No~~ rule may not be adopted concerning residential developments which treats a residential development in one county as being located in a less populated adjacent county unless more than 25 percent of the development is located within 2 ~~or less~~ miles or less of the less populated adjacent county. The residential thresholds of adjacent counties with less population and a lower threshold may ~~shall~~ not be controlling on any development wholly located within areas

designated as rural areas of opportunity ~~critical economic concern~~.

Section 35. Paragraph (b) of subsection (2) of section 985.686, Florida Statutes, is amended to read:

985.686 Shared county and state responsibility for juvenile detention.—

(2) As used in this section, the term:

(b) "Fiscally constrained county" means a county within a rural area of opportunity ~~critical economic concern~~ as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than $5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

Section 36. Subsection (2) of section 1011.76, Florida Statutes, is amended to read:

1011.76 Small School District Stabilization Program.—

(2) In order to participate in this program, a school district must be located in a rural area of opportunity ~~critical economic concern~~ designated by the Executive Office of the Governor, and the district school board must submit a resolution to the Department of Economic Opportunity requesting participation in the program. A rural area of opportunity ~~critical economic concern~~ must be a rural community, or a region composed of such, that has been adversely affected by an extraordinary economic event or a natural disaster or that presents a unique economic development concern or opportunity of regional impact. The resolution must be accompanied by ~~with~~ documentation of the economic conditions in the community and~~,~~

provide information indicating the negative impact of these conditions on the school district's financial stability, and the school district must participate in a best financial management practices review to determine potential efficiencies that could be implemented to reduce program costs in the district.

Section 37. Paragraph (a) of subsection (4) of section 215.425, Florida Statutes, is amended to read:

215.425 Extra compensation claims prohibited; bonuses; severance pay.—

(4)(a) On or after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.

2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29) ~~s. 443.036(30)~~, by the unit of government.

Section 38. Paragraph (f) of subsection (13) of section 443.1216, Florida Statutes, is amended to read:

443.1216 Employment.—Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:

(13) The following are exempt from coverage under this chapter:

(f) Service performed in the employ of a public employer as defined in s. 443.036, except as provided in subsection (2), and

service performed in the employ of an instrumentality of a public employer as described in s. 443.036(35)(b) or (c) ~~s. 443.036(36)(b) or (c)~~, to the extent that the instrumentality is immune under the United States Constitution from the tax imposed by s. 3301 of the Internal Revenue Code for that service.

Section 39. This act shall take effect July 1, 2014.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 25, 2014

I respectfully request that **1634**, relating to Department of Economic Opportunity , be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Department of Economic Opportunity Bill Number 1434 *(if applicable)*

Name Taylor Hatch Amendment Barcode *(if applicable)*

Job Title Deputy Legislative Affairs Director

Address 107 E. Madison Street Phone 850-245-7370
Street

Tallahassee FL 32301 E-mail taylor.hatch@deo.myflorida.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing DEO

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic DEO

Bill Number 1634 *(if applicable)*

Name David Cruz

Amendment Barcode 420500 *(if applicable)*

Job Title Assistant General Counsel

Address P.O. Box 1757 *Street*

Phone 850-701-3676

Tallahassee FL 32302
City *State* *Zip*

E-mail DCruz@flcities.com

Speaking: ☐ For ☑ Against ☐ Information

Representing florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

_____
Meeting Date

Topic DEO

Bill Number 1034 *(if applicable)*

Name Carolyn Johnson

Amendment Barcode _____ *(if applicable)*

Job Title Policy Director

Address 136 S Bronough
Street
Tallahassee
City *State* *Zip*

Phone 521-1235

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1666 (616958)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Sobel
SUBJECT:	Child Abuse and Child Welfare Services
DATE:	April 9, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Sanford	Hendon		**CF SPB 7072 as introduced**
1.	Brown	Pigott	AHS	**Fav/CS**
2.	Brown	Kynoch	AP	**Pre-meeting**

I. Summary:

PCS/SB 1666 makes numerous changes to statutes designed to protect children from abuse and neglect. The bill seeks to improve the quality of child abuse investigations conducted by the Department of Children and Families (DCF) and certain sheriff's offices. The bill increases child welfare expertise in the DCF, improves child abuse investigator qualifications, and creates a consortium of schools of social work to advise the state on child welfare policy.

The bill directs the DCF to conduct immediate investigations of deaths and other significant incidents involving children who have been known to the child protection and child welfare system. The purpose of the investigations is to identify root causes and to rapidly determine the need to change policies and practices related to child protection and child welfare.

The bill provides a definition of "medical neglect" and requires improvements in the care of medically complex children and the investigation of child abuse cases involving such children.

The bill creates a new part V of ch. 409, F.S., to be entitled "Community-Based Child Welfare." In this new part, current law relating to community-based care is reorganized, obsolete provisions are removed, and some provisions are clarified.

The bill has fiscal impacts that are anticipated to be addressed in the General Appropriations Act.

II. Present Situation:

Child Abuse, Neglect, and Death

Child abuse and child neglect, known collectively as child maltreatment, have been identified as serious social issues in the United States. Most recent studies show that the most common child maltreatment is neglect, which accounts for about 78 percent of the cases. Other common maltreatments are physical abuse (approximately 17 percent of cases) and sexual abuse (approximately 9 percent of cases). Victims less than one year old have the highest rate of victimization.

Many factors are associated with child maltreatment, including poverty, substance abuse, domestic violence, and mental illness.[1] The presence of an adult male unrelated to the child in the household has also been identified as a major risk factor for child maltreatment.

Child maltreatment is one of the nation's most serious problems.[2] In federal fiscal year 2011, the most recent year for which national data is available,[3] an estimated 3.4 million reports of abuse were received by child protection agencies.[4] After investigation, the number of unduplicated child victims nationally was estimated to be 681,000. Florida reported 208,437 calls to the national child abuse hotline, of which 55,770 resulted in substantiated allegations of abuse.[5]

In addition to the human cost of child abuse and neglect, there is a significant fiscal impact to state government. The DCF has made a conservative estimate of $72,709 annually per child to provide child welfare, hospitalization, special education, and juvenile justice services to care for an abused or neglected child.[6] Just the cost of child and adult protective investigations in Florida (of which the great majority are child investigations) was reported to be $312,493,471 in Fiscal Year 2012-2013.

The most serious result of child maltreatment is the death of the child. Nationally, 1,545 child fatalities resulting from child abuse or neglect were identified for federal fiscal year 2011.[7] Florida reported 133 child fatalities for that year resulting from child abuse or neglect.[8] In some instances the family was not previously known to the DCF, and in others the child was previously known. For cases in which the family was previously or currently known to the DCF, understanding the reasons that the previous or current intervention was not effective in avoiding the death is of critical importance.

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[1] Myers, John E.B., *Child Protection in America: Past, Present, and Future,* Oxford University Press, 2006, pp. 134-156.
[2] U.S. Department of Health and Human Services, *Child Maltreatment 2011*, p. 1, *available at* http://www.acf.hhs.gov/sites/default/files/cb/cm11.pdf (last visited March 25, 2014).
[3] All data in this paragraph are for FFY 2011 so that all are comparable.
[4] *Id.* at vii. The report adds that the rate of referrals have remained fairly constant for at least five years.
[5] *Id.* at 11, 29.
[6] Department of Children and Families, *2013 Annual Report*, p. 27, *available at* http://www.dcf.state.fl.us/admin/publications/docs/CFSAP-2013June.pdf (last visited March 25, 2014).
[7] U.S. Department of Health and Human Services, *ibid.* at 63.
[8] *Id.* at 63.

Child Protection and Child Welfare Services in Florida

Florida's system for providing services to children alleged to have been abused, neglected, or abandoned is complex, involving the DCF, six sheriff's offices, the Office of the Attorney General, one state attorney's office, the Department of Health, 17 eligible lead community-based providers (lead agencies),[9] and innumerable lead agency subcontractors.

A child protective investigation begins with a report by any person to the Florida Abuse Hotline. The state is required to maintain a non-stop ability and capacity for receiving reports of maltreatments. The reports are sent out to child protective investigators (CPIs) across the state to investigate.

CPIs are most commonly DCF employees, but in six counties, the local sheriff performs the investigative function.[10] The DCF child protective services are delivered through six regional offices, using 1,300 investigators and 300 supervisors. The sheriff's offices employ 387 CPIs and 70 supervisors.

Court hearings are required whenever a child is removed from his or her home. The attorneys in these cases are either DCF employees or employees of the Attorney General's Office under contract to DCF or, in one case, a state attorney's office.

The lead agencies and their subcontractors are the primary providers of services to children and families in the child welfare system. There are currently 17 lead agencies with contracts covering all 20 judicial circuits. The lead agencies and their subcontractors employ case managers and supervisors to oversee the provision of services to children in the child welfare system. Many of the services are not directly provided by the lead agencies or the case management subcontractors, but by providers of substance abuse services or mental health services, or other specialized community-based providers.

There is variation across the state in deciding the point at which the lead agency assumes responsibility for the case management of a child welfare case, with varying degrees of cooperation and overlap between CPIs and lead agencies. In addition, special problems arise when multiple areas of the state are involved in either the investigation or the placement of children.

Child Welfare Workforce

History

The college degrees most tailored to and associated with child welfare are the bachelor's and master's degrees in social work. During the first half of the 20th century, the federal government, in cooperation with universities and local agencies, established a child welfare system staffed by

[9] The term "eligible lead community-based provider" is defined as a single agency with which the DCF is required to contract for the provision of child protective services in a community that is no smaller than a county. *See* s. 409.1671(1)(e), F.S. These entities are commonly known as community-based care lead agencies or "lead agencies."

[10] As authorized under s. 39.3065, F.S., and the General Appropriations Act, sheriffs in Broward, Hillsborough, Manatee, Pasco, Pinellas and Seminole counties investigate child abuse and neglect reported to the abuse hotline rather than the DCF.

individuals with professional social work educations. Child welfare came to be viewed as a prestigious specialty within the social work profession.[11]

In the 1990's, an increased recognition of child abuse led to enactment of state child abuse and neglect reporting laws and toll-free numbers to report abuse. This resulted in a large increase of child abuse reports, and resources for the preparation and support of additional staff needed to respond to the reports became inadequate. States moved quickly to hire additional employees to investigate abuse. One way to expand the workforce was to reduce staff qualifications. In response to having a varied workforce without similar expertise and training, agencies began to structure child welfare work to reduce its complexity and make it possible for people with fewer qualifications to adequately perform required tasks.[12]

Current Qualifications

The current qualifications for child protective investigators are not specified in statute or rule, but the DCF's internal hiring practices require that new protective investigators have a bachelor's degree in any field and at least one year of child welfare related experience, or a master's degree in any field. Preference is given to candidates with a human services related degree. The DCF is not involved in the hiring practices or standards established by the sheriff's offices.[13]

The current qualifications for child welfare case managers operating in the community-based care system are established by rule and are a bachelor's degree in social work or related field.[14] Since employment decisions for child welfare case managers are made by individual lead agencies, and since the DCF does not collect data on their practices, the extent to which this rule is actually observed by the lead agencies is not clear. The DCF has authority to exempt employees from the rule and often does so.

In addition to these qualifications, the 2012 Legislature required that both child protective investigators and child welfare case managers obtain child welfare certification from a third-party credentialing entity.[15] This certification requires the individual to demonstrate core competency in any child welfare practice area. A "core competency" is defined in statute to be the minimum knowledge, skills, and abilities necessary to carry out child welfare work responsibilities.[16]

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[11] Child Welfare Workforce, Research Roundup, Child Welfare League of America, (Sept. 2002) *available at* http://www.cwla.org/programs/r2p/rrnews0209.pdf. (last visited March 3, 2014).
[12] Jones, L.P. and Okamura, A. Reprofessionalizing Child Welfare Services: An Evaluation of a Title IV-E Training Program, Research on Social Work Practice, Vol. 10 No. 5, September 2000 and Zlotnik, J.L., Preparing Social Workers for Child Welfare Practice: Lessons from an Historical Review of the Literature, Journal of Health & Social Policy, Vol. 15, No. 3/4, 2002.
[13] Communication from the Department of Children and Family Services, Family Safety Office, (Sept. 16, 2010) (on file with the Committee on Children, Families, and Elder Affairs).
[14] Section 409.1671(5)(a), F.S., requires that each community-based lead agency must be licensed as a child-caring or child-placing agency. Section 65C-15.017(2) and (3), F.A.C., sets the education and experience requirements for such agencies.
[15] Currently, the Florida Certification Board.
[16] Section 402.40, F.S.

Social Workers in Child Welfare

The DCF has records on the post-secondary degrees for 1,214 of the state's CPIs.[17] These data do not include information on the degrees of the investigators in the six county sheriff's offices. Approximately 10 percent of the DCF's CPIs have a social work degree, either bachelor's or master's. See Table 1 below:

Table 1. Degrees of DCF Child Protective Investigators

Degree Major	Number	Percent of Workforce
Other	388	32.0%
Criminal Justice	361	29.7%
Other Health and Human Service	350	28.8%
Social Work	115	9.5%
Total	1,214	100%

There were 4,728 students enrolled statewide in programs leading to a bachelor's or master's degree in social work in the fall of 2012.[18] (See Table 2.) There were 1,684 graduates from the state's 14 schools of social work in 2011-2012.[19] The bachelor's level program in social work requires a structured internship with approximately 512 hours of supervision by a master's level social worker and 50 hours of coursework. In contrast, a psychology or a criminology major requires no internship and 36 hours of coursework, and a sociology major requires no internship and 30 hours of coursework.[20]

[17] Data provided by the Department of Children and Families, (Jan. 27, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[18] Informal communication, Florida State University School of Social Work, (Mar. 3, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[19] Data provided by the Florida Board of Governors and the Independent Colleges and Universities for 2011-2012, (Nov. 18, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[20] *Id.*

Table 2. 2011-12 BSW and MSW Enrollment and Degrees

	Public Universities	**Enrollment**	**Degrees**
1	Florida Agricultural and Mechanical University	356	81
2	Florida Atlantic University	687	171
3	Florida Gulf Coast University	176	65
4	Florida International University	515	171
5	Florida State University	885	333
6	University of Central Florida	709	255
7	University of North Florida[21]	0	0
8	University of South Florida	327	184
9	University of West Florida	285	113
	Private Universities	**Enrollment**	**Degrees**
10	Barry University	420	209
11	Florida Memorial University	50	15
12	Saint Leo University	218	50
13	Southeastern University	70	31
14	Warner University	30	6
	Total	4,728	1,684

In 2014, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed child welfare systems in Florida and 16 other states with large child populations.[22] Among the issues studied by OPPAGA were the qualifications required by states in hiring child protection workers. The results are as follows:

[21] According to the Board of Governors, the University of North Florida's BSW program was approved for fall of 2013.
[22] OPPAGA, *Research Memorandum, State Child Welfare Systems: Key Components and Performance Indicators,* March 10, 2014.

Table 3: Qualifications for Child Protective Workers in 17 States

State	Any Bachelor's Degree	Bachelor's Degree in Human Services Field	BSW
Arizona		x	
California			x
Florida	**x**		
Georgia	x		
Illinois			x
Indiana	x		
Michigan		x	
Missouri		x	
New Jersey	x		
New York	x		
N. Carolina			x
Ohio		x	
Pennsylvania	x		
Tennessee	x		
Texas	x		
Virginia			
Washington			x

In addition, Kansas requires a social work degree.[23]

The impact of child welfare workers with a social work degree has been examined by researchers. Education is the variable that child welfare workforce researchers have explored most often in relation to performance.[24] Much of the research on the effect of education has focused on agency/university partnership programs that have been established over the past decade using federal funding provided under Title IV-E of the Social Security Act. While there is variation among these programs, they generally aim to increase educational opportunities for agency staff to add to the pool of potential child welfare employees and enhance the relevance of curricula in schools of social work. Research to examine their effects found that students score significantly higher on measures of job-related competencies than non-students. Graduates of the specialized child welfare program in New York State, for example, had higher levels of skills, confidence, and sensitivity to clients.[25]

[23] Informal communication, Florida State University School of Social Work (March 3, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

[24] *Id*. Several studies have found evidence that social work education, at either the bachelors of social work (BSW) or masters of social work (MSW) level, positively correlates with performance. A study conducted in Maryland public child welfare agencies found an MSW to be the best predictor of overall performance as measured by supervisory ratings and employee reports of work related competencies. A national study that measured competencies related to 32 job-related duties found that both MSW and BSW staff were better prepared for child welfare work than their colleagues without social work education. Research conducted with staff in Kentucky's public child welfare agency also revealed that staff with social work degrees scored significantly better on state merit examinations, received somewhat higher ratings from their supervisors, and had higher levels of work commitment than other staff. A Nevada study showed that caseworkers who had a social work degree were significantly more likely to create a permanent plan for children in their caseloads within three years than their colleagues without social work education.

[25] *Id*. Also see Lewandowski, K. (1998). *Retention outcomes of a public child welfare long-term training program*. Professional Development: International Journal of Continuing Social Work Education, 1 and Zlotnik, J.L. *Enhancing Child*

Issues Identified in Child Abuse Deaths

Agency Structure and Stability

Since 1998 the DCF has had eight secretaries. In July 2013, the agency secretary resigned[26] and an interim secretary was named who has agreed to remain through the 2014 Legislative Session.[27] With each new secretary typically comes a somewhat new vision and a new strategic plan that includes substantial changes to both the structure of the DCF and staff assignments, all of which may result in some degree of disruption to the functioning of the department. Frequent changes to federal and state laws and to rules and operating procedures, combined with these leadership changes, have made long-term stability at the DCF difficult to achieve.

Currently, the structure of the DCF is provided in law, which requires the appointment of a secretary, a deputy secretary, and an assistant secretary for substance abuse and mental health. The law also provides that DCF offices may be consolidated, restructured, or rearranged by the secretary, in consultation with the Executive Office of the Governor, and that the secretary may appoint additional managers and administrators as he or she determines are necessary for the effective management of the department.[28]

Child Welfare Workforce Issues

A number of commissions and task forces have been established over the past 25 years, often after deaths of children from child abuse or neglect. The commissions and task forces have often found that child protective and child welfare staff did not follow procedures or lacked the training and ability to perform their duties. The commissions and task forces have recommended ways to improve the qualifications of child welfare staff. Some of the findings are as follows:

- The Study Commission on Child Welfare was established by the Florida Legislature in November 1989 after several children died while in state care. [29] At that time, CPIs reported that prior to employment, they worked most frequently in social service/welfare, law enforcement, and in education positions (54 percent). The rest previously held positions as sales personnel, law clerks, real estate agents, and members of the U.S. military.[30] The

Welfare Service Delivery: Promoting Agency-Social Work Education Partnerships, Policy and Practice, 2001. Although the evidence related to educational qualifications is not unequivocal, it provides support for social work education as the best preparation for practice in child welfare. These findings tend to be most consistent with regard to graduates of specialized education programs offering enhanced child welfare content and internships in child welfare settings.

[26] Marbin Miller, C. and Klas, M.E., *DCF Secretary David Wilkins Resigns Amid Escalating Controversy over Child Deaths*, TAMPA BAY TIMES, July 18, 2013 a*vailable at* http://www.tampabay.com/news/politics/gubernatorial/dcf-secretary-david-wilkins-resigns-amid-escalating-scandal-over-child/2132083 (last visited Mar. 3, 2014).

[27] Koff, R., *Interim DCF Boss to Stay on Through Spring*. TAMPA BAY TIMES, Dec. 11, 2013 *available at* http://www.tampabay.com/news/politics/stateroundup/interim-dcf-boss-to-stay-on-through-spring/2156688 (last visited Mar. 3, 2014).

[28] Section 20.19, F.S.

[29] *Id*. Also see Lewandowski, K. (1998). *Retention outcomes of a public child welfare long-term training program*. Professional Development: International Journal of Continuing Social Work Education, 1 and Zlotnik, J.L. *Enhancing Child Welfare Service Delivery: Promoting Agency-Social Work Education Partnerships,* Policy and Practice, 2001. Although the evidence related to educational qualifications is not unequivocal, it provides support for social work education as the best preparation for practice in child welfare. These findings tend to be most consistent with regard to graduates of specialized education programs offering enhanced child welfare content and internships in child welfare settings.

[30] *Id*.

commission recommended that the state should recruit CPIs with bachelor's degrees in social work, child development, or guidance and counseling.[31]

- On April 25, 2002, the DCF revealed that a child in its care, five-year-old Rilya Wilson, had disappeared 15 months earlier from her custodial home and had not been seen since. In response, Gov. Jeb Bush appointed a four-member Governor's Blue-Ribbon Panel on Child Protection.[32] The panel recommended that DCF compare the performance and longevity of child welfare staff who had degrees in social work or other behavioral sciences to staff who had other degrees.[33]
- In a 2013 Florida case involving a two-year-old child who died from physical abuse, the Child Welfare League of America (CWLA) was commissioned to study the death and make recommendations. The family included two adult women, five adult men, and 10 children, including the victim. These people had varying connections and living arrangements throughout the child's life, and the family had been reported to the child abuse hotline 16 times between 2005 and 2013. The CWLA report stated the family had experienced substance abuse, domestic violence, a "chronic lack of even marginal parental nurturing," developmental delays in several of the children in the home, referrals for services that were not followed through, lack of managerial review, and "many years of systemic failure." In the words of the report, "(c)hanging a checklist or hiring additional staff cannot solve these pervasive problems."[34]

One of the problems highlighted by the various commissions and panels is the turnover of child protective investigator workforce. Experience among child abuse investigators suffers with significant employee turnover. The annual turnover rate of department CPIs has been 32 percent, 19 percent, and 22 percent over the last three years. The negative impact of turnover is well known – increased training costs ($6.2 million each year) and inexperienced workers.

Child welfare workers with degrees in social work are not immune from turnover. During the period from 2004-2013, Florida State University (FSU) placed and supervised a total of 293 interns in child welfare settings in the northwest region of Florida. While many of the interns were hired for positions with the DCF, retention was difficult, with few staying more than a few years. As a result, FSU began surveying students leaving employment within the field to determine the reasons for leaving. The top five reasons were:

- Poor overall management/administration by upper-level management;
- Lack of professional support from supervisors;
- Lack of respect and lack of feeling valued by supervisors and upper-level management;
- Lack of focus on teamwork, with employees often feeling like they were pitted against each other by upper-level management and supervisors; and
- No support for professional development or advancement.[35]

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[31] Report of the Study Commission on Child Welfare, *Part One Recommendations* (Mar. 1991) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[32] Governor's Blue Ribbon Panel on Child Protection, (May 2002) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[33] *Id*. In spite of continuing dialog with the Schools of Social Work statewide, the department does not appear to have made progress towards increasing the number of staff with degrees in social work.
[34] Child Welfare League of America, *Special Review Report re JVM*, submitted December 19, 2013, p. 15.
[35] *Id*.

While respondents indicated that caseloads were indeed high at some points and that salaries could be better, neither of these issues were cited as primary reasons for leaving.[36]

As part of its review of child welfare systems, OPPAGA conducted a series of focus groups with both child protective service investigators and child welfare case managers. They found a variety of problems in the working conditions of CPIs and case managers.[37] These problems included:

- A lack of mentoring and management support across the state:
  Some case managers noted that high turnover rates among workers resulted in supervisors carrying caseloads themselves, leaving little time for supervision or mentoring. In addition, most case managers reported that supervisors' primarily focused on meeting DCF performance measures rather than encouraging quality work or mentoring new case managers.
- Administrative tasks that detract from time spent with families and children:
  Investigators estimated that they spend 60 percent to 80 percent of their time on the administrative requirements associated with each case rather than with families. Investigators stated they could not complete required case-related tasks in the standard 40-hour work week and that they routinely work nights and weekends.
- Concern about the sometimes volatile work environment:
  Both investigators and case managers reported that they are required to go into unsafe neighborhoods and dangerous, violent homes, but they do not feel that the DCF is concerned for their safety. While investigators can request law enforcement agencies to have officers accompany them, they reported that law enforcement agencies are sometimes not responsive to their requests or that it takes hours for officers to arrive.
- Outdated technology:
  CPIs and case managers reported that their electronic equipment has not kept up with prevailing technology. For example, they reported they are issued laptop computers that are not enabled for wireless Internet connection and that DCF-issued mobile phones often have poor or no reception, depending on the investigator's location. As a result, staff must use personal phones at their own expense.

According to the U.S. Administration on Children and Families, a supportive organizational culture is a key ingredient in building a stable and effective child welfare workforce. Core elements of organizational culture include agency leadership, workforce management, supervision, and support. Organizational culture and employee relations significantly influence an agency's ability to recruit and retain staff as well as make long-lasting workforce changes.

Efforts to Improve Child Protection

Florida has taken many actions to improve the quality of child abuse investigators over the years. Most recently, the Legislature has made significant investments in child protection and child welfare:

[36] *Id.*
[37] OPPAGA, *ibid. (*Mar. 6, 2014)

- In the 2010 Session, the Legislature required child abuse investigators and child welfare case workers to be certified.[38] The certification is outsourced and includes testing in child welfare and agreement to a set of ethics.
- In the 2011 Session, the Legislature provided $11 million to the DCF to redesign the central abuse hotline.
- In the 2012 Session, the Legislature made several improvements to the child protection system by:
  - Appropriating $10.8 million to provide additional permanent and temporary child abuse investigators.
  - Appropriating $7.9 million to improve the state's child welfare information system (Florida Safe Families Network, or FSFN).
  - Providing funding to raise CPI salaries by $4,300 per CPI per year.
- In the 2013 Session, the Legislature provided $4 million for CPI redesign (including sheriff's offices) and $1.8 million for FSFN.

University Partnerships with Child Welfare

Section 1004.61, F.S., currently directs the DCF to form partnerships with the schools of social work of state universities in order to encourage the development of graduates trained to work in child protection. The University of South Florida for example, coordinates child welfare training in the state.

The federal government provides both policy and financial resources to states for child welfare services under Title IV of the Social Security Act. One use of such funds is the education and training of child welfare workers. Some states use these funds to create partnerships between their child welfare agencies and colleges of social work at state universities. The universities provide the expertise in child welfare research, policy, and practices. They also develop and conduct on-the-job training to child welfare workers. The child welfare agency, in turn, advises the universities on the content of the training and education in the university so graduates are better prepared for child welfare work.

Care of Medically Complex Children

Current law requires that children in this state be provided with the following:
- Protections from abuse, abandonment, neglect, and exploitation;
- A permanent and stable home;
- A safe and nurturing environment, which will preserve a sense of personal dignity and integrity;
- Adequate nutrition, shelter, and clothing;
- Effective treatment to address physical, social, and emotional needs, regardless of geographical location;
- Equal opportunity and access to quality and effective education, which will meet the individual needs of each child, and to recreation and other community resources to develop individual abilities;
- Access to preventive services; and

[38] Chapter 2011-163, Laws of Florida

- An independent, trained advocate, when intervention is necessary, and a skilled guardian or caregiver in a safe environment when alternative placement is necessary.[39]

Special provisions for medically complex children are not currently provided in statute.

Section 39.01(43), F.S., provides a definition of "necessary medical treatment" as care that is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child. Additionally, s. 39.01(44), F.S., sets out the circumstances for neglect of a child. The statute specifically provides that certain circumstances may not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered and rejected by a parent. Also, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or specific religious organization who does not provide specific medical treatment for a child, may not, for that reason alone, be considered a negligent parent or legal guardian. However, ch. 39, F.S., does not include a definition of "medical neglect" or special provisions related to the investigation of allegations of abuse, neglect, or abandonment when children with serious medical conditions are the reported victims.

Suspected child abuse, neglect, or abandonment may be reported to the DCF child abuse hotline regarding children with significant medical issues, as with any other children. Child Protection Teams, operated by the Department of Health (DOH), provide medical expertise to the DCF if there are medical issues associated with child abuse or neglect. However, the current law does not require the teams to coordinate their findings with physicians who have special knowledge of the medical condition of the child who is alleged to be the victim of abuse or neglect. Without the information possessed by those familiar with a particular disease or disability processes, parents can be found to be neglectful or abusive even when observed problems are related to insufficient services or a natural change in medical conditions.

In order to maintain these children in a safe environment that is the least restrictive, families with children who have medical issues need access to various medical and social services. These services are sometimes most readily available to the child in placements outside of the home. It is the current policy of the state, supported by federal and state law, that the parent or legal guardian decides what is best for the child. The state respects the parent or legal guardian's decision made in consultation with medical professionals. Many children with complex medical needs live safely in their homes with supportive services through the Florida Medicaid program.

Florida Medicaid has a comprehensive medical service package to accommodate families that choose to care for their medically complex child at home. Medical services are made available in the home, including private duty nursing, personal care assistance, home health aide services, and occupational, physical, and speech therapy when medically necessary, in unlimited amounts or durations for children in the Medicaid program.

The DCF requires foster care caseworkers to obtain high-level approval before placing any dependent child in a nursing home. Foster children already placed in nursing homes are reviewed

[39] *See* s. 39.001, F.S.

monthly by the AHCA in an effort to return the children to their birth parents or place them in foster homes run by parents with specialized medical training.

The state is currently a party to a lawsuit related to the placement of medically complex children in settings such as nursing homes. The U.S. Department of Justice joined the lawsuit that alleges that the state violated the Americans with Disabilities Act (ADA).[40] The AHCA has worked with the families of over 200 children in nursing homes under the Medicaid program to ensure they are aware of in-home health services and have been offered those services. In addition, the DCF and the Agency for Persons with Disabilities (APD) have worked with the families of medically complex children served by APD to ensure the least restrictive placement.

Statewide Medicaid Managed Care

Part IV of ch. 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the Statewide Medicaid Managed Care program (SMMC). The program, authorized by two federal Medicaid waivers, is designed for the Agency for Health Care Administration (AHCA) to issue invitations to negotiate[41] and competitively procure contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most of the state's enrollees in the Medicaid program. SMMC has two components: managed medical assistance (MMA) and long-term care managed care (LTCMC).

The LTCMC component began enrolling Medicaid recipients in August 2013 and is scheduled to complete its statewide roll-out in March 2014.[42] The MMA component is scheduled to begin enrolling Medicaid recipients in May 2014 and finish its roll-out in August 2014.[43]

Provider Service Networks in SMMC

Types of managed care plans that are eligible for SMMC include health insurers, exclusive provider organizations, health maintenance organizations, provider service networks (PSNs), and federally-authorized accountable care organizations, among other entities.[44]

A PSN is defined as a type of managed care plan of which a controlling interest is owned by a health care provider, or group of affiliated providers, or a public agency or entity that delivers health services. For the purpose of this definition, "health care provider" includes Florida-licensed health care professionals or licensed health care facilities, federally qualified health care centers, and home health care agencies.[45]

The AHCA is required to procure a specified number of managed care plans per region or a number of plans that range between a minimum and maximum specified for each region. At least

[40] *A.R. et al. v. Dudek et al, United States V. Florida*, Consolidated Case No. 0:12-cv-60460-RSR, U.S. District Court for the Southern District of Florida.
[41] An "invitation to negotiate" is a written or electronically posted solicitation for vendors to submit competitive, sealed replies for the purpose of selecting one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. *See* s. 287.012(17), F.S.
[42] *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#LTCMC >, last visited March 20, 2014.
[43] *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#MMA >, last visited March 20, 2014.
[44] *See* s. 409.962(6), F.S.
[45] *See* s. 409.962(13), F.S.

two plans per region must be procured, and at least one plan per region must be a PSN, if a PSN submits a responsive bid during the procurement. If no PSN submits a responsive bid for a region, the AHCA is required to procure no more than one less than the maximum number of plans for that region during the initial procurement and, within 12 months after the initial invitation to negotiate, attempt once again to procure a PSN for that region.[46]

Siblings

Current law includes legislative intent that when siblings are placed in out-of-home care, the DCF must make every possible effort to place them together. If they are permanently placed, the DCF must attempt to place them in the same adoptive home, and if placement together is not possible, the DCF must attempt to keep them in contact with each other.[47] The term "sibling" is not defined and there is no provision at specific points in the child welfare system, such as at removal or at judicial review, to ensure that the DCF is attending to issues relating to siblings.

Relative Caregiver Program

The Florida Legislature established the Relative Caregiver Program in 1998.[48] This program offers monthly cash assistance and Medicaid for a child under the age of 18 who is placed by a dependency court with a relative after the child is removed from his or her home as a result of abuse, neglect, or abandonment. The monthly payment provides financial help for a relative who would not be able to afford to care for the child without assistance. The amount of the payment varies depending on the child's age and circumstances. Medicaid pays for the child's health care. The child may also be eligible for subsidized child care.

Only persons who are within the fifth degree of relationship by blood or marriage to the parent or stepparent of a dependent child or a half-brother or half-sister of a dependent child and who are caring full-time for the child, are eligible for the Program.

Under the Relative Caregiver Program, the child may be in temporary custody of the relative under the protective supervision of the DCF, may be placed under guardianship, [49] or may be placed permanently with the relative.[50] Either of the last two options is considered a permanency placement for the child. Continued supervision of the placement by the DCF is required under the permanent placement option, but not under the guardianship option.

Funding for the Relative Caregiver Program is through Florida's share of the block grant for Temporary Assistance for Needy Families (TANF), in accordance with Title IV-A of the Social Security Act (SSA). The SSA lists the purposes of the TANF program in Title IV-A, section 401. This section specifically states that one of the purposes is to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives."

[46] *See* s. 409.974(1), F.S.
[47] Section 39.001(1)(k), F.S.
[48] Chapter 98-403, s. 70, Laws of Florida.
[49] Section 39.6221, F.S.
[50] Section 39.6231, F.S.

The DCF currently places children with nonrelatives under court-ordered supervision, but has not been able to pay the nonrelatives due to restrictions on the TANF funding source. These children are placed in the nonrelative homes after studies by the DCF. The only current difference between relative and nonrelative placements is that relatives receive payments to offset the cost of caring for the children and nonrelatives do not. As of December 31, 2012, there were 1,552 children in the care of nonrelatives under DCF supervision. The estimated monthly Relative Caregiver cost per child is $257.09 for an average annual total of $3,087 per child.[51]

Public Disclosure of Child Deaths

There is currently no mechanism by which child deaths that have been reported to the DCF's child abuse hotline are made public. Arkansas has a database by which such deaths are reported, along with basic facts related to the case. This information is made available through the Arkansas social services website.[52]

Child Abuse Death Review Committee

The State Child Abuse Death Review Committee (CADR) was established in Florida in 1999 by statute.[53] Case reviews began in 2000 and were expanded in 2004 to include all verified child abuse deaths. Current law establishes the CADR and local child abuse death review committees within the Department of Health (DOH).[54] The CADR is composed of 18 members, including experts from the medical, law enforcement, social services, and advocacy professions.[55]

Members convene every other month to review facts and circumstances of the deaths of children whose deaths have been investigated by the DCF and closed with a "verified" finding of child abuse or neglect. The purpose of the child death review is to help prevent child deaths as a result of abuse or neglect by:[56]

- Developing a community-based approach to address child abuse deaths and contributing factors;
- Achieving a greater understanding of the causes and contributing factors of deaths resulting from child abuse or neglect;
- Identifying gaps, deficiencies, or problems in service delivery to children and families by public and private agencies that may be related to child abuse deaths; and
- Developing and implementing data-driven recommendations for reducing child abuse and neglect deaths.

The CADR is required to submit an annual statistical report to the governor and the Legislature by December 31 containing recommendations to reduce preventable child deaths.[57]

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[51] Department of Children and Families, *SB 770 Fiscal Analysis* (Feb. 4, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[52] Arkansas Department of Human Services, Child Fatality Notification, *available at* https://ardhs.sharepointsite.net/CFN/default.aspx (last visited March 4, 2014)
[53] Section 383.402, F.S.
[54] Section 383.402(1), F.S.
[55] Section 383.402(2)(a) and (b), F.S.
[56] Section 383.402(1), F.S.
[57] Section 383.402(3)(c), F.S.

Local child abuse death review committees also conduct reviews of the verified deaths of children in their respective communities to develop prevention campaigns and prepare recommendations for improving local practices in child protection and support services to families. There are 23 local committees that provide coverage for Florida's 67 counties.[58]

During 2011, 2,241 children under the age of 18 died in Florida. Of those deaths, 474 were reported to the Florida Abuse Hotline and 130 deaths were verified by the DCF as being related to child abuse or neglect. The CADR received 126 cases for review during the period of January through November 2012. The CADR is statutorily limited to the review of "verified" child death reports.[59]

Statutory Provisions Relating to Community-Based Care Lead Agencies

The transition from government-delivered to outsourced child welfare sources began in earnest in Florida in 1996, when the Legislature directed the DCF to contract with established community-based organizations to establish pilot projects for the provision of foster care and related services.[60] In 1998, the Legislature required the DCF to privatize the provision of all foster care and related services statewide. The transition was completed in Fiscal Year 2004-2005. Currently, there are 19 community-based care lead agencies (lead agencies) providing child welfare services statewide.

From the beginning of the outsourcing of child welfare services, s. 409.1671, F.S., has been the primary statute providing legislative direction for the process. Consequently, the statute contains many provisions that are obsolete, some which are current, and some which need clarification. For example, there is no provision in statute currently describing the duties of the DCF in an outsourced child welfare system.

In addition, currently there is not a statutory requirement that the lead agencies be incorporated under Florida law. Also, the duty to provide community input for lead agencies is buried in the other duties ascribed to DCF Community Alliances, which are at present located in the DCF organizational statute, ch. 20.19, F.S.

Unlawful Desertion of a Child

Adoption is a legal process, but the process is not always properly carried-out, which can put children in danger. Beginning on September 9, 2013, Reuters New Service published a five-part series, entitled "The Child Exchange," which exposed how American parents were using Internet message boards to find new families for children they regretted adopting – a practice that has been called "private re-homing." Reuters spent 18 months investigating eight message boards

[58] Child Abuse Death Review Committee, *Annual Report* (Dec. 2012), *available at* http://www.floridahealth.gov/alternatesites/flcadr/reports.html (last visited Dec. 9, 2013).
[59] *Id*.
[60] Chapter 96-402, Laws of Florida.

where participants advertised unwanted children and examined two dozen cases in which adopted children were re-homed.[61] The investigative series found:

- An advertisement for re-homing appeared, on average, at least once per week;
- The average range for children being advertised for re-homing is 6 to 14 years of age;
- Re-homing is accomplished through basic power of attorney documents which allow the new guardians of the child to enroll the child in school or secure government benefits;
- At least 70 percent of the children offered for re-homing on one Yahoo message board had been adopted from foreign countries;
- Only 29 states have laws that govern how children can be advertised for adoption;[62] and
- The Interstate Compact for the Placement of Children, which is meant to be a safeguard against the improper placement of children across state lines, is often not enforced by law enforcement.[63]

Florida law currently contains no criminal provisions specifically relating to re-homing.

III. Effect of Proposed Changes:

Section 1 amends s. 20.19, F.S., to direct the secretary of the Department of Children and Families (DCF) to appoint an assistant secretary for child welfare to spearhead the DCF's efforts to carry out its duties and responsibilities for child protection and child welfare, and specifies the qualifications for a person appointed to that position. This section also provides new membership criteria for the DCF community alliances and adds the new duty of providing independent and community-focused assessment of child protection and child welfare services and the local system of community-based care.

Section 2 amends s. 39.001, F.S., to:

- Provide that the safety of children is the paramount concern of the chapter;
- Require that partnerships for child protection should include the courts, law enforcement agencies and service providers, as well as the DCF, other agencies, and local communities;
- Emphasize the importance of siblings remaining in contact with one another;
- Preserve and strengthen families caring for medically complex children; and
- Make specific provisions relating to medically complex children.

Section 3 amends s. 39.01, F.S., to provide definitions for "impending danger," "medical neglect," "present danger," "safety plan," and "sibling" and to remove obsolete provisions.

Section 4 amends s. 39.013, F.S., to require that the DCF be represented by legal counsel in every dependency proceeding and to give direction to DCF lawyers.

Section 5 amends s. 39.201, F.S., to require that all incidents of juvenile sexual abuse involving a child who is in the custody of or under the supervision of the DCF to be reported to the child

[61] Megan Twohey, *The Child Exchange*, REUTERS, (Sept. 9, 2013), *available at* http://www.reuters.com/investigates/adoption/#article/part1 (last visited Mar. 3, 2014).
[62] Florida is one of the 29 states that have addressed this issue. *See* s. 63.212(1)(g), F.S.
[63] *Id*.

abuse hotline and to require the DCF to inform the court at the next hearing or in its next report to the court about the facts and results of such investigations of child sexual abuse.

Section 6 creates s. 39.2015, F.S., to establish a critical incident rapid response team within the DCF, to outline its duties and composition, and to require cooperative agreements with other entities and organizations to facilitate the work of the team. This section also requires that the reports of the team be published on the DCF website. The DCF secretary is required to develop guidelines and training for the teams, directing them to conduct a root-cause analysis for each incident. In addition, the secretary is directed to appoint an advisory committee to conduct an independent review of the reports of the critical incident rapid response teams and submit a report to the secretary, who is required to provide the report to the governor, the president of the Senate, and the speaker of the House of Representatives.

Section 7 creates s. 39.2022, F.S., to require the DCF to report on its website basic facts about all deaths of children reported to the DCF child abuse hotline and describes the information to be posted on the website.

Section 8 amends s. 39.301, F.S., to provide direction to investigators about the use of safety plans during the investigation of allegations of child abuse, neglect, or abandonment.

Section 9 amends s. 39.303, F.S., to require that child protection teams evaluating a report of medical neglect and assessing the health care needs of a medically complex child consult with a physician who has experience in treating children with the same condition.

Section 10 creates s. 39.3068, F.S., to describe special procedures to be followed when investigating a report of medical neglect.

Section 11 amends s. 39.307, F.S., to describe procedures for the DCF to follow after receiving a report to the child abuse hotline alleging that a child is involved in child sexual abuse or inappropriate sexual behavior.

Section 12 amends s. 39.402, F.S, to provide that the DCF must, as part of the information presented to the dependency court at a shelter hearing, describe its reasonable efforts to keep siblings together after removal, unless the court finds that placement together is not in the best interest of the children. Reasonable efforts to keep sibling together must include short-term placement in a group home with the ability to accommodate sibling groups if such a placement is available. This section also requires that, if siblings cannot be placed together, the DCF must provide a recommendation for frequent visitation or other ongoing interaction among the siblings unless this interaction would be contrary to a sibling's safety or well-being. If visitation among siblings is ordered but will not commence within 72 hours after the shelter hearing, the DCF must provide justification to the court for the delay.

Section 13 amends s. 39.501, F.S., to add noncompliance with a safety plan as information to be included in a petition for dependency.

Section 14 amends s. 39.504, F.S., to add compliance with a safety plan to the actions which may be ordered by the court in issuing an injunction to protect a child.

Section 15 amends s. 39.5085, F.S., to add nonrelative caregivers to those who qualify for the DCF relative caregiver program. These placements are already used by the DCF, but with this change, nonrelatives may be reimbursed for the cost of caring for the child.

Section 16 amends s. 39.604, F.S., (the Rilya Wilson Act) to change the beginning age when a child under court-ordered supervision or in the custody of the DCF must be enrolled in child care from age three to birth. Enrollment in such a program is made a part of the child's safety plan. The requirement extends until the child is enrolled in school.

Section 17 amends s. 39.701, F.S., to require the DCF to report to the court at the time of judicial review hearings the frequency, kind, and duration of contacts among siblings during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the children.

Section 18 amends s. 39.802, F.S, to remove a requirement that petitions for termination of parental rights be signed by an employee of the DCF.

Section 19 amends s. 63.212, F.S, to clarify provisions relating to the advertisement of minors available for adoption.

Section 20 amends s. 383.402, F.S., to direct the child abuse death review committees of the Department of Health to review all deaths of children reported to the DCF child abuse hotline, not just deaths verified as caused by abuse or neglect. This section also changes the due date of the annual report of the statewide committee from December 31 to October 1 of each year.
Section 21 amends s. 402.40, F.S., to require that third-party credentialing entities maintain an advisory committee and specifies the membership of such committees. The bill also provides that the DCF may approve certifications involving specializations in serving specific populations or in skills relevant to child protection.

Section 22 creates s. 402.402, F.S., to require that on an annual and statewide basis, 80 percent of all child protective investigators and child protective investigation supervisors hired on or after July 1, 2014, by the DCF, must have a bachelor's degree or master's degree in social work from an accredited school of social work. The bill exempts all personnel employed before July 1, 2014, from this requirement. The bill allows the DCF to hire persons with bachelor's degrees or master's degrees in other human services-related fields if no viable candidates are available with social work degrees. However, such employees are required to complete certification requirements and at least six credit hours of college level coursework related to the child protection field within three years of employment. Child protective investigators and child protective investigation supervisors hired by a sheriff's office must have a bachelor's degree and, within three years of hire, complete at least six credit hours of college level casework with direct application to the child protection field. This section requires specialized training for child protective investigators and supervisors and specifies the content and deadline for such training. This section also describes training required for attorneys hired after July 1, 2014, to represent the DCF in child welfare cases.

Section 23 creates s. 402.403, F.S., to establish a child protection and child welfare personnel tuition exemption program and sets out the qualifications for obtaining the exemption. The program is for high-performing child protection and child welfare personnel who do not have a master's degree in social work or a certificate in an area related to child welfare.

Section 24 creates s. 402.404, F.S., to establish a student loan forgiveness program for child protection and child welfare staff and sets out the qualifications for obtaining the loan forgiveness. Approximately half of all graduates from the state university system have a student loan debt.[64] The bill allows the DCF or a lead agency to pay up to $3,000 per year towards the student loan debt as an incentive for degreed social workers to become child protection or child welfare personnel. The DCF is directed to prioritize the use of funds appropriated for this purpose to regions with high average caseloads and low workforce retention rates.

Section 25 amends s. 409.165, F.S., to direct the DCF to work with relevant state and local agencies to develop medical foster homes for medically complex children and to provide such services as may be necessary to maintain such children in the least restrictive and most nurturing environment consistent with their needs. The bill also provides that funds for the care of such children can be spent for care in their own homes or the homes of relatives if the children can be safely served and the cost is equal to or less than the cost of out-of-home placement.

Section 26 amends s. 409.967, F.S., to specify the components of managed care plans serving children in the care and custody of DCF and to require that providers of such plans make information available to DCF for inclusion in the state's child welfare data system. It directs the DCF and the Agency for Health Care Administration (AHCA) to use the information provided to determine the plan's compliance with standards for access to medical, dental, and behavioral health services, the use of psychotropic medications, and follow-up on all medically necessary services recommended as a result of early and periodic screening diagnosis and treatment.

Section 27 amends s. 409.972, F.S., to exempt Medicaid recipients residing in a group home facility licensed under chapter 393 from mandatory managed care enrollment.

Section 28 directs the Division of Law Revision and Information to create part V of ch. 409, F.S., to be entitled "Community-Based Child Welfare."

Section 29 moves and revises provisions from s. 409.1671, F.S., to create s. 409.986, F.S. The new section provides legislative findings, intent, goals, and definitions related to community-based care.

Section 30 moves and revises provisions from s. 409.1671, F.S., to create s. 409.987, F.S. The new section clarifies the requirements for the DCF to procure community-based care lead agencies. The procurement must be conducted through a competitive process required by ch. 287, F.S. The bill sets the requirements for an entity to compete for the award of a contract as a lead agency. The bill requires that the procurement be done in consultation with local community alliances. The bill also requires that upon award and execution of a contract between the DCF

[64] Data provided by the Florida Board of Governors, (Feb. 11, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

and a lead agency, the parties must enter into a letter of engagement that the DCF will provide legal representation of the lead agency or its subcontractors for the preparation and presentation of dependency court proceedings without charge to the lead agency or subcontractor.

Section 31 moves and revises provisions from s. 409.1671, F.S., and 409.1675, F.S., to create s. 409.988, F.S. The new section outlines the duties of the lead agencies and to authorize subcontracting for the provision of child welfare services.

Section 32 moves and revises provisions from s. 409.1671, F.S., and 409.16745, F.S., to create s. 409.990, F.S. The new section describes funding for lead agencies.

Section 33 moves provisions from 409.16713, F.S., to create s. 409.991, F.S. The new section remains unchanged and describes the allocation of funds for lead agencies.

Section 34 moves and revises provisions from s. 409.1671, F.S., to create s. 409.992, F.S. The new section provides for lead agency expenditures, requiring that these expenditures be governed by financial guidelines developed by the DCF and must comply with applicable state and federal law as well as good business practices. The auditor general is authorized to provide technical assistance in the development of the guidelines.

Section 35 moves and revises provisions from s. 409.1671, F.S., to create s. 409.993, F.S., to describe lead agency and subcontractor liability. The contents of this section are currently found in s. 409.1671(1)(h)-(l), F.S.

Section 36 transfers and renumbers the current s. 409.1675, F.S., to create s. 409.994, F.S., describing lead agencies and receivership.

Section 37 creates s. 409.996, F.S., to describe the duties of the DCF in contracting for community-based child welfare services.

Section 38 creates s. 409.997, F.S., to establish a child welfare results-oriented accountability system. The section requires that the DCF maintain a comprehensive accountability system that monitors the use of resources, the quality and amount of services provided, and the child and family outcomes through data analysis, research review, evaluation, and quality improvement. The DCF is given direction for establishing such a system and is required to report the result of the accountability system at least quarterly on its website as well as annually to the governor, the president of the Senate, and the speaker of the House of Representatives.

Section 39 creates s. 409.998, F.S., to add duties relating to community-based care to community alliances established in s. 20.19, F.S.

Section 40creates s. 827.10, F.S., to establish the criminal offense of unlawful desertion of a child and provides definitions and penalties. This will provide a tool for prosecutors to stop the unlawful adoptions practice referred to as “re-homing.”

Section 41 amends s. 985.04, F.S., to correct a reference.

Section 42 creates s. 1004.615, F.S., to establish the Florida Institute for Child Welfare (FICW) and to set forth the purpose, duties, and responsibilities of the institute. The FICW is defined as a consortium of the state's public and private university schools of social work. The FICW is charged to advise the state on child welfare policy, improve the curriculum for social work degree programs, and develop on-the-job training for child protective investigators and child welfare case managers. The bill requires the FICW to provide a report annually by October 1 to the governor, the president of the Senate, and the speaker of the House of Representatives to describe its activities in the preceding fiscal year, present significant research findings and results of other programs, and make specific recommendations for improving child protection and child welfare services.

Section 43 amends s. 1009.25, F.S., to add child protection and child welfare personnel who meet specified criteria to the list of persons exempted from payment of tuition and fees at a state college or state university under certain circumstances.

Section 44 repeals s. 402.401, F.S., which contains provisions relating to student loan forgiveness. The bill makes this statute obsolete.

Section 45 repeals s. 409.1671, F.S., which this bill makes obsolete.

Section 46 repeals s. 409.16715, F.S., whose provisions are modified and included in this bill.

Section 47 repeals s. 409.16745, F.S., whose provisions are modified and included in this bill.

Section 48 repeals s. 1004.61, F.S., which contains the current-law provisions relating to partnerships between the DCF and state schools of social work. The bill makes this statute obsolete.

Section 49 corrects a cross-reference in s. 39.201, F.S.

Section 50 corrects a cross-reference to s. 39.302, F.S.

Section 51 corrects a cross-reference to s. 39.524, F.S.

Section 52 corrects a cross-reference to s. 316.613, F.S.

Section 53 corrects a cross-reference to s. 409.1676, F.S.

Section 54 corrects a cross-reference to s. 409.1677, F.S.

Section 55 corrects a cross-reference to s. 409.1678, F.S.

Section 56 corrects a cross-reference to s. 409.906, F.S.

Section 57 corrects a cross-reference to s. 409.912, F.S.

Section 58 corrects a cross-reference to s. 409.91211, F.S.

Section 59 corrects a cross-reference to s. 420.628, F.S.

Section 60 corrects a cross-reference to s. 960.065, F.S.

Section 61 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private schools of social work may see an increased enrollment of students as a result of CS/SB 1666.

C. Government Sector Impact:

The bill has fiscal impacts that are anticipated to be addressed in the General Appropriations Act, which could include the following:

The annual cost of an additional assistant secretary and an executive assistant in the DCF will be approximately $260,000.

The bill calls for the creation of critical incident rapid response teams to review certain child abuse deaths. The team members may be reimbursed for expenses and salaries. It is unknown how many cases each year would be investigated by the teams so the cost of these new investigations is unknown.

The bill requires the posting on the DCF website of information relating to child deaths reported to the DCF hotline. The information is currently collected and maintained in the Florida Safe Families Network (FSFN). The costs to post this information on the DCF website would be insignificant.

The bill allows for the payment to nonrelatives willing to assume custody and care of a dependent child. Based on the number of children currently in this placement, the DCF estimates that the cost could be up to $4.8 million each year.

The bill expands the cases reviewed by the State Child Abuse Death Review Committee. The reviews cost $714 each and the costs are paid from the expense budget of the Department of Health. Based on these current costs and an estimated additional 346 cases to be reviewed under the bill, the increased costs could be $247,143 each year.

The requirement in the bill that 80 percent of new Child Protective Investigators (CPIs) and supervisors hold a social work degree should have little or no fiscal impact. The cost of the tuition exemption program to the state university system cannot be determined until the number of persons taking advantage of the program is known.

There will be costs associated with the loan forgiveness program. The costs will be limited by the amount of funding appropriated by the Legislature. Using the current number of department CPIs (1,522) and an average turnover rate of 24 percent, then an additional 365 CPIs would be hired each year. If all of these new hires are social workers and receive the loan repayment amount of $3,000, then the annual cost estimate could range as high as $1,095,000.

The establishment of the Institute for Child Welfare would have associated costs depending on the structure or the institute. Similar consortiums of Florida universities can cost between $500,000 and $2 million, according to the Florida Board of Governors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.19, 39.001, 39.01, 39.013, 39.201, 39.301, 39.302, 39.303, 39.524, 39.307, 39.402, 39.501, 39.504, 39.5085, 39.604, 39.701, 39.802, 63.212, 316.613, 383.402, 402.40, 409.165, 409.16713, 409.1675, 409.1676, 409.1677, 409.1678, 409.906, 409.912, 409.91211, 409.967, 409.972, 420.628, 960.065, 985.04, and 1009.25.

This bill creates the following sections of the Florida Statutes: 39.2015, 39.2022, 39.3068, 402.402, 402.403, 402.404, 409.986, 409.987, 409.988, 409.990, 409.992, 409.993, 409.996, 409.997, 409.998, 827.10, and 1004.615.

This bill repeals the following sections of the Florida Statutes: 402.401, 409.1671, 409.16715, 409.16745, and 1004.61.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Health and Human Services on April 2, 2014:
The Committee Substitute:

- Retains the current responsibilities for DCF community alliances but adds new duties related to child protective services and child welfare services;
- Amends the purposes of ch. 39, F.S., to emphasize that the safety of children is the paramount concern;
- Directs the DCF to investigate all calls of child-on-child sexual abuse for children in its custody or under its supervision;
- Strengthens provisions relating to safety plans for children who have been abused, neglected, or abandoned by their caregivers;
- Responds to judicial concerns by clarifying the role and training of DCF lawyers, as well as the relationship between the lawyers and caseworkers or investigators;
- Strengthens the requirement for the DCF to keep siblings together when they are removed from their homes and requires that temporary placement in appropriate group homes be considered for this purpose, if available;
- Extends the requirement of the Rilya Wilson Act that children supervised by or in the custody of the DCF attend a child care program five days a week so that children are covered from birth, rather than from age three, to school entry;
- Establishes a new criminal offense of unlawful desertion of a child and provides for penalties;
- Establishes qualifications for hiring child welfare workers as well as protective investigators and supervisors and expands tuition exemption similarly;
- Excludes protective investigative staff in sheriffs' offices from the requirement for social work degrees but requires sheriffs' staff to acquire training as a part of certification process; and
- Reorganizes and updates statutes relating to community-based child welfare, placing these provisions in a new part V of ch. 409.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2014	.	
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	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 2037 and 2038
insert:

Section 19. Paragraphs (f) and (h) of subsection (1) of section 39.806, Florida Statutes, are amended to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(f) The parent or parents engaged in egregious conduct or

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had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling. Proof of a nexus between egregious conduct to a child and the potential harm to the child's sibling is not required.

1. As used in this subsection, the term "sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.

2. As used in this subsection, the term "egregious conduct" means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(h) The parent or parents have committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child. Proof of a nexus between the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery to a child and the potential harm to a child or another child is not required.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 83 and 84

503878

insert:

amending s. 39.806, F.S.; revising grounds for termination of parental rights;

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2014	.	
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	.	

The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment

Delete lines 2583 - 3329
and insert:
Section 31. Section 409.988, Florida Statutes, is created to read:
409.988 Lead agency duties; general provisions.—
(1) DUTIES.—A lead agency:
(a) Shall serve all children referred as a result of a report of abuse, neglect, or abandonment to the department's

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central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject of verified reports but who are at moderate to extremely high risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred. The lead agency may also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.

(b) Shall provide accurate and timely information necessary for oversight by the department pursuant to the child welfare results-oriented accountability system required by s. 409.997.

(c) Shall follow the financial guidelines developed by the department and provide for a regular independent auditing of its financial activities. Such financial information shall be provided to the community alliance established under s. 409.998.

(d) Shall post on its website the current budget for the lead agency, including the salaries, bonuses, and other compensation paid, by position, for the agency's chief executive officer, chief financial officer, chief operating officer, or their equivalents.

(e) Shall prepare all judicial reviews, case plans, and other reports necessary for court hearings for dependent children, except those related to the investigation of a referral from the department's child abuse hotline, and shall submit these documents timely to the department's attorneys for review, any necessary revision, and filing with the court. The

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lead agency shall make the necessary staff available to department attorneys for preparation for dependency proceedings, and shall provide testimony and other evidence required for dependency court proceedings in coordination with the department's attorneys. This duty does not include the preparation of legal pleadings or other legal documents, which remain the responsibility of the department.

(f) Shall ensure that all individuals providing care for dependent children receive appropriate training and meet the minimum employment standards established by the department.

(g) Shall maintain eligibility to receive all available federal child welfare funds.

(h) Shall maintain written agreements with Healthy Families Florida lead entities in its service area pursuant to s. 409.153 to promote cooperative planning for the provision of prevention and intervention services.

(i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services.

(j) May subcontract for the provision of services required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services provided.

(k) Shall post on its website by the 15th day of each month at a minimum the information contained in subparagraphs 1.-4.

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for the preceding calendar month regarding its case management services. The following information shall be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:

1. The average caseload of case managers, including only filled positions;

2. The turnover rate for case managers and case management supervisors for the previous 12 months;

3. The percentage of required home visits completed; and

4. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months.

(2) LICENSURE.—

(a) A lead agency must be licensed as a child-caring or child-placing agency by the department under this chapter.

(b) Each foster home, therapeutic foster home, emergency shelter, or other placement facility operated by the lead agency must be licensed by the department under chapter 402 or this chapter.

(c) Substitute care providers who are licensed under s. 409.175 and who have contracted with a lead agency are also authorized to provide registered or licensed family day care under s. 402.313 if such care is consistent with federal law and if the home has met the requirements of s. 402.313.

(d) In order to eliminate or reduce the number of duplicate inspections by various program offices, the department shall coordinate inspections required for licensure of agencies under this subsection.

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(e) The department may adopt rules to administer this subsection.

(3) SERVICES.—A lead agency must serve dependent children through services that are supported by research or are best child welfare practices. The agency may also provide innovative services, including, but not limited to, family-centered, cognitive-behavioral, trauma-informed interventions designed to mitigate out-of-home placements.

(4) LEAD AGENCY ACTING AS GUARDIAN.—

(a) If a lead agency or other provider has accepted case management responsibilities for a child who is sheltered or found to be dependent and who is assigned to the care of the lead agency or other provider, the agency or provider may act as the child's guardian for the purpose of registering the child in school if a parent or guardian of the child is unavailable and his or her whereabouts cannot reasonably be ascertained.

(b) The lead agency or other provider may also seek emergency medical attention for the child, but only if a parent or guardian of the child is unavailable, the parent or guardian's whereabouts cannot reasonably be ascertained, and a court order for such emergency medical services cannot be obtained because of the severity of the emergency or because it is after normal working hours.

(c) A lead agency or other provider may not consent to sterilization, abortion, or termination of life support.

(d) If a child's parents' rights have been terminated, the lead agency shall act as guardian of the child in all circumstances.

Section 32. Section 409.990, Florida Statutes, is created

to read:

409.990 Funding for lead agencies.—A contract established between the department and a lead agency must be funded by a grant of general revenue, other applicable state funds, or applicable federal funding sources.

(1) The method of payment for a fixed-price contract with a lead agency must provide for a 2-month advance payment at the beginning of each fiscal year and equal monthly payments thereafter.

(2) Notwithstanding s. 215.425, all documented federal funds earned for the current fiscal year by the department and lead agencies which exceed the amount appropriated by the Legislature shall be distributed to all entities that contributed to the excess earnings based on a schedule and methodology developed by the department and approved by the Executive Office of the Governor.

(a) Distribution shall be pro rata, based on total earnings, and shall be made only to those entities that contributed to excess earnings.

(b) Excess earnings of lead agencies shall be used only in the service district in which they were earned.

(c) Additional state funds appropriated by the Legislature for lead agencies or made available pursuant to the budgetary amendment process described in s. 216.177 shall be transferred to the lead agencies.

(d) The department shall amend a lead agency's contract to permit expenditure of the funds.

(3) Notwithstanding any other provision of this section, the amount of the annual contract for a lead agency may be

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increased by excess federal funds earned in accordance with s. 216.181(11).

(4) Each contract with a lead agency shall provide for the payment by the department to the lead agency of a reasonable administrative cost in addition to funding for the provision of services.

(5) A lead agency may carry forward documented unexpended state funds from one fiscal year to the next; however, the cumulative amount carried forward may not exceed 8 percent of the total contract. Any unexpended state funds in excess of that percentage must be returned to the department.

(a) The funds carried forward may not be used in any way that would create increased recurring future obligations, and such funds may not be used for any type of program or service that is not currently authorized by the existing contract with the department.

(b) Expenditures of funds carried forward must be separately reported to the department.

(c) Any unexpended funds that remain at the end of the contract period shall be returned to the department.

(d) Funds carried forward may be retained through any contract renewals and any new procurements as long as the same lead agency is retained by the department.

(6) It is the intent of the Legislature to improve services and local participation in community-based care initiatives by fostering community support and providing enhanced prevention and in-home services, thereby reducing the risk otherwise faced by lead agencies. A community partnership matching grant program is established and shall be operated by the department to

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encourage local participation in community-based care for children in the child welfare system. A children's services council or another local entity that makes a financial commitment to a community-based care lead agency may be eligible for a matching grant. The total amount of the local contribution may be matched on a one-to-one basis up to a maximum annual amount of $500,000 per lead agency. Awarded matching grant funds may be used for any prevention or in-home services that can be reasonably expected to reduce the number of children entering the child welfare system. Funding available for the matching grant program is subject to legislative appropriation of nonrecurring funds provided for this purpose.

(7)(a) The department, in consultation with the Florida Coalition for Children, Inc., shall develop and implement a community-based care risk pool initiative to mitigate the financial risk to eligible lead agencies. This initiative must include:

1. A risk pool application and protocol developed by the department which outlines submission criteria, including, but not limited to, financial and program management, descriptive data requirements, and timeframes for submission of applications. Requests for funding from risk pool applicants must be based on relevant and verifiable service trends and changes that have occurred during the current fiscal year. The application must confirm that expenditure of approved risk pool funds by the lead agency will be completed within the current fiscal year.

2. A risk pool peer review committee, appointed by the secretary and consisting of department staff and representatives

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from at least three nonapplicant lead agencies, which reviews and assesses all risk pool applications. Upon completion of each application review, the peer review committee shall report its findings and recommendations to the secretary, providing, at a minimum, the following information:

a. Justification for the specific funding amount required by the risk pool applicant based on the current year's service trend data, including validation that the applicant's financial need was caused by circumstances beyond the control of the lead agency management;

b. Verification that the proposed use of risk pool funds meets at least one of the purposes specified in paragraph (c); and

c. Evidence of technical assistance provided in an effort to avoid the need to access the risk pool and recommendations for technical assistance to the lead agency to ensure that risk pool funds are expended effectively and that the agency's need for future risk pool funding is diminished.

(b) Upon approval by the secretary of a risk pool application, the department may request funds from the risk pool in accordance with s. 216.181(6)(a).

(c) The purposes for which the community-based care risk pool shall be used include:

1. Significant changes in the number or composition of clients eligible to receive services.

2. Significant changes in the services that are eligible for reimbursement.

3. Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a lead

agency.

4. Significant changes in the mix of available funds.

(d) The department may also request in its annual legislative budget request, and the Governor may recommend, that the funding necessary to effect paragraph (c) be appropriated to the department. In addition, the department may request the allocation of funds from the community-based care risk pool in accordance with s. 216.181(6)(a). Funds from the pool may be used to match available federal dollars.

1. Such funds shall constitute partial security for contract performance by lead agencies and shall be used to offset the need for a performance bond.

2. The department may separately require a bond to mitigate the financial consequences of potential acts of malfeasance or misfeasance or criminal violations by the service provider.

Section 33. Section 409.16713, Florida Statutes, is transferred, renumbered as section 409.991, Florida Statutes, and paragraph (a) of subsection (1) of that section is amended to read:

409.991 ~~409.16713~~ Allocation of funds for community-based care lead agencies.—

(1) As used in this section, the term:

(a) "Core services funding" means all funds allocated to community-based care lead agencies operating under contract with the department pursuant to s. 409.987 ~~s. 409.1671~~, with the following exceptions:

1. Funds appropriated for independent living;

2. Funds appropriated for maintenance adoption subsidies;

3. Funds allocated by the department for protective

investigations training;

4. Nonrecurring funds;

5. Designated mental health wrap-around services funds; and

6. Funds for special projects for a designated community-based care lead agency.

Section 34. Section 409.992, Florida Statutes, is created to read:

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies shall be governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

(2) Notwithstanding any other provision of law, a community-based care lead agency may make expenditures for staff cellular telephone allowances, contracts requiring deferred payments and maintenance agreements, security deposits for office leases, related agency professional membership dues other than personal professional membership dues, promotional materials, and grant writing services. Expenditures for food and refreshments, other than those provided to clients in the care of the agency or to foster parents, adoptive parents, and caseworkers during training sessions, are not allowable.

(3) A lead community-based care agency and its subcontractors are exempt from state travel policies as provided in s. 112.061(3)(a) for their travel expenses incurred in order to comply with the requirements of this section.

Section 35. Section 409.993, Florida Statutes, is created

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to read:

409.993 Lead agencies and subcontractor liability.—

(1) FINDINGS.—

(a) The Legislature finds that the state has traditionally provided foster care services to children who are the responsibility of the state. As such, foster children have not had the right to recover for injuries beyond the limitations specified in s. 768.28. The Legislature has determined that foster care and related services should be outsourced pursuant to this section and that the provision of such services is of paramount importance to the state. The purpose of such outsourcing is to increase the level of safety, security, and stability of children who are or become the responsibility of the state. One of the components necessary to secure a safe and stable environment for such children is the requirement that private providers maintain liability insurance. As such, insurance needs to be available and remain available to nongovernmental foster care and related services providers without the resources of such providers being significantly reduced by the cost of maintaining such insurance.

(b) The Legislature further finds that, by requiring the following minimum levels of insurance, children in outsourced foster care and related services will gain increased protection and rights of recovery in the event of injury than currently provided in s. 768.28.

(2) LEAD AGENCY LIABILITY.—

(a) Other than an entity to which s. 768.28 applies, an eligible community-based care lead agency, or its employees or officers, except as otherwise provided in paragraph (b), shall,

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as a part of its contract, obtain general liability insurance coverage sufficient to pay any successful tort action up to the liability caps established in this subsection. In a tort action brought against such an eligible community-based care lead agency or employee, net economic damages shall be limited to $2 million per liability claim and $200,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In any tort action brought against such an eligible community-based care lead agency, noneconomic damages shall be limited to $400,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76. The community-based care lead agency is not liable in tort for the acts or omissions of its subcontractors or the officers, agents, or employees of its subcontractors.

(b) The liability of an eligible community-based care lead agency described in this section shall be exclusive and in place of all other liability of such lead agency. The same immunities from liability enjoyed by such lead agencies shall extend to each employee of the lead agency if he or she is acting in furtherance of the lead agency's business, including the transportation of clients served, as described in this subsection, in privately owned vehicles. Such immunities are not applicable to a lead agency or an employee who acts in a culpably negligent manner or with willful and wanton disregard

or unprovoked physical aggression if such acts result in injury or death or such acts proximately cause such injury or death. Such immunities are not applicable to employees of the same lead agency when each is operating in the furtherance of the agency's business, but they are assigned primarily to unrelated work within private or public employment. The same immunity provisions enjoyed by a lead agency also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who, in the course and scope of his or her duties, acts in a managerial or policymaking capacity and the conduct that caused the alleged injury arose within the course and scope of those managerial or policymaking duties. As used in this subsection and subsection (3), the term "culpably negligent manner" means reckless indifference or grossly careless disregard of human life.

(3) SUBCONTRACTOR LIABILITY.—

(a) A subcontractor of an eligible community-based care lead agency that is a direct provider of foster care and related services to children and families, and its employees or officers, except as otherwise provided in paragraph (b), must, as a part of its contract, obtain general liability insurance coverage sufficient to pay any successful tort action up to the liability caps established in this subsection. In a tort action brought against such subcontractor or employee, net economic damages shall be limited to $2 million per liability claim and $200,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In a tort action brought against such subcontractor,

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noneconomic damages shall be limited to $400,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76.

(b) The liability of a subcontractor of an eligible community-based care lead agency that is a direct provider of foster care and related services as described in this section is exclusive and in place of all other liability of such provider. The same immunities from liability enjoyed by such subcontractor provider extend to each employee of the subcontractor when such employee is acting in furtherance of the subcontractor's business, including the transportation of clients served, as described in this subsection, in privately owned vehicles. Such immunities are not applicable to a subcontractor or an employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression if such acts result in injury or death or if such acts proximately cause such injury or death. Such immunities are not applicable to employees of the same subcontractor who are operating in the furtherance of the subcontractor's business but are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by a subcontractor also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who, in the course and scope of his or her duties, acts in a managerial or policymaking capacity and the conduct that caused the alleged injury arose within the course and scope of those managerial or policymaking duties.

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(4) LIMITATIONS ON DAMAGES.—The Legislature is cognizant of the increasing costs of goods and services each year and recognizes that fixing a set amount of compensation has the effect of a reduction in compensation each year. Accordingly, the conditional limitations on damages in this section shall be increased at the rate of 5 percent each year, prorated from July 1, 2014, to the date at which damages subject to such limitations are awarded by final judgment or settlement.

Section 36. Section 409.1675, Florida Statutes, is transferred, renumbered as section 409.994, Florida Statutes, and amended to read:

409.994 ~~409.1675 Lead~~ Community-based care lead agencies ~~providers~~; receivership.—

(1) The Department of Children and Families ~~Family Services~~ may petition a court of competent jurisdiction for the appointment of a receiver for a ~~lead~~ community-based care lead agency ~~provider~~ established pursuant to s. 409.987 if ~~s. 409.1671 when~~ any of the following conditions exist:

(a) The lead agency ~~community-based provider~~ is operating without a license as a child-placing agency.

(b) The lead agency ~~community-based provider~~ has given less than 120 days' notice of its intent to cease operations, and arrangements have not been made for another lead agency ~~community-based provider~~ or for the department to continue the uninterrupted provision of services.

(c) The department determines that conditions exist in the lead agency ~~community-based provider~~ which present an imminent danger to the health, safety, or welfare of the dependent children under that agency's ~~provider's~~ care or supervision.

Whenever possible, the department shall make a reasonable effort to facilitate the continued operation of the program.

(d) The lead agency ~~community-based provider~~ cannot meet its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities shall constitute prima facie evidence that the lead agency ~~community-based provider~~ lacks the financial ability to meet its financial obligations.

(2)(a) The petition for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having statutory precedence, has priority.

(b) A hearing shall be conducted within 5 days after the filing of the petition, at which time interested parties shall have the opportunity to present evidence as to whether a receiver should be appointed. The department shall give reasonable notice of the hearing on the petition to the lead agency ~~community-based provider~~.

(c) The court shall grant the petition upon finding that one or more of the conditions in subsection (1) exists and the continued existence of the condition or conditions jeopardizes the health, safety, or welfare of dependent children. A receiver may be appointed ex parte when the court determines that one or more of the conditions in subsection (1) exists. After such finding, the court may appoint any person, including an employee of the department who is qualified by education, training, or experience to carry out the duties of the receiver pursuant to

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this section, except that the court may ~~shall~~ not appoint any member of the governing board or any officer of the lead agency ~~community-based provider~~. The receiver may be selected from a list of persons qualified to act as receivers which is developed by the department and presented to the court with each petition of receivership.

(d) A receiver may be appointed for up to 90 days, and the department may petition the court for additional 30-day extensions. Sixty days after appointment of a receiver and every 30 days thereafter until the receivership is terminated, the department shall submit to the court an assessment of the lead agency's ~~community-based provider's~~ ability to ensure the health, safety, and welfare of the dependent children under its supervision.

(3) The receiver shall take such steps as are reasonably necessary to ensure the continued health, safety, and welfare of the dependent children under the supervision of the lead agency ~~community-based provider~~ and shall exercise those powers and perform those duties set out by the court, including, but not limited to:

(a) Taking such action as is reasonably necessary to protect or conserve the assets or property of the lead agency ~~community-based provider~~. The receiver may use the assets and property and any proceeds from any transfer thereof only in the performance of the powers and duties provided ~~set forth~~ in this section and by order of the court.

(b) Using the assets of the lead agency ~~community-based provider~~ in the provision of care and services to dependent children.

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(c) Entering into contracts and hiring agents and employees to carry out the powers and duties of the receiver under this section.

(d) Having full power to direct, manage, hire, and discharge employees of the lead agency ~~community-based provider~~. The receiver shall hire and pay new employees at the rate of compensation, including benefits, approved by the court.

(e) Honoring all leases, mortgages, and contractual obligations of the lead agency ~~community-based provider~~, but only to the extent of payments that become due during the period of the receivership.

(4)(a) The receiver shall deposit funds received in a separate account and shall use this account for all disbursements.

(b) A payment to the receiver of any sum owing to the lead agency ~~community-based provider~~ shall discharge any obligation to the provider to the extent of the payment.

(5) A receiver may petition the court for temporary relief from obligations entered into by the lead agency ~~community-based provider~~ if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was entered into, or if any material provision of the agreement was unreasonable when compared to contracts negotiated under similar conditions. Any relief in this form provided by the court shall be limited to the life of the receivership, unless otherwise determined by the court.

(6) The court shall set the compensation of the receiver, which shall be considered a necessary expense of a receivership

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and may grant to the receiver such other authority necessary to ensure the health, safety, and welfare of the children served.

(7) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts, or breaches of fiduciary duty. This section may ~~shall~~ not be interpreted to be a waiver of sovereign immunity should the department be appointed receiver.

(8) If the receiver is not the department, the court may require a receiver to post a bond to ensure the faithful performance of these duties.

(9) The court may terminate a receivership when:

(a) The court determines that the receivership is no longer necessary because the conditions that gave rise to the receivership no longer exist; or

(b) The department has entered into a contract with a new lead agency ~~community-based provider~~ pursuant to s. 409.987 ~~s. 409.1671~~, and that contractor is ready and able to assume the duties of the previous lead agency ~~provider~~.

(10) Within 30 days after the termination, unless this time period is extended by the court, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed, and of the expenses of the receivership.

(11) ~~Nothing in~~ This section does not ~~shall be construed to~~ relieve any employee of the lead agency ~~community-based provider~~ placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the employee before ~~prior to~~ the appointment of a receiver, and~~; nor shall anything contained in~~ this section does

not ~~be construed to~~ suspend during the receivership any obligation of the employee for payment of taxes or other operating or maintenance expenses of the lead agency ~~community-based provider~~ or for the payment of mortgages or liens. The lead agency ~~community-based provider~~ shall retain the right to sell or mortgage any facility under receivership, subject to the prior approval of the court that ordered the receivership.

Section 37. Section 409.996, Florida Statutes, is created to read:

409.996 Duties of the Department of Children and Families.—The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility for the quality of contracted services and programs and shall ensure that services are delivered in accordance with applicable federal and state statutes and regulations.

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies pursuant to s. 409.988. At a minimum, the contracts must:

(a) Provide for the services needed to accomplish the duties established in s. 409.988 and provide information to the department which is necessary to meet the requirements for a quality assurance program pursuant to subsection (18) and the child welfare results-oriented accountability system pursuant to s. 409.997.

(b) Provide for graduated penalties for failure to comply with contract terms. Such penalties may include financial penalties, enhanced monitoring and reporting, corrective action

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plans, and early termination of contracts or other appropriate action to ensure contract compliance.

(c) Ensure that the lead agency shall furnish current and accurate information on its activities in all cases in client case records in the state's statewide automated child welfare information system.

(d) Specify the procedures to be used by the parties to resolve differences in interpreting the contract or to resolve disputes as to the adequacy of the parties' compliance with their respective obligations under the contract.

(2) The department must adopt written policies and procedures for monitoring the contract for delivery of services by lead agencies which must be posted on the department's website. These policies and procedures must, at a minimum, address the evaluation of fiscal accountability and program operations, including provider achievement of performance standards, provider monitoring of subcontractors, and timely followup of corrective actions for significant monitoring findings related to providers and subcontractors. These policies and procedures must also include provisions for reducing the duplication of the department's program monitoring activities both internally and with other agencies, to the extent possible. The department's written procedures must ensure that the written findings, conclusions, and recommendations from monitoring the contract for services of lead agencies are communicated to the director of the provider agency and the community alliance as expeditiously as possible.

(3) The department shall receive federal and state funds as appropriated for the operation of the child welfare system and

shall transmit these funds to the lead agencies as agreed to in the contract. The department retains responsibility for the appropriate spending of these funds. The department shall monitor lead agencies to assess compliance with the financial guidelines established pursuant to s. 409.992 and other applicable state and federal laws.

(4) The department shall provide technical assistance and consultation to lead agencies in the provision of care to children in the child protection and child welfare system.

(5) The department retains the responsibility for the review, approval or denial, and issuances of all foster home licenses.

(6) The department shall process all applications submitted by lead agencies for the Interstate Compact on the Placement of Children and the Interstate Compact on Adoption and Medical Assistance.

(7) The department shall assist lead agencies with access to and coordination with other service programs within the department.

(8) The department shall determine Medicaid eligibility for all referred children and shall coordinate services with the Agency for Health Care Administration.

(9) The department shall develop, in cooperation with the lead agencies and the third-party credentialing entity approved pursuant to s. 402.40(3), a standardized competency-based curriculum for certification training for child protection staff.

(10) The department shall maintain the statewide adoptions website and provide information and training to the lead

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agencies relating to the website.

(11) The department shall provide training and assistance to lead agencies regarding the responsibility of lead agencies relating to children receiving supplemental security income, social security, railroad retirement, or veterans' benefits.

(12) With the assistance of a lead agency, the department shall develop and implement statewide and local interagency agreements needed to coordinate services for children and parents involved in the child welfare system who are also involved with the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Education, the Department of Health, and other governmental organizations that share responsibilities for children or parents in the child welfare system.

(13) With the assistance of a lead agency, the department shall develop and implement a working agreement between the lead agency and the substance abuse and mental health managing entity to integrate services and supports for children and parents serviced in the child welfare system.

(14) The department shall work with the Agency for Health Care Administration to provide each Medicaid-eligible child with early and periodic screening, diagnosis, and treatment, including 72-hour screening, periodic child health checkups, and prescribed followup for ordered services, including, but not limited to, medical, dental, and vision care.

(15) The department shall assist lead agencies in developing an array of services in compliance with the Title IV-E waiver and shall monitor the provision of such services.

(16) The department shall provide a mechanism to allow lead

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agencies to request a waiver of department policies and procedures that create inefficiencies or inhibit the performance of the lead agency's duties.

(17) The department shall directly or through contract provide attorneys to prepare and present cases in dependency court and shall ensure that the court is provided with adequate information for informed decisionmaking in dependency cases, including a fact sheet for each case which lists the names and contact information for any child protective investigator, child protective investigation supervisor, case manager, and case manager supervisor, and the regional department official responsible for the lead agency contract. For the Sixth Judicial Circuit, the department shall contract with the state attorney for the provision of these services.

(18) The department, in consultation with lead agencies, shall establish a quality assurance program for contracted services to dependent children. The quality assurance program shall be based on standards established by federal and state law and national accrediting organizations.

(a) The department must evaluate each lead agency under contract at least annually. These evaluations shall cover the programmatic, operational, and fiscal operations of the lead agency and must be consistent with the child welfare results-oriented accountability system required by s. 409.997. The department must consult with dependency judges in the circuit or circuits served by the lead agency on the performance of the lead agency.

(b) The department and each lead agency shall monitor out-of-home placements, including the extent to which sibling groups

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are placed together or provisions to provide visitation and other contacts if siblings are separated. The data shall identify reasons for sibling separation. Information related to sibling placement shall be incorporated into the results-oriented accountability system required pursuant to s. 409.997 and in the evaluation of the outcome specified in s. 409.986(2)(e). The information related to sibling placement shall also be made available to the institute established pursuant s. 1004.615 for use in assessing the performance of child welfare services in relation to the outcome specified in s. 409.986(2)(e).

(c) The department shall, to the extent possible, use independent financial audits provided by the lead agency to eliminate or reduce the ongoing contract and administrative reviews conducted by the department. If the department determines that such independent financial audits are inadequate, other audits, as necessary, may be conducted by the department. This paragraph does not abrogate the requirements of s. 215.97.

(d) The department may suggest additional items to be included in such independent financial audits to meet the department's needs.

(e) The department may outsource programmatic, administrative, or fiscal monitoring oversight of lead agencies.

(f) A lead agency must assure that all subcontractors are subject to the same quality assurance activities as the lead agency.

(19) The department and its attorneys have the responsibility to ensure that the court is fully informed about

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issues before it, to make recommendations to the court, and to present competent evidence, including testimony by the department's employees, contractors, and subcontractors, as well as other individuals, to support all recommendations made to the court. The department's attorneys shall coordinate lead agency or subcontractor staff to ensure that dependency cases are presented appropriately to the court.

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576-03666-14

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to child welfare; amending s. 20.19, F.S.; requiring the Secretary of Children and Families to appoint an Assistant Secretary for Child Welfare; providing qualifications and responsibilities; revising duties, appointment, and membership of community alliances; requiring the Department of Children and Families to appoint a statewide advisory committee to provide specified assistance to community alliances; amending s. 39.001, F.S.; revising the purposes of ch. 39, F.S.; requiring the department to provide for certain services for medically complex children; amending s. 39.01, F.S.; providing, revising, and deleting definitions; amending s. 39.013, F.S.; clarifying responsibilities of the department in dependency proceedings; amending s. 39.201, F.S.; requiring alleged incidents of juvenile sexual abuse involving specified children to be reported to the department’s central abuse hotline; requiring the department to provide specified information on an investigation of child sexual abuse to the court; creating s. 39.2015, F.S.; requiring the department to conduct specified investigations using critical incident rapid response teams; providing requirements for such investigations and for team membership; authorizing team access to specified information; requiring the cooperation of specified

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agencies and organizations; providing for reimbursement of team members; requiring the team to provide an investigation report; requiring the secretary to develop guidelines for investigations and provide team member training; requiring the secretary to appoint an advisory committee; requiring the committee to submit a report to the secretary; requiring the secretary to submit such report to the Governor and the Legislature by a specified date; creating s. 39.2022, F.S.; providing legislative intent; requiring the department to publish specified information on its website regarding the death of a child reported to the central abuse hotline; amending s. 39.301, F.S.; authorizing the use of safety plans in child protection investigations in cases of present or impending danger; providing requirements for implementation of a safety plan; providing conditions for filing a petition for dependency; amending s. 39.303, F.S.; requiring physician involvement when a child protection team evaluates a report of medical neglect of a medically complex child; creating s. 39.3068, F.S.; providing requirements for investigating medical neglect; providing duties of the department; amending s. 39.307, F.S.; requiring the department to assist the family, child, and caregiver in receiving services upon a report alleging juvenile sexual abuse or inappropriate sexual behavior; requiring the department to maintain specified records; requiring child sexual abuse to be taken into

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account in placement consideration; requiring the department to monitor the occurrence of child sexual abuse and related services; amending s. 39.402, F.S.; requiring the department to make a reasonable effort to keep siblings together when they are placed in out-of-home care under certain circumstances; providing for sibling visitation under certain conditions; amending s. 39.501, F.S.; requiring compliance with a safety plan to be considered when deciding a petition for dependency; amending s. 39.504, F.S.; authorizing the court to order a person to comply with a safety plan that is implemented in an injunction; amending s. 39.5085, F.S.; revising legislative intent; authorizing placement of a child with a nonrelative caregiver and financial assistance for such nonrelative caregiver through the Relative Caregiver Program under certain circumstances; amending s. 39.604, F.S.; requiring certain children to attend a licensed early education or child care program; requiring the inclusion of attendance at a licensed early education or child care program in a child's safety plan; amending s. 39.701, F.S.; requiring the court to consider contact among siblings in judicial reviews; authorizing the court to remove specified disabilities of nonage at judicial reviews; amending s. 39.802, F.S.; removing department authorization to sign a petition for termination of parental rights; amending s. 63.212, F.S.; requiring a person who places an advertisement for adoption services to

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provide specified information; amending s. 383.402, F.S.; requiring review of all child deaths reported to the department's central abuse hotline; revising the due date for a report; amending s. 402.40, F.S.; requiring a third-party credentialing entity to establish an advisory committee; authorizing the department to approve certification of specializations; creating s. 402.402, F.S.; defining terms; providing education and specialized training requirements for child protection and child welfare personnel; providing training requirements for department attorneys; creating s. 402.403, F.S.; establishing a tuition exemption program for child protective and child welfare personnel; providing eligibility requirements; creating s. 402.404, F.S.; establishing a student loan forgiveness program for child protective investigators and supervisors; providing eligibility requirements; authorizing community-based care lead agencies to provide student loan forgiveness to case managers employed by a community-based care lead agency or its subcontractor; amending s. 409.165, F.S.; enhancing provision of care to medically complex children; amending s. 409.967, F.S.; revising standards for Medicaid managed care plan accountability with respect to services for dependent children; amending s. 409.972, F.S.; exempting certain Medicaid recipients from mandatory enrollment in managed care plans; providing a directive to the Division of Law Revision and

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Information; creating part V of ch. 409, F.S.; creating s. 409.986, F.S.; providing legislative findings and intent; providing child protection and child welfare outcome goals; defining terms; creating s. 409.987, F.S.; providing for department procurement of community-based care lead agencies; providing requirements for contracting as a lead agency; creating s. 409.988, F.S.; providing duties of a community-based care lead agency; providing licensure requirements for a lead agency; specifying services provided by a lead agency; providing conditions for an agency or provider to act as a child's guardian; creating s. 409.990, F.S.; providing general funding provisions for lead agencies; providing for a matching grant program and the maximum amount of funds that may be awarded; requiring the department to develop and implement a community-based care risk pool initiative; providing requirements for the risk pool; transferring, renumbering, and amending s. 409.16713, F.S.; transferring provisions relating to the allocation of funds for community-based lead care agencies; conforming a cross-reference; creating s. 409.992, F.S.; providing requirements for community-based care lead agency expenditures; creating s. 409.993, F.S.; providing legislative findings; providing for lead agency and subcontractor liability; providing limitations on damages; transferring, renumbering, and amending s. 409.1675, F.S.; transferring provisions relating to receivership from

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community-based providers to lead agencies; conforming cross-references and terminology; creating s. 409.996, F.S.; providing duties of the department relating to community-based care and lead agencies; creating s. 409.997, F.S.; providing outcome goals for the department and specified entities with respect to the delivery of child welfare services; requiring the department to maintain an accountability system; requiring the department to establish a technical advisory panel; requiring the department to make the results of the accountability system public; requiring a report to the Governor and the Legislature by a specified date; creating s. 409.998, F.S.; providing for assessment of community-based care by community alliances; creating s. 827.10, F.S.; providing definitions; establishing the criminal offense of unlawful desertion of a child; providing criminal penalties; providing exceptions; amending s. 985.04, F.S.; conforming terminology; creating s. 1004.615, F.S.; establishing the Florida Institute for Child Welfare; providing purpose, duties, and responsibilities of the institute; requiring the institute to contract and work with specified entities; providing for the administration of the institute; requiring reports to the Governor and the Legislature by specified dates; amending s. 1009.25, F.S.; exempting specified child protective investigators and child protective investigation supervisors from certain tuition and fee requirements;

repealing s. 402.401, F.S., relating to child welfare worker student loan forgiveness; repealing s. 409.1671, F.S., relating to outsourcing of foster care and related services; repealing s. 409.16715, F.S., relating to certain therapy for foster children; repealing s. 409.16745, F.S., relating to the community partnership matching grant program; repealing s. 1004.61, F.S., relating to a partnership between the Department of Children and Families and state universities; amending ss. 39.201, 39.302, 39.524, 316.613, 409.1676, 409.1677, 409.1678, 409.906, 409.912, 409.91211, 420.628, and 960.065, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (3) through (5) of section 20.19, Florida Statutes, are renumbered as subsections (4) through (6), respectively, subsection (2) and present subsection (4) are amended, and a new subsection (3) is added to that section, to read:

20.19 Department of Children and Families.—There is created a Department of Children and Families.

(2) SECRETARY OF CHILDREN AND FAMILIES; DEPUTY SECRETARY.—

(a) The head of the department is the Secretary of Children and Families. The secretary is appointed by the Governor, subject to confirmation by the Senate. The secretary serves at the pleasure of the Governor.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary is directly responsible to the secretary, performs such duties as are assigned by the secretary, and serves at the pleasure of the secretary.

(3) ASSISTANT SECRETARIES.—

(a) *Child welfare.*—

1. The secretary shall appoint an Assistant Secretary for Child Welfare to lead the department in carrying out its duties and responsibilities for child protection and child welfare. The assistant secretary shall serve at the pleasure of the secretary.

2. The assistant secretary must have at least 7 years of experience working in organizations that deliver child protective or child welfare services.

(b) *Substance abuse and mental health.*—

~~(c)~~1. The secretary shall appoint an Assistant Secretary for Substance Abuse and Mental Health. The assistant secretary shall serve at the pleasure of the secretary and must have expertise in both areas of responsibility.

2. The secretary shall appoint a Director for Substance Abuse and Mental Health who has the requisite expertise and experience to head the state's Substance Abuse and Mental Health Program Office.

(5)~~(4)~~ COMMUNITY ALLIANCES.—

(a) The department shall, in consultation with local communities, establish a community alliance ~~or similar group of the stakeholders, community leaders, client representatives and funders of human services~~ in each county to provide a focal

point for community participation and feedback into ~~governance of~~ community-based services. An alliance may cover more than one county when such arrangement is determined to provide for more effective representation. The community alliance shall represent the diversity of the community.

(b) The duties of the community alliance include, but are not limited to:

1. Providing independent and community-focused assessment of child protection and child welfare services and the local system of community-based care as described in s. 409.998.

2.~~1.~~ Joint planning for resource utilization in the community, including resources appropriated to the department and any funds that local funding sources choose to provide.

3.~~2.~~ Needs assessment and establishment of community priorities for service delivery.

4.~~3.~~ Determining community outcome goals to supplement state-required outcomes.

5.~~4.~~ Serving as a catalyst for community resource development.

6.~~5.~~ Providing for community education and advocacy on issues related to delivery of services.

7.~~6.~~ Promoting prevention and early intervention services.

(c) The department shall ensure, to the greatest extent possible, that the formation of each community alliance builds on the strengths of the existing community human services infrastructure.

(d) The initial membership of the community alliance in a county shall be composed of the following:

1. A representative from the department.

2. A representative from county government.

3. A representative from the school district.

4. A representative from the county United Way.

5. A representative from the county sheriff's office.

6. A representative from the circuit court corresponding to the county.

7. A representative from the county children's board, if one exists.

This paragraph is repealed on July 1, 2015.

(e) No later than July 1, 2015, the alliance shall ensure its membership and member selection process meets the following requirements:

1. The total number of voting members shall be at least nine and no more than 25 individuals. The alliance may establish committees, task forces, and other advisory groups to create opportunities for participation for community representatives who are not voting members of the alliance.

2. The voting members of the alliance shall include individuals with a variety of backgrounds and experience. At least one member must be from a family who has received community services. At least one person shall have experience in each of the following areas:

a. Community service organizations;

b. Education;

c. Law enforcement;

d. Local government;

e. Legal services;

f. The judiciary;

g. Philanthropic organizations; and

h. Children's service organizations.

3. The alliance shall include two ex officio, nonvoting members, one of whom is designated by the secretary to represent the department and one of whom is designated by the community-based care lead agency.

4. The recruitment and selection of alliance members shall be an open and transparent process that allows for individuals and organizations to nominate potential candidates.

(f) The community alliance shall adopt or amend bylaws to comply with paragraph (e).

(g) The department shall appoint a statewide advisory committee to assist alliances to comply with this subsection. The advisory committee shall consist of a representative of the department designated by the secretary, the chief child advocate, a representative designated by the Florida Coalition of Children, and two persons currently serving on an alliance.

~~(e) At any time after the initial meeting of the community alliance, the community alliance shall adopt bylaws and may increase the membership of the alliance to include the state attorney for the judicial circuit in which the community alliance is located, or his or her designee, the public defender for the judicial circuit in which the community alliance is located, or his or her designee, and other individuals and organizations who represent funding organizations, are community leaders, have knowledge of community based service issues, or otherwise represent perspectives that will enable them to accomplish the duties listed in paragraph (b), if, in the judgment of the alliance, such change is necessary to adequately~~

~~represent the diversity of the population within the community alliance service circuits.~~

(h) ~~(f)~~ A member of the community alliance, other than a member specified in paragraph (d), may not receive payment for contractual services from the department or a community-based care lead agency.

(i) ~~(g)~~ Members of the community alliances shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses, as provided in s. 112.061. Payment may also be authorized for preapproved child care expenses or lost wages for members who are consumers of the department's services and for preapproved child care expenses for other members who demonstrate hardship.

(j) ~~(h)~~ Members of a community alliance are subject to the provisions of part III of chapter 112, the Code of Ethics for Public Officers and Employees.

(k) ~~(i)~~ Actions taken by a community alliance must be consistent with department policy and state and federal laws, rules, and regulations.

(l) ~~(j)~~ Alliance members shall annually submit a disclosure statement of services interests to the department's inspector general. Any member who has an interest in a matter under consideration by the alliance must abstain from voting on that matter.

(m) ~~(k)~~ All alliance meetings are open to the public pursuant to s. 286.011 and the public records provision of s. 119.07(1).

Section 2. Paragraphs (b), (c), (g), and (k) of subsection (1) of section 39.001, Florida Statutes, are amended, paragraphs

(o) and (p) are added to that subsection, present paragraphs (f) through (h) of subsection (3) are redesignated as paragraphs (g) through (i), respectively, and a new paragraph (f) is added to that subsection, present subsections (4) through (11) are renumbered as subsections (5) through (12), respectively, and a new subsection (4) is added to that section, and paragraph (c) of present subsection (8) and paragraph (b) of present subsection (10) of that section are amended, to read:

39.001 Purposes and intent; personnel standards and screening.—

(1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

(b) To recognize that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention through the department's child protection system should be based on the following principles:

1. The health and safety of the children served shall be of paramount concern.

2. The prevention and intervention should engage families in constructive, supportive, and nonadversarial relationships.

3. The prevention and intervention should intrude as little as possible into the life of the family, be focused on clearly defined objectives, and take the most parsimonious path to remedy a family's problems, keeping the safety of the child or children as the paramount concern.

4. The prevention and intervention should be based upon

outcome evaluation results that demonstrate success in protecting children and supporting families.

(c) To provide a child protection system that reflects a partnership between the department, other agencies, the courts, law enforcement agencies, service providers, and local communities.

(g) To ensure that the parent or legal custodian from whose custody the child has been taken assists the department to the fullest extent possible in locating relatives suitable to serve as caregivers for the child and provides all medical and educational information, or consent for access thereto, needed to help the child.

(k) To make every possible effort, if ~~when~~ two or more children who are in the care or under the supervision of the department are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated while under the care or supervision of the department or in a permanent placement, to keep them in contact with each other.

(o) To preserve and strengthen families who are caring for medically complex children.

(p) To provide protective investigations that are conducted by trained persons in a complete and fair manner, that are promptly concluded, and that consider the purposes of this subsection and the general protections provided by law relating to child welfare.

(3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with

the following protections:

(f) Access to sufficient supports and services for medically complex children to allow them to remain in the least restrictive and most nurturing environment, which includes sufficient services in an amount and scope comparable to those services the child would receive in out-of-home care placement.

(4) SERVICES FOR MEDICALLY COMPLEX CHILDREN.—The department shall maintain a program of family-centered services and supports for medically complex children. The purpose of the program is to prevent abuse and neglect of medically complex children while enhancing the capacity of families to provide for their children's needs. Program services must include outreach, early intervention, and the provision of other supports and services to meet the child's needs. The department shall collaborate with all relevant state and local agencies to provide needed services.

(9) ~~(8)~~ OFFICE OF ADOPTION AND CHILD PROTECTION.—

(c) The office is authorized and directed to:

1. Oversee the preparation and implementation of the state plan established under subsection (10) ~~(9)~~ and revise and update the state plan as necessary.

2. Provide for or make available continuing professional education and training in the prevention of child abuse and neglect.

3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and other public and private sources in order to ensure that sufficient funds are available for the promotion of adoption, support of adoptive families, and child abuse prevention

efforts.

4. Make recommendations pertaining to agreements or contracts for the establishment and development of:

a. Programs and services for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

b. Training programs for the prevention of child abuse and neglect.

c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.

d. Efforts to promote adoption.

e. Postadoptive services to support adoptive families.

5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January 1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the head of each state agency affected by the report, and the appropriate substantive committees of the Legislature. The report shall include:

a. A summary of the activities of the office.

b. A summary of the adoption data collected and reported to the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) and the federal Administration for Children and Families.

c. A summary of the child abuse prevention data collected

and reported to the National Child Abuse and Neglect Data System (NCANDS) and the federal Administration for Children and Families.

d. A summary detailing the timeliness of the adoption process for children adopted from within the child welfare system.

e. Recommendations, by state agency, for the further development and improvement of services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

f. Budget requests, adoption promotion and support needs, and child abuse prevention program needs by state agency.

6. Work with the direct-support organization established under s. 39.0011 to receive financial assistance.

(11)~~(10)~~ FUNDING AND SUBSEQUENT PLANS.—

(b) The office and the other agencies and organizations listed in paragraph (10)(a) ~~(9)(a)~~ shall readdress the state plan and make necessary revisions every 5 years, at a minimum. Such revisions shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than June 30 of each year divisible by 5. At least biennially, the office shall review the state plan and make any necessary revisions based on changing needs and program evaluation results. An annual progress report shall be submitted to update the state plan in the years between the 5-year intervals. In order to avoid duplication of effort, these required plans may be made a part of or merged with other plans required by either the state or Federal Government, so long as the portions of the other state or Federal Government plan that constitute the state

plan for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect are clearly identified as such and are provided to the Speaker of the House of Representatives and the President of the Senate as required under this section ~~above~~.

Section 3. Present subsections (59) through (65) of section 39.01, Florida Statutes, are redesignated as subsections (60) through (66), respectively, present subsections (67) through (69) are redesignated as subsections (68) through (70), respectively, present subsections (70) through (76) are redesignated as subsections (72) through (78), respectively, new subsections (31), (41), (59), (67), and (71) are added to that section, and subsections (7), (14), (18), (22), (26), and (27) and present subsections (28) through (41), (59), and (65) of that section are amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(7) ~~"Alleged juvenile sexual offender" means:~~

~~(a) A child 12 years of age or younger who is alleged to have committed a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133; or~~

~~(b) A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse.~~

"Juvenile sexual abuse" means any sexual behavior which occurs without consent, without equality, or as a result of coercion. For purposes of this subsection ~~paragraph~~, the following definitions apply:

(a)~~1.~~ "Coercion" means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain

cooperation or compliance.

(b) ~~2.~~ "Equality" means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

(c) ~~3.~~ "Consent" means an agreement, including all of the following:

1. ~~a.~~ Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.

2. ~~b.~~ Knowledge of societal standards for what is being proposed.

3. ~~c.~~ Awareness of potential consequences and alternatives.

4. ~~d.~~ Assumption that agreement or disagreement will be accepted equally.

5. ~~e.~~ Voluntary decision.

6. ~~f.~~ Mental competence.

Juvenile sexual ~~offender~~ behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

(14) "Child who has exhibited inappropriate sexual behavior" means a child ~~who is 12 years of age or younger and~~ who has been found by the department or the court to have committed an inappropriate sexual act.

(18) "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a child's and caregiver's physical, psychiatric, psychological, or mental

health; developmental delays or challenges; and~~,~~ educational, vocational, and social condition and family environment as they relate to the child's and caregiver's need for rehabilitative and treatment services, including substance abuse treatment services, mental health services, developmental services, literacy services, medical services, family services, and other specialized services, as appropriate.

(22) "Diligent efforts by a parent" means a course of conduct which results in a meaningful change in the behavior of a parent that reduces ~~reduction in~~ risk to the child in the child's home to the extent that ~~would allow~~ the child may ~~to~~ be safely placed permanently back in the home as set forth in the case plan.

~~(26) "District" means any one of the 15 service districts of the department established pursuant to s. 20.19.~~

~~(27) "District administrator" means the chief operating officer of each service district of the department as defined in s. 20.19(5) and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.~~

(26) ~~(28)~~ "Expedited termination of parental rights" means proceedings wherein a case plan with the goal of reunification is not being offered.

(27) ~~(29)~~ "False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a child; or

(d) Personal benefit for the reporting person in any other private dispute involving a child.

The term "false report" does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.

(28) ~~(30)~~ "Family" means a collective body of persons, consisting of a child and a parent, legal custodian, or adult relative, in which:

(a) The persons reside in the same house or living unit; or

(b) The parent, legal custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(29) ~~(31)~~ "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.

(30) ~~(32)~~ "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as

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defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

k. Significant bruises or welts.

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter

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(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of "harm," the term "abandoned the child" or "abandonment of the child" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this paragraph, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term "abandoned" does not include a surrendered newborn infant as described in s. 383.50, a child in need of services as defined in chapter 984, or a family in need of services as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(f) Neglects the child. Within the context of the definition of "harm," the term "neglects the child" means that the parent or other person responsible for the child's welfare

fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;

2. Prevent the department from investigating such a case; or

3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or

2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term "controlled substance" means

prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

(31) "Impending danger" means a situation in which family behaviors, attitudes, motives, emotions, or situations pose a threat that may not be currently active but that can be anticipated to become active and to have severe effects on a child at any time.

(32) ~~(33)~~ "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (47).

(33)~~(34)~~ "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

(34)~~(35)~~ "Legal custody" means a legal status created by a court which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(35)~~(36)~~ "Licensed child-caring agency" means a person, society, association, or agency licensed by the department to care for, receive, and board children.

(36)~~(37)~~ "Licensed child-placing agency" means a person, society, association, or institution licensed by the department to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.

(37)~~(38)~~ "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

(38)~~(39)~~ "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.

(39)~~(40)~~ "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will

inflict serious and unjustified bodily harm on another person.

(40)~~(41)~~ "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(41) "Medical neglect" means the failure to provide or the failure to allow needed care as recommended by a health care practitioner for a physical injury, illness, medical condition, or impairment, or the failure to seek timely and appropriate medical care for a serious health problem that a reasonable person would have recognized as requiring professional medical attention. Medical neglect does not occur if the parent or legal guardian of the child has made reasonable attempts to obtain necessary health care services or the immediate health condition giving rise to the allegation of neglect is a known and expected complication of the child's diagnosis or treatment and:

(a) The recommended care offers limited net benefit to the child and the morbidity or other side effects of the treatment may be considered to be greater than the anticipated benefit; or

(b) The parent or legal guardian received conflicting medical recommendations for treatment from multiple practitioners and did not follow all recommendations.

(59) "Present danger" means a significant and clearly observable family condition that is occurring at the current

moment and is already endangering or threatening to endanger the child. Present danger threats are conspicuous and require that an immediate protective action be taken to ensure the child's safety.

(60)~~(59)~~ "Preventive services" means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's developmental needs and need for physical, mental, and emotional health and a safe, stable, living environment;~~,~~ shall promote family autonomy;~~,~~ and shall strengthen family life, whenever possible.

(66)~~(65)~~ "Reunification services" means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, developmental, mental, and emotional health and a safe, stable, living environment;~~,~~ shall promote family autonomy;~~,~~ and shall strengthen family life, whenever possible.

(67) "Safety plan" means a plan created to control present

or impending danger using the least intrusive means appropriate to protect a child when a parent, caregiver, or legal custodian is unavailable, unwilling, or unable to do so.

(71) "Sibling" means:

(a) A child who shares a birth parent or legal parent with one or more other children; or

(b) A child who has lived together in a family with one or more other children whom he or she identifies as siblings.

Section 4. Subsection (12) is added to section 39.013, Florida Statutes, to read:

39.013 Procedures and jurisdiction; right to counsel.—

(12) The department shall be represented by counsel in each dependency proceeding. Through its attorneys, the department shall make recommendations to the court on issues before the court and may support its recommendations through testimony and other evidence by its own employees, employees of sheriff's offices providing child protection services, employees of its contractors, employees of its contractor's subcontractors, or from any other relevant source.

Section 5. Paragraph (c) of subsection (2) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(2)

(c) Reports involving ~~a known or suspected~~ juvenile sexual abuse ~~offender~~ or a child who has exhibited inappropriate sexual behavior shall be made and received by the department. An alleged incident of juvenile sexual abuse involving a child who is in the custody of or protective supervision of the department

shall be reported to the department's central abuse hotline.

1. ~~The department shall determine the age of the alleged offender, if known.~~

~~2. If the alleged offender is 12 years of age or younger,~~ The central abuse hotline shall immediately electronically transfer the report or call to the county sheriff's office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

2. The department shall ensure that the facts and results of any investigation of child sexual abuse involving a child in the custody of or under the protective supervision of the department are made known to the court at the next hearing or included in the next report to the court concerning the child.

~~3. If the alleged offender is 13 years of age or older, the central abuse hotline shall immediately electronically transfer the report or call to the appropriate county sheriff's office and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the central abuse hotline.~~

Section 6. Section 39.2015, Florida Statutes, is created to read:

39.2015 Critical incident rapid response team.—

(1) The department shall conduct an immediate investigation of certain incidents involving children using critical incident rapid response teams as provided in subsection (2). The purpose of such investigation is to identify root causes and rapidly

determine the need to change policies and practices related to child protection and child welfare.

(2) An immediate onsite investigation conducted by a critical incident rapid response team is required for all child deaths reported to the department if the child or another child in his or her family was the subject of a verified report of suspected abuse or neglect during the previous 12 months. The secretary may direct an immediate investigation for other cases involving serious injury to a child.

(3) Each investigation shall be conducted by a team of at least five professionals with expertise in child protection, child welfare, and organizational management. The team may consist of employees of the department, community-based care lead agencies, and other provider organizations; faculty from the institute consisting of public and private universities offering degrees in social work established pursuant to s. 1004.615; or any other person with the required expertise. The majority of the team must reside in judicial circuits outside the location of the incident. The secretary shall appoint a team leader for each group assigned to an investigation.

(4) An investigation shall be initiated as soon as possible, but not later than 2 business days after the case is reported to the department. A preliminary report on each case shall be provided to the secretary no later than 30 days after the investigation begins.

(5) Each member of the team is authorized to access all information in the case file.

(6) All employees of the department or other state agencies and all personnel from contracted provider organizations must

cooperate with the investigation by participating in interviews and timely responding to any requests for information. However, records or information of contracted provider organizations made confidential or privileged by state or federal law may be shared among team members but not outside the team.

(7) The secretary shall develop cooperative agreements with other entities and organizations as necessary to facilitate the work of the team.

(8) The members of the team may be reimbursed by the department for per diem, mileage, and other reasonable expenses as provided in s. 112.061. The department may also reimburse the team member's employer for the associated salary and benefits during the time the team member is fulfilling the duties required under this section.

(9) Upon completion of the investigation, the department shall make the team's final report available on its website.

(10) The secretary, in conjunction with the institute established pursuant to s. 1004.615, shall develop guidelines for investigations conducted by critical incident rapid response teams and provide training to team members. Such guidelines must direct the teams in the conduct of a root-cause analysis that identifies, classifies, and attributes responsibility for both direct and latent causes for the death or other incident, including organizational factors, preconditions, and specific acts or omissions resulting from either error or a violation of procedures.

(11) The secretary shall appoint an advisory committee made up of experts in child protection and child welfare to conduct an independent review of investigative reports from the critical

incident rapid response teams and make recommendations to improve policies and practices related to child protection and child welfare services. By October 1 of each year, the advisory committee shall submit a report to the secretary that includes findings and recommendations. The secretary shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 7. Section 39.2022, Florida Statutes, is created to read:

39.2022 Public disclosure of reported child deaths.—

(1) It is the intent of the Legislature to provide prompt disclosure of the basic facts of all deaths of children from birth through 18 years of age which occur in this state and which are reported to the department's central abuse hotline. Disclosure shall be posted on the department's public website. This section does not limit the public access to records under any other provision of law.

(2) Notwithstanding s. 39.202, if a child death is reported to the central abuse hotline, the department shall post on its website all of the following:

(a) The initials, age, race, and gender of the child.

(b) The date of the child's death.

(c) Any allegations of the cause of death or the preliminary cause of death, and the verified cause of death, if known.

(d) The county and placement of the child at the time of the incident leading to the child's death, if applicable.

(e) The name of the community-based care lead agency, case management agency, or out-of-home licensing agency involved with

the child, family, or licensed caregiver, if applicable.

(f) The relationship of the person adjudicated guilty of any criminal offense related to the child's death.

(g) Whether the child has been the subject of any prior verified reports to the department's central abuse hotline.

Section 8. Subsections (9) and (14) of section 39.301, Florida Statutes, are amended to read:

39.301 Initiation of protective investigations.—

(9)(a) For each report received from the central abuse hotline and accepted for investigation, the department or the sheriff providing child protective investigative services under s. 39.3065, shall perform the following child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person making the report should be contacted before the face-to-face interviews with the child and family members.

2. Conduct face-to-face interviews with the child; other siblings, if any; and the parents, legal custodians, or

caregivers.

3. Assess the child's residence, including a determination of the composition of the family and household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

4. Determine whether there is any indication that any child in the family or household has been abused, abandoned, or neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

5. Complete assessment of immediate child safety for each child based on available records, interviews, and observations with all persons named in subparagraph 2. and appropriate collateral contacts, which may include other professionals. The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and may not be

further disseminated or used for any other purpose.

6. Document the present and impending dangers to each child based on the identification of inadequate protective capacity through utilization of a standardized safety assessment instrument. If present or impending danger is identified, the child protective investigator must implement a safety plan or take the child into custody. If present danger is identified and the child is not removed, the child protective investigator shall create and implement a safety plan before leaving the home or the location where there is present danger. If impending danger is identified, the child protective investigator shall create and implement a safety plan as soon as necessary to protect the safety of the child. The child protective investigator may modify the safety plan if he or she identifies additional impending danger.

a. If the child protective investigator implements a safety plan, the plan must be specific, sufficient, feasible, and sustainable in response to the realities of the present or impending danger. A safety plan may be an in-home plan or an out-of-home plan, or a combination of both. A safety plan may not rely solely on promissory commitments by the parent, caregiver, or legal custodian who is currently not able to protect the child or on services that are not available or will not result in the safety of the child. A safety plan may not be implemented if for any reason the parents, guardian, or legal custodian lacks the capacity or ability to comply with the plan. If the department is not able to develop a plan that is specific, sufficient, feasible, and sustainable, the department shall file a shelter petition. A child protective investigator

shall implement separate safety plans for the perpetrator of domestic violence and the parent who is a victim of domestic violence as defined in s. 741.28. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of the child, the child protective investigator shall seek issuance of an injunction authorized by s. 39.504 to implement a safety plan for the perpetrator and impose any other conditions to protect the child. The safety plan for the parent who is a victim of domestic violence may not be shared with the perpetrator. If any party to a safety plan fails to comply with the safety plan resulting in the child being unsafe, the department shall file a shelter petition.

b. The child protective investigator shall collaborate with the community-based care lead agency in the development of the safety plan as necessary to ensure that the safety plan is specific, sufficient, feasible, and sustainable. The child protective investigator shall identify services necessary for the successful implementation of the safety plan. The child protective investigator and the community-based care lead agency shall mobilize service resources to assist all parties in complying with the safety plan. The community-based care lead agency shall prioritize safety plan services to families who have multiple risk factors, including, but not limited to, two or more of the following:

(I) The parent or legal custodian is of young age;

(II) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has a history of substance abuse, mental illness, or domestic violence;

(III) The parent or legal custodian, or an adult currently

living in or frequently visiting the home, has been previously found to have physically or sexually abused a child;

(IV) The parent or legal custodian or an adult currently living in or frequently visiting the home has been the subject of multiple allegations by reputable reports of abuse or neglect;

(V) The child is physically or developmentally disabled; or

(VI) The child is 3 years of age or younger.

c. The child protective investigator shall monitor the implementation of the plan to ensure the child's safety until the case is transferred to the lead agency at which time the lead agency shall monitor the implementation.

~~(b) Upon completion of the immediate safety assessment, the department shall determine the additional activities necessary to assess impending dangers, if any, and close the investigation.~~

(b) ~~(c)~~ For each report received from the central abuse hotline, the department or the sheriff providing child protective investigative services under s. 39.3065, shall determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the child's safety and well-being and development, and cause the delivery of those services through the early intervention of the department or its agent. As applicable, child protective investigators must inform parents and caregivers how and when to use the injunction process under s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

1. If the department or the sheriff providing child protective investigative services determines that the interests

of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and the parents or legal custodians, the parent or legal custodian and child may be referred for such care, case management, or other community resources.

2. If the department or the sheriff providing child protective investigative services determines that the child is in need of protection and supervision, the department may file a petition for dependency.

3. If a petition for dependency is not being filed by the department, the person or agency originating the report shall be advised of the right to file a petition pursuant to this part.

4. At the close of an investigation, the department or the sheriff providing child protective services shall provide to the person who is alleged to have caused the abuse, neglect, or abandonment and the parent or legal custodian a summary of findings from the investigation and provide information about their right to access confidential reports in accordance with s. 39.202.

(14)(a) If the department or its agent determines that a child requires immediate or long-term protection through~~:~~

~~1.~~ medical or other health care~~;~~ or

~~2.~~ homemaker care, day care, protective supervision, or other services to stabilize the home environment, including intensive family preservation services through the Intensive Crisis Counseling Program, such services shall first be offered for voluntary acceptance unless:

1. There are high-risk factors that may impact the ability of the parents or legal custodians to exercise judgment. Such

factors may include the parents' or legal custodians' young age or history of substance abuse, mental illness, or domestic violence; or

2. There is a high likelihood of lack of compliance with voluntary services, and such noncompliance would result in the child being unsafe.

(b) The parents or legal custodians shall be informed of the right to refuse services, as well as the responsibility of the department to protect the child regardless of the acceptance or refusal of services. If the services are refused, a collateral contact shall include a relative, if the protective investigator has knowledge of and the ability to contact a relative. If the services are refused and the department deems that the child's need for protection ~~so~~ requires services, the department shall take the child into protective custody or petition the court as provided in this chapter. At any time after the commencement of a protective investigation, a relative may submit in writing to the protective investigator or case manager a request to receive notification of all proceedings and hearings in accordance with s. 39.502. The request shall include the relative's name, address, and phone number and the relative's relationship to the child. The protective investigator or case manager shall forward such request to the attorney for the department. The failure to provide notice to either a relative who requests it pursuant to this subsection or to a relative who is providing out-of-home care for a child may not result in any previous action of the court at any stage or proceeding in dependency or termination of parental rights under any part of this chapter being set aside, reversed, modified, or

in any way changed absent a finding by the court that a change is required in the child's best interests.

(c) The department, in consultation with the judiciary, shall adopt by rule:

1. Criteria that are factors requiring that the department take the child into custody, petition the court as provided in this chapter, or, if the child is not taken into custody or a petition is not filed with the court, conduct an administrative review. Such factors must include, but are not limited to, noncompliance with a safety plan or the case plan developed by the department, and the family under this chapter, and prior abuse reports with findings that involve the child, the child's sibling, or the child's caregiver.

2. Requirements that if after an administrative review the department determines not to take the child into custody or petition the court, the department shall document the reason for its decision in writing and include it in the investigative file. For all cases that were accepted by the local law enforcement agency for criminal investigation pursuant to subsection (2), the department must include in the file written documentation that the administrative review included input from law enforcement. In addition, for all cases that must be referred to child protection teams pursuant to s. 39.303(2) and (3), the file must include written documentation that the administrative review included the results of the team's evaluation. ~~Factors that must be included in the development of the rule include noncompliance with the case plan developed by the department, or its agent, and the family under this chapter and prior abuse reports with findings that involve the child or~~

~~caregiver.~~

Section 9. Section 39.303, Florida Statutes, is amended to read:

39.303 Child protection teams; services; eligible cases.—The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of the Department of Children and Families ~~Family Services~~. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. ~~The Legislature finds that optimal coordination of child protection teams and sexual abuse treatment programs requires collaboration between~~ The Department of Health and the Department of Children and Families ~~Family Services. The two departments~~ shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Families ~~Family Services~~, shall maintain the responsibility for the screening, employment, and, if necessary, the termination of child protection team medical directors, at headquarters and in the 15 districts. Child protection team medical directors shall be responsible for oversight of the teams in the districts.

(1) The Department of Health shall use ~~utilize~~ and convene the teams to supplement the assessment and protective supervision activities of the family safety and preservation

program of the Department of Children and Families ~~Family Services~~. ~~Nothing in~~ This section does not ~~shall be construed to~~ remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or neglect or sexual abuse of a child. The role of the teams shall be to support activities of the program and to provide services deemed by the teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a child protection team shall be capable of providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of related findings ~~relative thereto~~.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.

(e) Expert medical, psychological, and related professional testimony in court cases.

(f) Case staffings to develop treatment plans for children

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whose cases have been referred to the team. A child protection team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such child protection team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.

(g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(h) Such training services for program and other employees of the Department of Children and Families ~~Family Services~~, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.

(i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.

(j) Child protection team assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.

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All medical personnel participating on a child protection team must successfully complete the required child protection team training curriculum as set forth in protocols determined by the Deputy Secretary for Children's Medical Services and the Statewide Medical Director for Child Protection. A child protection team that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child shall consult with a physician who has experience in treating children with the same condition.

(2) The child abuse, abandonment, and neglect reports that must be referred by the department to child protection teams of the Department of Health for an assessment and other appropriate available support services as set forth in subsection (1) must include cases involving:

(a) Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.

(b) Bruises anywhere on a child 5 years of age or under.

(c) Any report alleging sexual abuse of a child.

(d) Any sexually transmitted disease in a prepubescent child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child when

emotional or other abuse, abandonment, or neglect is suspected.

(3) All abuse and neglect cases transmitted for investigation to a district by the hotline must be simultaneously transmitted to the Department of Health child protection team for review. For the purpose of determining whether face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (2) must be timely reviewed by:

(a) A physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(b) A physician licensed under chapter 458 or chapter 459 who holds board certification in a specialty other than pediatrics, who may complete the review only when working under the direction of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(c) An advanced registered nurse practitioner licensed under chapter 464 who has a specialty ~~speciality~~ in pediatrics or family medicine and is a member of a child protection team;

(d) A physician assistant licensed under chapter 458 or chapter 459, who may complete the review only when working under the supervision of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team; or

(e) A registered nurse licensed under chapter 464, who may complete the review only when working under the direct supervision of a physician licensed under chapter 458 or chapter

459 who holds certification in pediatrics and is a member of a child protection team.

(4) A face-to-face medical evaluation by a child protection team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team board-certified pediatrician, advanced registered nurse practitioner, physician assistant working under the supervision of a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

(b) The child protective investigator, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in paragraphs (2)(a)-(h) as reported; or

(c) The child protection team board-certified pediatrician, as authorized in subsection (3), determines that a medical evaluation is not required.

Notwithstanding paragraphs (a), (b), and (c), a child protection team pediatrician, as authorized in subsection (3), may determine that a face-to-face medical evaluation is necessary.

(5) In all instances in which a child protection team is providing certain services to abused, abandoned, or neglected children, other offices and units of the Department of Health, and offices and units of the Department of Children and Families ~~Family Services~~, shall avoid duplicating the provision of those

services.

(6) The Department of Health child protection team quality assurance program and the Family Safety Program Office of the Department of Children and Families ~~Family Services' Family Safety Program Office quality assurance program~~ shall collaborate to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate. Each quality assurance program shall include a review of records in which there are no findings of abuse, abandonment, or neglect, and the findings of these reviews shall be included in each department's quality assurance reports.

Section 10. Section 39.3068, Florida Statutes, is created to read:

39.3068 Reports of medical neglect.—

(1) Upon receiving a report alleging medical neglect, the department or sheriff's office shall assign the case to a child protective investigator who has specialized training in addressing medical neglect or working with medically complex children, if such investigator is available. If a child protective investigator with specialized training is not available, the child protective investigator shall consult with department staff with such expertise.

(2) The child protective investigator who has interacted with the child and the child's family shall promptly contact and provide information to the child protection team. The child protection team shall assist the child protective investigator in identifying immediate responses to address the medical needs of the child with the priority of maintaining the child in the home if the parents will be able to meet the needs of the child

with additional services. The child protective investigator and the child protection team must use a family-centered approach to assess the capacity of the family to meet those needs. A family-centered approach is intended to increase independence on the part of the family, accessibility to programs and services within the community, and collaboration between families and their service providers. The ethnic, cultural, economic, racial, social, and religious diversity of families must be respected and considered in the development and provision of services.

(3) The child shall be evaluated by the child protection team as soon as practicable. After receipt of the report from the child protection team, the department shall convene a case staffing which shall be attended, at a minimum, by the child protective investigator; department legal staff; and representatives from the child protection team that evaluated the child, Children's Medical Services, the Agency for Health Care Administration, the community-based care lead agency, and any providers of services to the child. However, the Agency for Health Care Administration is not required to attend the staffing if the child is not Medicaid-eligible. The staffing shall consider, at a minimum, available services, given the family's eligibility for services; services that are effective in addressing conditions leading to medical neglect allegations; and services that would enable the child to safely remain at home. Any services that are available and effective, shall be provided.

Section 11. Section 39.307, Florida Statutes, is amended to read:

39.307 Reports of child-on-child sexual abuse.—

(1) Upon receiving a report alleging juvenile sexual abuse or inappropriate sexual behavior as defined in s. 39.01~~(7)~~, the department shall assist the family, child, and caregiver in receiving appropriate services to address the allegations of the report.

(a) The department shall ensure that information describing the child's history of child sexual abuse is included in the child's electronic record. This record must also include information describing the services the child has received as a result of his or her involvement with child sexual abuse.

(b) Placement decisions for a child who has been involved with child sexual abuse must include consideration of the needs of the child and any other children in the placement.

(c) The department shall monitor the occurrence of child sexual abuse and the provision of services to children involved in child sexual abuse, juvenile sexual abuse, or who have displayed inappropriate sexual behavior.

(2) The department, contracted sheriff's office providing protective investigation services, or contracted case management personnel responsible for providing services, at a minimum, shall adhere to the following procedures:

(a) The purpose of the response to a report alleging juvenile sexual abuse behavior or inappropriate sexual behavior shall be explained to the caregiver.

1. The purpose of the response shall be explained in a manner consistent with legislative purpose and intent provided in this chapter.

2. The name and office telephone number of the person responding shall be provided to the caregiver of the alleged

abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

3. The possible consequences of the department's response, including outcomes and services, shall be explained to the caregiver of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

(b) The caregiver of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior and the victim's caregiver shall be involved to the fullest extent possible in determining the nature of the sexual behavior concerns and the nature of any problem or risk to other children.

(c) The assessment of risk and the perceived treatment needs of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers shall be conducted by the district staff, the child protection team of the Department of Health, and other providers under contract with the department to provide services to the caregiver of the alleged offender, the victim, and the victim's caregiver.

(d) The assessment shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.

(e) If necessary, the child protection team of the Department of Health shall conduct a physical examination of the victim, which is sufficient to meet forensic requirements.

(f) Based on the information obtained from the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited

inappropriate sexual behavior, his or her caregiver, the victim, and the victim's caregiver, an assessment of service and treatment needs must be completed and, if needed, a case plan developed within 30 days.

(g) The department shall classify the outcome of the report as follows:

1. Report closed. Services were not offered because the department determined that there was no basis for intervention.

2. Services accepted by alleged abuser ~~juvenile sexual offender~~. Services were offered to the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior and accepted by the caregiver.

3. Report closed. Services were offered to the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, but were rejected by the caregiver.

4. Notification to law enforcement. The risk to the victim's safety and well-being cannot be reduced by the provision of services or the caregiver rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.

5. Services accepted by victim. Services were offered to the victim and accepted by the caregiver.

6. Report closed. Services were offered to the victim but were rejected by the caregiver.

(3) If services have been accepted by the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers, the department shall designate a case manager and

develop a specific case plan.

(a) Upon receipt of the plan, the caregiver shall indicate its acceptance of the plan in writing.

(b) The case manager shall periodically review the progress toward achieving the objectives of the plan in order to:

1. Make adjustments to the plan or take additional action as provided in this part; or

2. Terminate the case if indicated by successful or substantial achievement of the objectives of the plan.

(4) Services provided to the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers or family must be voluntary and of necessary duration.

(5) If the family or caregiver of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior fails to adequately participate or allow for the adequate participation of the child in the services or treatment delineated in the case plan, the case manager may recommend that the department:

(a) Close the case;

(b) Refer the case to mediation or arbitration, if available; or

(c) Notify the appropriate law enforcement agency of failure to comply.

(6) At any time, as a result of additional information, findings of facts, or changing conditions, the department may pursue a child protective investigation as provided in this chapter.

(7) The department may adopt ~~is authorized to develop~~ rules

~~and other policy directives necessary~~ to administer ~~implement the provisions of~~ this section.

Section 12. Paragraph (h) of subsection (8) and subsection (9) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

(h) The order for placement of a child in shelter care must identify the parties present at the hearing and must contain written findings:

1. That placement in shelter care is necessary based on the criteria in subsections (1) and (2).

2. That placement in shelter care is in the best interest of the child.

3. That continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services.

4. That based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent or that the court needs additional time, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child.

5. That the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home. A finding of reasonable effort by the department to prevent or eliminate the need for removal may be made and the department is deemed to have made reasonable efforts to prevent

or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal of the home situation by the department indicates that the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services;

c. The child cannot safely remain at home, either because there are no preventive services that can ensure the health and safety of the child or because, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or

d. The parent or legal custodian is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights in s. 39.806(1)(f)-(i).

6. That the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. Reasonable efforts shall include short-term placement in a group home with the ability to accommodate sibling groups if such a placement is available. The department shall report to the court its efforts to place siblings together unless the court finds that such placement is not in the best interest of a child or his or her sibling.

7.~~6.~~ That the court notified the parents, relatives that are providing out-of-home care for the child, or legal custodians of the time, date, and location of the next dependency hearing and of the importance of the active

participation of the parents, relatives that are providing out-of-home care for the child, or legal custodians in all proceedings and hearings.

8.~~7.~~ That the court notified the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013.

9.~~8.~~ That the court notified relatives who are providing out-of-home care for a child as a result of the shelter petition being granted that they have the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child, if they so desire.

(9)(a) At any shelter hearing, the department shall provide to the court a recommendation for scheduled contact between the child and parents, if appropriate. The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child. Any order for visitation or other contact must conform to ~~the provisions of~~ s. 39.0139. If visitation is ordered but will not commence within 72 hours of the shelter hearing, the department shall provide justification to the court.

(b) If siblings who are removed from the home cannot be placed together, the department shall provide to the court a recommendation for frequent visitation or other ongoing interaction between the siblings unless this interaction would be contrary to a sibling's safety or well-being. If visitation among siblings is ordered but will not commence within 72 hours after the shelter hearing, the department shall provide

justification to the court for the delay.

Section 13. Paragraph (d) of subsection (3) of section 39.501, Florida Statutes, is amended to read:

39.501 Petition for dependency.—

(3)

(d) The petitioner must state in the petition, if known, whether:

1. A parent or legal custodian named in the petition has previously unsuccessfully participated in voluntary services offered by the department;

2. A parent or legal custodian named in the petition has participated in mediation and whether a mediation agreement exists;

3. A parent or legal custodian has rejected the voluntary services offered by the department;

4. A parent or legal custodian named in the petition has not fully complied with a safety plan; or

5.~~4.~~ The department has determined that voluntary services are not appropriate for the parent or legal custodian and the reasons for such determination.

If the department is the petitioner, it shall provide all safety assessments and safety plans involving the parent or legal custodian to the court.

Section 14. Paragraph (a) of subsection (4) of section 39.504, Florida Statutes, is amended to read:

39.504 Injunction pending disposition of petition; penalty.—

(4) If an injunction is issued under this section, the

primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.

(a) The injunction applies to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the court, which may include ordering the alleged or actual offender to:

1. Refrain from further abuse or acts of domestic violence.

2. Participate in a specialized treatment program.

3. Limit contact or communication with the child victim, other children in the home, or any other child.

4. Refrain from contacting the child at home, school, work, or wherever the child may be found.

5. Have limited or supervised visitation with the child.

6. Vacate the home in which the child resides.

7. Comply with the terms of a safety plan implemented in the injunction pursuant to s. 39.301.

Section 15. Section 39.5085, Florida Statutes, is amended to read:

39.5085 Relative Caregiver Program.—

(1) It is the intent of the Legislature in enacting this section to:

(a) Provide for the establishment of procedures and protocols that serve to advance the continued safety of children by acknowledging the valued resource uniquely available through grandparents, ~~and~~ relatives of children, and specified nonrelatives of children pursuant to subparagraph (2)(a)3.

(b) Recognize family relationships in which a grandparent

or other relative is the head of a household that includes a child otherwise at risk of foster care placement.

(c) Enhance family preservation and stability by recognizing that most children in such placements with grandparents and other relatives do not need intensive supervision of the placement by the courts or by the department.

(d) Recognize that permanency in the best interests of the child can be achieved through a variety of permanency options, including permanent guardianship under s. 39.6221 if the guardian is a relative, by permanent placement with a fit and willing relative under s. 39.6231, by a relative, guardianship under chapter 744, or adoption, by providing additional placement options and incentives that will achieve permanency and stability for many children who are otherwise at risk of foster care placement because of abuse, abandonment, or neglect, but who may successfully be able to be placed by the dependency court in the care of such relatives.

(e) Reserve the limited casework and supervisory resources of the courts and the department for those cases in which children do not have the option for safe, stable care within the family.

(f) Recognize that a child may have a close relationship with a person who is not a blood relative or a relative by marriage and that such person should be eligible for financial assistance under this section if he or she is able and willing to care for the child and provide a safe, stable home environment.

(2)(a) The Department of Children and Families ~~Family Services~~ shall establish and operate the Relative Caregiver

Program pursuant to eligibility guidelines established in this section as further implemented by rule of the department. The Relative Caregiver Program shall, within the limits of available funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

2. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

3. Nonrelatives who are willing to assume custody and care of a dependent child and a dependent half-brother or half-sister of that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the nonrelative caregiver under this chapter. The court must find that a proposed placement under this subparagraph is in the best interest of the child.

The placement may be court-ordered temporary legal custody to the relative or nonrelative under protective supervision of the department pursuant to s. 39.521(1)(b)3., or court-ordered

placement in the home of a relative or nonrelative as a permanency option under s. 39.6221 or s. 39.6231 or under former s. 39.622 if the placement was made before July 1, 2006. The Relative Caregiver Program shall offer financial assistance to caregivers ~~who are relatives and~~ who would be unable to serve in that capacity without the ~~relative~~ caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

(b) Caregivers ~~who are relatives and~~ who receive assistance under this section must be capable, as determined by a home study, of providing a physically safe environment and a stable, supportive home for the children under their care~~,~~ and must assure that the children's well-being is met, including, but not limited to, the provision of immunizations, education, and mental health services as needed.

(c) Relatives or nonrelatives who qualify for and participate in the Relative Caregiver Program are not required to meet foster care licensing requirements under s. 409.175.

(d) Relatives or nonrelatives who are caring for children placed with them by the court pursuant to this chapter shall receive a special monthly ~~relative~~ caregiver benefit established by rule of the department. The amount of the special benefit payment shall be based on the child's age within a payment schedule established by rule of the department and subject to availability of funding. The statewide average monthly rate for children judicially placed with relatives or nonrelatives who are not licensed as foster homes may not exceed 82 percent of the statewide average foster care rate, and ~~nor may~~ the cost of providing the assistance described in this section to any

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~~relative~~ caregiver may not exceed the cost of providing out-of-home care in emergency shelter or foster care.

(e) Children receiving cash benefits under this section are not eligible to simultaneously receive WAGES cash benefits under chapter 414.

(f) Within available funding, the Relative Caregiver Program shall provide ~~relative~~ caregivers with family support and preservation services, flexible funds in accordance with s. 409.165, school readiness, and other available services in order to support the child's safety, growth, and healthy development. Children living with ~~relative~~ caregivers who are receiving assistance under this section shall be eligible for Medicaid coverage.

(g) The department may use appropriate available state, federal, and private funds to operate the Relative Caregiver Program. The department may develop liaison functions to be available to relatives or nonrelatives who care for children pursuant to this chapter to ensure placement stability in extended family settings.

Section 16. Subsections (3) and (4) of section 39.604, Florida Statutes, are amended to read:

39.604 Rilya Wilson Act; short title; legislative intent; requirements; attendance and reporting responsibilities.—

(3) REQUIREMENTS.—A child from birth to the age of ~~who is age 3 years to~~ school entry, under court-ordered ~~court ordered~~ protective supervision or in the custody of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or a community-based lead agency, and enrolled in a licensed early education or child care program must attend ~~be~~

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~~enrolled to participate in~~ the program 5 days a week. Notwithstanding ~~the requirements of~~ s. 39.202, the Department of Children and Families ~~Family Services~~ must notify operators of the licensed early education or child care program, subject to the reporting requirements of this act, of the enrollment of any child from birth to the age of ~~age 3 years to~~ school entry, under court-ordered ~~court ordered~~ protective supervision or in the custody of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or a community-based lead agency. When a child is enrolled in an early education or child care program regulated by the department, the child's attendance in the program must be a required action in the safety plan or the case plan developed for the ~~a~~ child pursuant to this chapter ~~who is enrolled in a licensed early education or child care program must contain the participation in this program as a required action~~. An exemption to participating in the licensed early education or child care program 5 days a week may be granted by the court.

(4) ATTENDANCE AND REPORTING REQUIREMENTS.—

(a) A child enrolled in a licensed early education or child care program who meets the requirements of subsection (3) may not be withdrawn from the program without the prior written approval of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or the community-based lead agency.

(b)1. If a child covered by this section is absent from the program on a day when he or she is supposed to be present, the person with whom the child resides must report the absence to the program by the end of the business day. If the person with

whom the child resides, whether the parent or caregiver, fails to timely report the absence, the absence is considered to be unexcused. The program shall report any unexcused absence or seven consecutive excused absences of a child who is enrolled in the program and covered by this act to the local designated staff of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or the community-based lead agency by the end of the business day following the unexcused absence or seventh consecutive excused absence.

2. The department or community-based lead agency shall conduct a site visit to the residence of the child upon receiving a report of two consecutive unexcused absences or seven consecutive excused absences.

3. If the site visit results in a determination that the child is missing, the department or community-based lead agency shall report the child as missing to a law enforcement agency and proceed with the necessary actions to locate the child pursuant to procedures for locating missing children.

4. If the site visit results in a determination that the child is not missing, the parent or caregiver shall be notified that failure to ensure that the child attends the licensed early education or child care program is a violation of the safety plan or the case plan. If more than two site visits are conducted pursuant to this subsection, staff shall initiate action to notify the court of the parent or caregiver's noncompliance with the case plan.

Section 17. Paragraph (c) of subsection (2) and paragraph (a) of subsection (3) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(c) *Review determinations.*—The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or legal custodian, the guardian ad litem or surrogate parent for educational decisionmaking if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

1. If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.

2. If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.

3. If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously been appointed or if there is a need to continue a guardian ad

litem in a case in which a guardian ad litem has been appointed.

4. Who holds the rights to make educational decisions for the child. If appropriate, the court may refer the child to the district school superintendent for appointment of a surrogate parent or may itself appoint a surrogate parent under the Individuals with Disabilities Education Act and s. 39.0016.

5. The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.

6. The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and results of the parent-child visitation and the reason for any noncompliance.

7. The frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the child.

8.~~7.~~ The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply, if applicable ~~such is the case~~.

9.~~8.~~ Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement, as

documented by assurances from the community-based care provider that:

a. The placement of the child takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

b. The community-based care agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

10.~~9.~~ A projected date likely for the child's return home or other permanent placement.

11.~~10.~~ When appropriate, the basis for the unwillingness or inability of the parent to become a party to a case plan. The court and the citizen review panel shall determine if the efforts of the social service agency to secure party participation in a case plan were sufficient.

12.~~11.~~ For a child who has reached 13 years of age but is not yet 18 years of age, the adequacy of the child's preparation for adulthood and independent living.

13.~~12.~~ If amendments to the case plan are required. Amendments to the case plan must be made under s. 39.6013.

(3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

(a) In addition to the review and report required under paragraphs (1)(a) and (2)(a), respectively, the court shall hold a judicial review hearing within 90 days after a child's 17th birthday. The court shall also issue an order, separate from the order on judicial review, that the disability of nonage of the child has been removed pursuant to ss. 743.044, 743.045, and

743.046, and for any of these disabilities that the court finds is in the child's best interest to remove. The court ~~s. 743.045 and~~ shall continue to hold timely judicial review hearings. If necessary, the court may review the status of the child more frequently during the year before the child's 18th birthday. At each review hearing held under this subsection, in addition to any information or report provided to the court by the foster parent, legal custodian, or guardian ad litem, the child shall be given the opportunity to address the court with any information relevant to the child's best interest, particularly in relation to independent living transition services. The department shall include in the social study report for judicial review written verification that the child has:

1. A current Medicaid card and all necessary information concerning the Medicaid program sufficient to prepare the child to apply for coverage upon reaching the age of 18, if such application is appropriate.

2. A certified copy of the child's birth certificate and, if the child does not have a valid driver license, a Florida identification card issued under s. 322.051.

3. A social security card and information relating to social security insurance benefits if the child is eligible for those benefits. If the child has received such benefits and they are being held in trust for the child, a full accounting of these funds must be provided and the child must be informed as to how to access those funds.

4. All relevant information related to the Road-to-Independence Program, including, but not limited to, eligibility requirements, information on participation, and assistance in

gaining admission to the program. If the child is eligible for the Road-to-Independence Program, he or she must be advised that he or she may continue to reside with the licensed family home or group care provider with whom the child was residing at the time the child attained his or her 18th birthday, in another licensed family home, or with a group care provider arranged by the department.

5. An open bank account or the identification necessary to open a bank account and to acquire essential banking and budgeting skills.

6. Information on public assistance and how to apply for public assistance.

7. A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and the educational program or school in which he or she will be enrolled.

8. Information related to the ability of the child to remain in care until he or she reaches 21 years of age under s. 39.013.

9. A letter providing the dates that the child is under the jurisdiction of the court.

10. A letter stating that the child is in compliance with financial aid documentation requirements.

11. The child's educational records.

12. The child's entire health and mental health records.

13. The process for accessing his or her case file.

14. A statement encouraging the child to attend all judicial review hearings occurring after the child's 17th birthday.

Section 18. Subsection (2) of section 39.802, Florida Statutes, is amended to read:

39.802 Petition for termination of parental rights; filing; elements.—

(2) The form of the petition is governed by the Florida Rules of Juvenile Procedure. The petition must be in writing and signed by the petitioner ~~or, if the department is the petitioner, by an employee of the department,~~ under oath stating the petitioner's good faith in filing the petition.

Section 19. Paragraph (g) of subsection (1) of section 63.212, Florida Statutes, is amended to read:

63.212 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person:

(g) Except an adoption entity, to advertise or offer to the public, in any way, by any medium whatever that a minor is available for adoption or that a minor is sought for adoption; and, further, it is unlawful for any person to publish or broadcast any such advertisement or assist an unlicensed person or entity in publishing or broadcasting any such advertisement without including a Florida license number of the agency or attorney placing the advertisement.

1. Only a person who is an attorney licensed to practice law in this state or an adoption entity licensed under the laws of this state may place a paid advertisement or paid listing of the person's telephone number, on the person's own behalf, in a telephone directory that:

a. A child is offered or wanted for adoption; or

b. The person is able to place, locate, or receive a child for adoption.

2. A person who publishes a telephone directory that is distributed in this state~~:~~

~~a.~~ shall include, at the beginning of any classified heading for adoption and adoption services, a statement that informs directory users that only attorneys licensed to practice law in this state and licensed adoption entities may legally provide adoption services under state law.

3.~~b.~~ A person who places ~~may publish~~ an advertisement described in subparagraph 1. in a ~~the~~ telephone directory must include ~~only if the advertisement contains~~ the following information:

a.~~(I)~~ For an attorney licensed to practice law in this state, the person's Florida Bar number.

b.~~(II)~~ For a child placing agency licensed under the laws of this state, the number on the person's adoption entity license.

Section 20. Subsection (1) and paragraph (c) of subsection (3) of section 383.402, Florida Statutes, are amended to read:

383.402 Child abuse death review; State Child Abuse Death Review Committee; local child abuse death review committees.—

(1) It is the intent of the Legislature to establish a statewide multidisciplinary, multiagency child abuse death assessment and prevention system that consists of state and local review committees. The state and local review committees shall review the facts and circumstances of all deaths of children from birth through age 18 which occur in this state and are reported to the central abuse hotline of the Department of Children and Families ~~as the result of verified child abuse or neglect~~. The purpose of the review shall be to:

(a) Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse.

(b) Whenever possible, develop a communitywide approach to address such cases and contributing factors.

(c) Identify any gaps, deficiencies, or problems in the delivery of services to children and their families by public and private agencies which may be related to deaths that are the result of child abuse.

(d) Make and implement recommendations for changes in law, rules, and policies, as well as develop practice standards that support the safe and healthy development of children and reduce preventable child abuse deaths.

(3) The State Child Abuse Death Review Committee shall:

(c) Prepare an annual statistical report on the incidence and causes of death resulting from reported child abuse in the state during the prior calendar year. The state committee shall submit a copy of the report by October 1 ~~December 31~~ of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include recommendations for state and local action, including specific policy, procedural, regulatory, or statutory changes, and any other recommended preventive action.

Section 21. Subsection (5) of section 402.40, Florida Statutes, is amended, and paragraph (g) is added to subsection (3) of that section, to read:

402.40 Child welfare training and certification.—

(3) THIRD-PARTY CREDENTIALING ENTITIES.—The department shall approve one or more third-party credentialing entities for the purpose of developing and administering child welfare

certification programs for persons who provide child welfare services. A third-party credentialing entity shall request such approval in writing from the department. In order to obtain approval, the third-party credentialing entity must:

(g) Maintain an advisory committee, including representatives from each region of the department, each sheriff's office providing child protective services, and each community-based care lead agency, who shall be appointed by the organization they represent. The third-party credentialing entity may appoint additional members to the advisory committee.

(5) CORE COMPETENCIES AND SPECIALIZATIONS.—

(a) The Department of Children and Families ~~Family Services~~ shall approve the core competencies and related preservice curricula that ensures that each person delivering child welfare services obtains the knowledge, skills, and abilities to competently carry out his or her work responsibilities.

(b) The identification of these core competencies and development of preservice curricula shall be a collaborative effort that includes professionals who have expertise in child welfare services, department-approved third-party credentialing entities, and providers that will be affected by the curriculum, including, but not limited to, representatives from the community-based care lead agencies, sheriffs' offices conducting child protection investigations, and child welfare legal services providers.

(c) Community-based care agencies, sheriffs' offices, and the department may contract for the delivery of preservice and any additional training for persons delivering child welfare services if the curriculum satisfies the department-approved

core competencies.

(d) The department may also approve certifications involving specializations in serving specific populations or in skills relevant to child protection to be awarded to persons delivering child welfare services by a third-party credentialing entity approved pursuant to subsection (3).

(e)~~(d)~~ Department-approved credentialing entities shall, for a period of at least 12 months after implementation of the third-party child welfare certification programs, grant reciprocity and award a child welfare certification to individuals who hold current department-issued child welfare certification in good standing, at no cost to the department or the certificateholder.

Section 22. Section 402.402, Florida Statutes, is created to read:

402.402 Child protection and child welfare personnel; attorneys employed by the department.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Child protection and child welfare personnel" includes child protective investigators and child protective investigator supervisors employed by the department and case managers and case manager supervisors employed by a community-based care lead agency or a subcontractor of a community-based care lead agency.

(b) "Human services-related field" means psychology, sociology, counseling, special education, human development, child development, family development, marriage and family therapy, and nursing.

(2) CHILD PROTECTION AND CHILD WELFARE PERSONNEL REQUIREMENTS.—

(a) On an annual and statewide basis, 80 percent of child protective investigators and child protective investigation supervisors hired by the department on or after July 1, 2014, must have a bachelor's degree or master's degree in social work from a college or university social work program accredited by the Council on Social Work Education. If no viable candidates are available, the department may hire a person with a bachelor's degree or master's degree in a human services-related field. However, such employees must complete certification pursuant to s. 402.40(3) and complete at least 6 credit hours of college level coursework that imparts knowledge and leads to the development of skills with direct application to the child protection field within 3 years of the date of hire.

(b) Child protective investigators and child protective investigation supervisors employed by the department or a sheriff's office before July 1, 2014, are exempt from the requirements of paragraph (a).

(c) Child protective investigators and child protective investigation supervisors employed by a sheriff's office must have a bachelor's degree and, within 3 years of hire, complete at least 6 credit hours of college level coursework that impart knowledge and lead to the development of skills with direct application to the child protection field.

(d) All child protective investigators and child protective investigation supervisors employed by the department or a sheriff's office must complete specialized training focused on serving a specific population, including, but not limited to, medically fragile children, sexually exploited children, children under 3 years of age, or families with a history of

domestic violence, mental illness, or substance abuse, or focused on performing certain aspects of child protection practice, including, but not limited to, investigation techniques and analysis of family dynamics. The specialized training may be used to fulfill continuing education requirements under s. 402.40(3)(e). Individuals hired before July 1, 2014, shall complete the specialized training by June 30, 2016, and individuals hired on or after July 1, 2014, shall complete the specialized training within 2 years after hire. An individual may receive specialized training in multiple areas.

(3) ATTORNEYS EMPLOYED BY THE DEPARTMENT TO HANDLE CHILD WELFARE CASES.—Attorneys hired on or after July 1, 2014, whose primary responsibility is representing the department in child welfare cases shall, within the first 6 months of employment, receive training in:

(a) The dependency court process, including the attorney's role in preparing and reviewing documents prepared for dependency court for accuracy and completeness;

(b) Preparing and presenting child welfare cases, including at least 1 week shadowing an experienced children's legal services attorney preparing and presenting cases;

(c) Safety assessment, safety decisionmaking tools, and safety plans;

(d) Developing information presented by investigators and case managers to support decisionmaking in the best interest of children; and

(e) The experiences and techniques of case managers and investigators, including shadowing an experienced child protective investigator and an experienced case manager for at

least 8 hours.

Section 23. Section 402.403, Florida Statutes, is created to read:

402.403 Child Protection and Child Welfare Personnel Tuition Exemption Program.—

(1) There is established within the department the Child Protection and Child Welfare Personnel Tuition Exemption Program for the purpose of recruiting and retaining high-performing individuals who are employed as child protection and child welfare personnel as defined in s. 402.402 and who do not possess a master's degree in social work or a certificate in an area related to child welfare.

(2) Child protection and child welfare personnel who meet the requirements specified in subsection (3) are exempt from the payment of tuition and fees at a state university.

(3) The department may approve child protection and child welfare personnel for the tuition and fee exemption if such personnel:

(a) Are employed as child protection and child welfare personnel and are determined by their employers to perform at a high level as established by their personnel evaluations; and

(b) Are accepted in a graduate-level social work program or a certificate program related to child welfare which is accredited by the Council on Social Work Education.

(4) Child protection and child welfare personnel who meet the requirements specified in subsection (3) may enroll for up to 6 credit hours of courses per term.

(5) Child protection and child welfare personnel who are accepted into a graduate-level social work program or a

certificate program related to child welfare which is accredited by the Council on Social Work Education shall take courses associated with the degree or certificate program online if such courses are offered online.

Section 24. Section 402.404, Florida Statutes, is created to read:

402.404 Child Protective Investigator and Supervisor Student Loan Forgiveness Program.—

(1) There is established within the department the Child Protective Investigator and Supervisor Student Loan Forgiveness Program. The purpose of the program is to increase employment and retention of high-performing individuals who have either a bachelor's degree or a master's degree in social work and work in child protection or child welfare for the department, a community-based care lead agency, or a community-based care subcontractor by making payments toward loans received by students from federal or state programs or commercial lending institutions for the support of prior postsecondary study in accredited social work programs.

(2) To be eligible for the program, a candidate must:

(a) Be employed by the department as a child protective investigator or a child protective investigation supervisor or be employed by a community-based care lead agency or subcontractor as a case manager or case manager supervisor;

(b) Be determined by the department or his or her employer to have a high level of performance based on his or her personal evaluation; and

(c) Have graduated from an accredited social work program with either a bachelor's degree or a master's degree in social

work.

(3) Only loans to pay the costs of tuition, books, fees, and living expenses shall be covered.

(4) The department or lead agency may make loan payments of up to $3,000 each year for up to 4 years on behalf of selected graduates of an accredited social work program from the funds appropriated for this purpose. All payments are contingent upon continued proof of employment and shall be made directly to the holder of the loan.

(5) A student who receives a tuition exemption pursuant to s. 402.403 is not eligible to participate in the Child Protective Investigator and Supervisor Student Loan Forgiveness Program.

(6) The department shall prioritize funds appropriated for this purpose to regions with high average caseloads and low workforce retention rates.

Section 25. Section 409.165, Florida Statutes, is amended to read:

409.165 Alternate care for children.—

(1) Within funds appropriated, the department shall establish and supervise a program of emergency shelters, runaway shelters, foster homes, group homes, agency-operated group treatment homes, nonpsychiatric residential group care facilities, psychiatric residential treatment facilities, and other appropriate facilities to provide shelter and care for dependent children who must be placed away from their families. The department, in accordance with outcome ~~established~~ goals established in s. 409.986, shall contract for the provision of such shelter and care by counties, municipalities, nonprofit

corporations, and other entities capable of providing needed services if:

(a) The services ~~so~~ provided comply with all department standards, policies, and procedures ~~are available~~;

(b) The services can be ~~so~~ provided at a reasonable cost ~~are more cost-effective than those provided by the department~~; and

(c) Unless otherwise provided by law, such providers of shelter and care are licensed by the department.

~~It is the legislative intent that the~~

(2) Funds appropriated for the alternate care of children as described in this section may be used to meet the needs of children in their own homes or those of relatives if the children can be safely served in such settings ~~their own homes, or the homes of relatives,~~ and the expenditure of funds in such manner is equal to or less than the cost of out-of-home placement ~~calculated by the department to be an eventual cost savings over placement of children~~.

(3) ~~(2)~~ The department shall ~~may~~ cooperate with all child service institutions or agencies within the state which meet the department's standards in order to maintain a comprehensive, coordinated, and inclusive system for promoting and protecting the well-being of children, consistent with the goals established in s. 409.986 ~~rules for proper care and supervision prescribed by the department for the well-being of children~~.

(a) The department shall work with the Department of Health in the development, use, and monitoring of medical foster homes for medically complex children.

(b) The department shall collaborate with all relevant state and local agencies to provide such supports and services as may be necessary to maintain medically complex children in the least restrictive and most nurturing environment.

(4) ~~(3)~~ With the written consent of parents, custodians, or guardians, or in accordance with those provisions in chapter 39 that relate to dependent children, the department, under rules properly adopted, may place a child:

(a) With a relative;

(b) With an adult nonrelative approved by the court for long-term custody;

(c) With a person who is considering the adoption of a child in the manner provided for by law;

(d) When limited, except as provided in paragraph (b), to temporary emergency situations, with a responsible adult approved by the court;

(e) With a person or family approved by the department to serve as a medical foster home;

(f) ~~(c)~~ With a person or agency licensed by the department in accordance with s. 409.175; or

(g) ~~(f)~~ In a subsidized independent living situation, subject to the provisions of s. 409.1451(4)(c),

under such conditions as are determined to be for the best interests or the welfare of the child. Any child placed in an institution or in a family home by the department or its agency may be removed by the department or its agency, and such other disposition may be made as is for the best interest of the child, including transfer of the child to another institution,

another home, or the home of the child. Expenditure of funds appropriated for out-of-home care can be used to meet the needs of a child in the child's own home or the home of a relative if the child can be safely served in the child's own home or that of a relative if placement can be avoided by the expenditure of such funds, and if the expenditure of such funds in this manner is equal to or less than the cost of out-of-home placement ~~calculated by the department to be a potential cost savings~~.

Section 26. Paragraph (c) of subsection (2) of section 409.967, Florida Statutes, is amended to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(c) *Access.*—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1,

2013, and a final order has issued in any civil or administrative challenge. Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to both the agency and the public and have the capability to compare the availability of providers to network adequacy standards and to accept and display feedback from each provider's patients. Each plan shall submit quarterly reports to the agency identifying the number of enrollees assigned to each primary care provider.

2. Each managed care plan must publish any prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan must update the list within 24 hours after making a change. Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers. For Medicaid recipients diagnosed with hemophilia who have been prescribed anti-hemophilic-factor replacement products, the agency shall provide for those products and hemophilia overlay services through the agency's hemophilia disease management program.

3. Managed care plans, and their fiscal agents or intermediaries, must accept prior authorization requests for any service electronically.

4. Managed care plans serving children in the care and custody of the Department of Children and Families must maintain complete medical, dental, and behavioral health information and provide such information to the department for inclusion in the state's child welfare data system. Using such documentation, the agency and the department shall determine the plan's compliance with standards for access to medical, dental, and behavioral health services; the use of psychotropic medications; and followup on all medically necessary services recommended as a result of early and periodic screening, diagnosis, and treatment.

Section 27. Paragraph (f) is added to subsection (2) of section 409.972, Florida Statutes, to read:

409.972 Mandatory and voluntary enrollment.—

(2) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(f) Medicaid recipients residing in a group home facility licensed under chapter 393.

Section 28. The Division of Law Revision and Information is directed to create part V of chapter 409, Florida Statutes, consisting of ss. 409.986-409.998, to be entitled "Community-based child welfare."

Section 29. Section 409.986, Florida Statutes, is created to read:

409.986 Legislative findings and intent; child protection and child welfare outcomes; definitions.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) It is the intent of the Legislature that the Department of Children and Families provide child protection and child welfare services to children through contracting with community-based care lead agencies. It is the further intent of the Legislature that communities have responsibility for and participate in ensuring safety, permanence, and well-being for all children in the state.

(b) The Legislature finds that when private entities assume responsibility for the care of children in the child protection and child welfare system, comprehensive oversight of the programmatic, administrative, and fiscal operation of those entities is essential. The Legislature further finds that the appropriate care of children is ultimately the responsibility of the state and that outsourcing such care does not relieve the state of its responsibility to ensure that appropriate care is provided.

(2) CHILD PROTECTION AND CHILD WELFARE OUTCOMES.—It is the goal of the department to protect the best interest of children by achieving the following outcomes in conjunction with the community-based care lead agency, community-based subcontractors, and the community alliance:

(a) Children are first and foremost protected from abuse and neglect.

(b) Children are safely maintained in their homes, if possible and appropriate.

(c) Services are provided to protect children and prevent their removal from their home.

(d) Children have permanency and stability in their living arrangements.

(e) Family relationships and connections are preserved for children.

(f) Families have enhanced capacity to provide for their children's needs.

(g) Children receive appropriate services to meet their educational needs.

(h) Children receive adequate services to meet their physical and mental health needs.

(i) Children develop the capacity for independent living and competence as an adult.

(3) DEFINITIONS.—As used in this part, except as otherwise provided, the term:

(a) "Care" means services of any kind which are designed to facilitate a child remaining safely in his or her own home, returning safely to his or her own home if he or she is removed from the home, or obtaining an alternative permanent home if he or she cannot remain at home or be returned home. The term includes, but is not be limited to, prevention, diversion, and related services.

(b) "Child" or "children" has the same meaning as provided in s. 39.01.

(c) "Community alliance" or "alliance" means the group of stakeholders, community leaders, client representatives, and funders of human services established pursuant to s. 20.19(5) to provide a focal point for community participation and oversight of community-based services.

(d) "Community-based care lead agency" or "lead agency" means a single entity with which the department has a contract for the provision of care for children in the child protection

and child welfare system in a community that is no smaller than a county and no larger than two contiguous judicial circuits. The secretary of the department may authorize more than one eligible lead agency within a single county if doing so will result in more effective delivery of services to children.

(e) "Related services" includes, but is not limited to, family preservation, independent living, emergency shelter, residential group care, foster care, therapeutic foster care, intensive residential treatment, foster care supervision, case management, coordination of mental health services, postplacement supervision, permanent foster care, and family reunification.

Section 30. Section 409.987, Florida Statutes, is created to read:

409.987 Lead agency procurement.—

(1) Community-based care lead agencies shall be procured by the department through a competitive process as required under chapter 287.

(2) The department shall produce a schedule for the procurement of community-based care lead agencies and provide the schedule to the community alliances established pursuant to s. 409.998 and post the schedule on the department's website.

(3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies.

(4) In order to serve as a lead agency, an entity must:

(a) Be organized as a Florida corporation or a governmental entity.

(b) Be governed by a board of directors or a board committee composed of board members. The membership of the board

of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must consist of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

1. At least 75 percent of the membership of the board of directors must consist of persons residing in this state, and at least 51 percent of the membership of the board of directors must consist of persons residing within the service area of the lead agency. If a board committee governs the lead agency, 100 percent of its membership must consist of persons residing within the service area of the lead agency.

2. The powers of the board of directors or board committee include, are not limited to, approving the lead agency's budget and setting the lead agency's operational policy and procedures. A board of directors must additionally have the power to hire the lead agency's executive director, unless a board committee governs the lead agency, in which case the board committee must have the power to confirm the selection of the lead agency's executive director.

(c) Demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a performance bond.

(5) The department's procurement team procuring any lead agencies' contracts must include individuals from the community alliance in the area to be served under the contract. All

meetings at which vendors make presentations to or negotiate with the procurement team shall be held in the area to be served by the contract.

(6) Upon award and execution of a contract between the department and a lead agency, the parties shall enter into a letter of engagement that the department will provide legal representation to the lead agency or its subcontractors for the preparation and presentation of dependency court proceedings. The department may not charge the lead agency for such legal representation.

Section 31. Section 409.988, Florida Statutes, is created to read:

409.988 Lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(a) Shall serve all children referred as a result of a report of abuse, neglect, or abandonment to the department's central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject of verified reports but who are at moderate to extremely high risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred. The lead agency may also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.

(b) Shall provide accurate and timely information necessary for oversight by the department pursuant to the child welfare

results-oriented accountability system required by s. 409.997.

(c) Shall follow the financial guidelines developed by the department and provide for a regular independent auditing of its financial activities. Such financial information shall be provided to the community alliance established under s. 409.998.

(d) Shall post on its website the current budget for the lead agency, including the salaries, bonuses, and other compensation paid, by position, for the agency's chief executive officer, chief financial officer, chief operating officer, or their equivalents.

(e) Shall prepare all judicial reviews, case plans, and other reports necessary for court hearings for dependent children, except those related to the investigation of a referral from the department's child abuse hotline, and shall submit these documents timely to the department's attorneys for review, any necessary revision, and filing with the court. The lead agency shall make the necessary staff available to department attorneys for preparation for dependency proceedings, and shall provide testimony and other evidence required for dependency court proceedings in coordination with the department's attorneys. This duty does not include the preparation of legal pleadings or other legal documents, which remain the responsibility of the department.

(f) Shall ensure that all individuals providing care for dependent children receive appropriate training and meet the minimum employment standards established by the department.

(g) Shall maintain eligibility to receive all available federal child welfare funds.

(h) Shall maintain written agreements with Healthy Families

Florida lead entities in its service area pursuant to s. 409.153 to promote cooperative planning for the provision of prevention and intervention services.

(i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services.

(j) May subcontract for the provision of services required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services provided.

(k) Shall post on its website by the 15th day of each month at a minimum the information contained in subparagraphs 1.-4. for the preceding calendar month regarding its case management services. The following information shall be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:

1. The average caseload of case managers, including only filled positions;

2. The turnover rate for case managers and case management supervisors for the previous 12 months;

3. The percentage of required home visits completed; and

4. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months.

(2) LICENSURE.—

(a) A lead agency must be licensed as a child-caring or child-placing agency by the department under this chapter.

(b) Each foster home, therapeutic foster home, emergency shelter, or other placement facility operated by the lead agency must be licensed by the department under chapter 402 or this chapter.

(c) Substitute care providers who are licensed under s. 409.175 and who have contracted with a lead agency are also authorized to provide registered or licensed family day care under s. 402.313 if such care is consistent with federal law and if the home has met the requirements of s. 402.313.

(d) In order to eliminate or reduce the number of duplicate inspections by various program offices, the department shall coordinate inspections required for licensure of agencies under this subsection.

(e) The department may adopt rules to administer this subsection.

(3) SERVICES.—A lead agency must serve dependent children through services that are supported by research or are best child welfare practices. The agency may also provide innovative services, including, but not limited to, family-centered, cognitive-behavioral, trauma-informed interventions designed to mitigate out-of-home placements.

(4) LEAD AGENCY ACTING AS GUARDIAN.—

(a) If a lead agency or other provider has accepted case management responsibilities for a child who is sheltered or found to be dependent and who is assigned to the care of the lead agency or other provider, the agency or provider may act as

the child's guardian for the purpose of registering the child in school if a parent or guardian of the child is unavailable and his or her whereabouts cannot reasonably be ascertained.

(b) The lead agency or other provider may also seek emergency medical attention for the child, but only if a parent or guardian of the child is unavailable, the parent or guardian's whereabouts cannot reasonably be ascertained, and a court order for such emergency medical services cannot be obtained because of the severity of the emergency or because it is after normal working hours.

(c) A lead agency or other provider may not consent to sterilization, abortion, or termination of life support.

(d) If a child's parents' rights have been terminated, the lead agency shall act as guardian of the child in all circumstances.

Section 32. Section 409.990, Florida Statutes, is created to read:

409.990 Funding for lead agencies.—A contract established between the department and a lead agency must be funded by a grant of general revenue, other applicable state funds, or applicable federal funding sources.

(1) The method of payment for a fixed-price contract with a lead agency must provide for a 2-month advance payment at the beginning of each fiscal year and equal monthly payments thereafter.

(2) Notwithstanding s. 215.425, all documented federal funds earned for the current fiscal year by the department and lead agencies which exceed the amount appropriated by the Legislature shall be distributed to all entities that

contributed to the excess earnings based on a schedule and methodology developed by the department and approved by the Executive Office of the Governor.

(a) Distribution shall be pro rata, based on total earnings, and shall be made only to those entities that contributed to excess earnings.

(b) Excess earnings of lead agencies shall be used only in the service district in which they were earned.

(c) Additional state funds appropriated by the Legislature for lead agencies or made available pursuant to the budgetary amendment process described in s. 216.177 shall be transferred to the lead agencies.

(d) The department shall amend a lead agency's contract to permit expenditure of the funds.

(3) Notwithstanding any other provision of this section, the amount of the annual contract for a lead agency may be increased by excess federal funds earned in accordance with s. 216.181(11).

(4) Each contract with a lead agency shall provide for the payment by the department to the lead agency of a reasonable administrative cost in addition to funding for the provision of services.

(5) A lead agency may carry forward documented unexpended state funds from one fiscal year to the next; however, the cumulative amount carried forward may not exceed 8 percent of the total contract. Any unexpended state funds in excess of that percentage must be returned to the department.

(a) The funds carried forward may not be used in any way that would create increased recurring future obligations, and

such funds may not be used for any type of program or service that is not currently authorized by the existing contract with the department.

(b) Expenditures of funds carried forward must be separately reported to the department.

(c) Any unexpended funds that remain at the end of the contract period shall be returned to the department.

(d) Funds carried forward may be retained through any contract renewals and any new procurements as long as the same lead agency is retained by the department.

(6) It is the intent of the Legislature to improve services and local participation in community-based care initiatives by fostering community support and providing enhanced prevention and in-home services, thereby reducing the risk otherwise faced by lead agencies. A community partnership matching grant program is established and shall be operated by the department to encourage local participation in community-based care for children in the child welfare system. A children's services council or another local entity that makes a financial commitment to a community-based care lead agency may be eligible for a matching grant. The total amount of the local contribution may be matched on a one-to-one basis up to a maximum annual amount of $500,000 per lead agency. Awarded matching grant funds may be used for any prevention or in-home services that can be reasonably expected to reduce the number of children entering the child welfare system. Funding available for the matching grant program is subject to legislative appropriation of nonrecurring funds provided for this purpose.

(7)(a) The department, in consultation with the Florida

Coalition for Children, Inc., shall develop and implement a community-based care risk pool initiative to mitigate the financial risk to eligible lead agencies. This initiative must include:

1. A risk pool application and protocol developed by the department which outlines submission criteria, including, but not limited to, financial and program management, descriptive data requirements, and timeframes for submission of applications. Requests for funding from risk pool applicants must be based on relevant and verifiable service trends and changes that have occurred during the current fiscal year. The application must confirm that expenditure of approved risk pool funds by the lead agency will be completed within the current fiscal year.

2. A risk pool peer review committee, appointed by the secretary and consisting of department staff and representatives from at least three nonapplicant lead agencies, which reviews and assesses all risk pool applications. Upon completion of each application review, the peer review committee shall report its findings and recommendations to the secretary, providing, at a minimum, the following information:

a. Justification for the specific funding amount required by the risk pool applicant based on the current year's service trend data, including validation that the applicant's financial need was caused by circumstances beyond the control of the lead agency management;

b. Verification that the proposed use of risk pool funds meets at least one of the purposes specified in paragraph (c); and

c. Evidence of technical assistance provided in an effort to avoid the need to access the risk pool and recommendations for technical assistance to the lead agency to ensure that risk pool funds are expended effectively and that the agency's need for future risk pool funding is diminished.

(b) Upon approval by the secretary of a risk pool application, the department may request funds from the risk pool in accordance with s. 216.181(6)(a).

(c) The purposes for which the community-based care risk pool shall be used include:

1. Significant changes in the number or composition of clients eligible to receive services.

2. Significant changes in the services that are eligible for reimbursement.

3. Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a lead agency.

4. Significant changes in the mix of available funds.

(d) The department may also request in its annual legislative budget request, and the Governor may recommend, that the funding necessary to effect paragraph (c) be appropriated to the department. In addition, the department may request the allocation of funds from the community-based care risk pool in accordance with s. 216.181(6)(a). Funds from the pool may be used to match available federal dollars.

1. Such funds shall constitute partial security for contract performance by lead agencies and shall be used to offset the need for a performance bond.

2. The department may separately require a bond to mitigate

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the financial consequences of potential acts of malfeasance or misfeasance or criminal violations by the service provider.

Section 33. Section 409.16713, Florida Statutes, is transferred, renumbered as section 409.991, Florida Statutes, and paragraph (a) of subsection (1) of that section is amended to read:

409.991 ~~409.16713~~ Allocation of funds for community-based care lead agencies.—

(1) As used in this section, the term:

(a) "Core services funding" means all funds allocated to community-based care lead agencies operating under contract with the department pursuant to s. 409.987 ~~s. 409.1671~~, with the following exceptions:

1. Funds appropriated for independent living;

2. Funds appropriated for maintenance adoption subsidies;

3. Funds allocated by the department for protective investigations training;

4. Nonrecurring funds;

5. Designated mental health wrap-around services funds; and

6. Funds for special projects for a designated community-based care lead agency.

Section 34. Section 409.992, Florida Statutes, is created to read:

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies shall be governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical

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advice in the development of the financial guidelines.

(2) Notwithstanding any other provision of law, a community-based care lead agency may make expenditures for staff cellular telephone allowances, contracts requiring deferred payments and maintenance agreements, security deposits for office leases, related agency professional membership dues other than personal professional membership dues, promotional materials, and grant writing services. Expenditures for food and refreshments, other than those provided to clients in the care of the agency or to foster parents, adoptive parents, and caseworkers during training sessions, are not allowable.

(3) A lead community-based care agency and its subcontractors are exempt from state travel policies as provided in s. 112.061(3)(a) for their travel expenses incurred in order to comply with the requirements of this section.

Section 35. Section 409.993, Florida Statutes, is created to read:

409.993 Lead agencies and subcontractor liability.—

(1) FINDINGS.—

(a) The Legislature finds that the state has traditionally provided foster care services to children who are the responsibility of the state. As such, foster children have not had the right to recover for injuries beyond the limitations specified in s. 768.28. The Legislature has determined that foster care and related services should be outsourced pursuant to this section and that the provision of such services is of paramount importance to the state. The purpose of such outsourcing is to increase the level of safety, security, and stability of children who are or become the responsibility of

the state. One of the components necessary to secure a safe and stable environment for such children is the requirement that private providers maintain liability insurance. As such, insurance needs to be available and remain available to nongovernmental foster care and related services providers without the resources of such providers being significantly reduced by the cost of maintaining such insurance.

(b) The Legislature further finds that, by requiring the following minimum levels of insurance, children in outsourced foster care and related services will gain increased protection and rights of recovery in the event of injury than currently provided in s. 768.28.

(2) LEAD AGENCY LIABILITY.—

(a) Other than an entity to which s. 768.28 applies, an eligible community-based care lead agency, or its employees or officers, except as otherwise provided in paragraph (b), shall, as a part of its contract, obtain general liability insurance coverage sufficient to pay any successful tort action up to the liability caps established in this subsection. In a tort action brought against such an eligible community-based care lead agency or employee, net economic damages shall be limited to $2 million per liability claim and $200,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In any tort action brought against such an eligible community-based care lead agency, noneconomic damages shall be limited to $400,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits

specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76. The community-based care lead agency is not liable in tort for the acts or omissions of its subcontractors or the officers, agents, or employees of its subcontractors.

(b) The liability of an eligible community-based care lead agency described in this section shall be exclusive and in place of all other liability of such lead agency. The same immunities from liability enjoyed by such lead agencies shall extend to each employee of the lead agency if he or she is acting in furtherance of the lead agency's business, including the transportation of clients served, as described in this subsection, in privately owned vehicles. Such immunities are not applicable to a lead agency or an employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression if such acts result in injury or death or such acts proximately cause such injury or death. Such immunities are not applicable to employees of the same lead agency when each is operating in the furtherance of the agency's business, but they are assigned primarily to unrelated work within private or public employment. The same immunity provisions enjoyed by a lead agency also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who, in the course and scope of his or her duties, acts in a managerial or policymaking capacity and the conduct that caused the alleged injury arose within the course and scope of those managerial or policymaking duties. As used in this subsection and subsection (3), the term "culpably negligent

manner" means reckless indifference or grossly careless disregard of human life.

(3) SUBCONTRACTOR LIABILITY.—

(a) A subcontractor of an eligible community-based care lead agency that is a direct provider of foster care and related services to children and families, and its employees or officers, except as otherwise provided in paragraph (b), must, as a part of its contract, obtain general liability insurance coverage sufficient to pay any successful tort action up to the liability caps established in this subsection. In a tort action brought against such subcontractor or employee, net economic damages shall be limited to $2 million per liability claim and $200,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In a tort action brought against such subcontractor, noneconomic damages shall be limited to $400,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76.

(b) The liability of a subcontractor of an eligible community-based care lead agency that is a direct provider of foster care and related services as described in this section is exclusive and in place of all other liability of such provider. The same immunities from liability enjoyed by such subcontractor provider extend to each employee of the subcontractor when such employee is acting in furtherance of the subcontractor's

business, including the transportation of clients served, as described in this subsection, in privately owned vehicles. Such immunities are not applicable to a subcontractor or an employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression if such acts result in injury or death or if such acts proximately cause such injury or death. Such immunities are not applicable to employees of the same subcontractor who are operating in the furtherance of the subcontractor's business but are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by a subcontractor also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who, in the course and scope of his or her duties, acts in a managerial or policymaking capacity and the conduct that caused the alleged injury arose within the course and scope of those managerial or policymaking duties.

(4) LIMITATIONS ON DAMAGES.—The Legislature is cognizant of the increasing costs of goods and services each year and recognizes that fixing a set amount of compensation has the effect of a reduction in compensation each year. Accordingly, the conditional limitations on damages in this section shall be increased at the rate of 5 percent each year, prorated from July 1, 2014, to the date at which damages subject to such limitations are awarded by final judgment or settlement.

Section 36. Section 409.1675, Florida Statutes, is transferred, renumbered as section 409.994, Florida Statutes, and amended to read:

409.994 ~~409.1675~~ ~~Lead~~ Community-based care lead agencies ~~providers~~; receivership.—

(1) The Department of Children and Families ~~Family Services~~ may petition a court of competent jurisdiction for the appointment of a receiver for a ~~lead~~ community-based care lead agency ~~provider~~ established pursuant to s. 409.987 if ~~s. 409.1671 when~~ any of the following conditions exist:

(a) The lead agency ~~community-based provider~~ is operating without a license as a child-placing agency.

(b) The lead agency ~~community-based provider~~ has given less than 120 days' notice of its intent to cease operations, and arrangements have not been made for another lead agency ~~community based provider~~ or for the department to continue the uninterrupted provision of services.

(c) The department determines that conditions exist in the lead agency ~~community-based provider~~ which present an imminent danger to the health, safety, or welfare of the dependent children under that agency's ~~provider's~~ care or supervision. Whenever possible, the department shall make a reasonable effort to facilitate the continued operation of the program.

(d) The lead agency ~~community-based provider~~ cannot meet its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities shall constitute prima facie evidence that the lead agency ~~community-based provider~~ lacks the financial ability to meet its financial obligations.

(2)(a) The petition for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having statutory precedence, has

priority.

(b) A hearing shall be conducted within 5 days after the filing of the petition, at which time interested parties shall have the opportunity to present evidence as to whether a receiver should be appointed. The department shall give reasonable notice of the hearing on the petition to the lead agency ~~community-based provider~~.

(c) The court shall grant the petition upon finding that one or more of the conditions in subsection (1) exists and the continued existence of the condition or conditions jeopardizes the health, safety, or welfare of dependent children. A receiver may be appointed ex parte when the court determines that one or more of the conditions in subsection (1) exists. After such finding, the court may appoint any person, including an employee of the department who is qualified by education, training, or experience to carry out the duties of the receiver pursuant to this section, except that the court may ~~shall~~ not appoint any member of the governing board or any officer of the lead agency ~~community-based provider~~. The receiver may be selected from a list of persons qualified to act as receivers which is developed by the department and presented to the court with each petition of receivership.

(d) A receiver may be appointed for up to 90 days, and the department may petition the court for additional 30-day extensions. Sixty days after appointment of a receiver and every 30 days thereafter until the receivership is terminated, the department shall submit to the court an assessment of the lead agency's ~~community-based provider's~~ ability to ensure the health, safety, and welfare of the dependent children under its

supervision.

(3) The receiver shall take such steps as are reasonably necessary to ensure the continued health, safety, and welfare of the dependent children under the supervision of the lead agency ~~community-based provider~~ and shall exercise those powers and perform those duties set out by the court, including, but not limited to:

(a) Taking such action as is reasonably necessary to protect or conserve the assets or property of the lead agency ~~community-based provider~~. The receiver may use the assets and property and any proceeds from any transfer thereof only in the performance of the powers and duties provided ~~set forth~~ in this section and by order of the court.

(b) Using the assets of the lead agency ~~community-based provider~~ in the provision of care and services to dependent children.

(c) Entering into contracts and hiring agents and employees to carry out the powers and duties of the receiver under this section.

(d) Having full power to direct, manage, hire, and discharge employees of the lead agency ~~community-based provider~~. The receiver shall hire and pay new employees at the rate of compensation, including benefits, approved by the court.

(e) Honoring all leases, mortgages, and contractual obligations of the lead agency ~~community-based provider~~, but only to the extent of payments that become due during the period of the receivership.

(4)(a) The receiver shall deposit funds received in a separate account and shall use this account for all

disbursements.

(b) A payment to the receiver of any sum owing to the lead agency ~~community based provider~~ shall discharge any obligation to the provider to the extent of the payment.

(5) A receiver may petition the court for temporary relief from obligations entered into by the lead agency ~~community-based provider~~ if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was entered into, or if any material provision of the agreement was unreasonable when compared to contracts negotiated under similar conditions. Any relief in this form provided by the court shall be limited to the life of the receivership, unless otherwise determined by the court.

(6) The court shall set the compensation of the receiver, which shall be considered a necessary expense of a receivership and may grant to the receiver such other authority necessary to ensure the health, safety, and welfare of the children served.

(7) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts, or breaches of fiduciary duty. This section may ~~shall~~ not be interpreted to be a waiver of sovereign immunity should the department be appointed receiver.

(8) If the receiver is not the department, the court may require a receiver to post a bond to ensure the faithful performance of these duties.

(9) The court may terminate a receivership when:

(a) The court determines that the receivership is no longer necessary because the conditions that gave rise to the

receivership no longer exist; or

(b) The department has entered into a contract with a new lead agency ~~community based provider~~ pursuant to s. 409.987 ~~s. 409.1671~~, and that contractor is ready and able to assume the duties of the previous lead agency ~~provider~~.

(10) Within 30 days after the termination, unless this time period is extended by the court, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed, and of the expenses of the receivership.

(11) ~~Nothing in~~ This section does not ~~shall be construed to~~ relieve any employee of the lead agency ~~community-based provider~~ placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the employee before ~~prior to~~ the appointment of a receiver, and~~; nor shall anything contained in~~ this section does not ~~be construed to~~ suspend during the receivership any obligation of the employee for payment of taxes or other operating or maintenance expenses of the lead agency ~~community-based provider~~ or for the payment of mortgages or liens. The lead agency ~~community-based provider~~ shall retain the right to sell or mortgage any facility under receivership, subject to the prior approval of the court that ordered the receivership.

Section 37. Section 409.996, Florida Statutes, is created to read:

409.996 Duties of the Department of Children and Families.—The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains

responsibility for the quality of contracted services and programs and shall ensure that services are delivered in accordance with applicable federal and state statutes and regulations.

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies pursuant to s. 409.988. At a minimum, the contracts must:

(a) Provide for the services needed to accomplish the duties established in s. 409.988 and provide information to the department which is necessary to meet the requirements for a quality assurance program pursuant to subsection (18) and the child welfare results-oriented accountability system pursuant to s. 409.997.

(b) Provide for graduated penalties for failure to comply with contract terms. Such penalties may include financial penalties, enhanced monitoring and reporting, corrective action plans, and early termination of contracts or other appropriate action to ensure contract compliance.

(c) Ensure that the lead agency shall furnish current and accurate information on its activities in all cases in client case records in the state's statewide automated child welfare information system.

(d) Specify the procedures to be used by the parties to resolve differences in interpreting the contract or to resolve disputes as to the adequacy of the parties' compliance with their respective obligations under the contract.

(2) The department must adopt written policies and procedures for monitoring the contract for delivery of services by lead agencies which must be posted on the department's

website. These policies and procedures must, at a minimum, address the evaluation of fiscal accountability and program operations, including provider achievement of performance standards, provider monitoring of subcontractors, and timely followup of corrective actions for significant monitoring findings related to providers and subcontractors. These policies and procedures must also include provisions for reducing the duplication of the department's program monitoring activities both internally and with other agencies, to the extent possible. The department's written procedures must ensure that the written findings, conclusions, and recommendations from monitoring the contract for services of lead agencies are communicated to the director of the provider agency and the community alliance as expeditiously as possible.

(3) The department shall receive federal and state funds as appropriated for the operation of the child welfare system and shall transmit these funds to the lead agencies as agreed to in the contract. The department retains responsibility for the appropriate spending of these funds. The department shall monitor lead agencies to assess compliance with the financial guidelines established pursuant to s. 409.992 and other applicable state and federal laws.

(4) The department shall provide technical assistance and consultation to lead agencies in the provision of care to children in the child protection and child welfare system.

(5) The department retains the responsibility for the review, approval or denial, and issuances of all foster home licenses.

(6) The department shall process all applications submitted

by lead agencies for the Interstate Compact on the Placement of Children and the Interstate Compact on Adoption and Medical Assistance.

(7) The department shall assist lead agencies with access to and coordination with other service programs within the department.

(8) The department shall determine Medicaid eligibility for all referred children and shall coordinate services with the Agency for Health Care Administration.

(9) The department shall develop, in cooperation with the lead agencies and the third-party credentialing entity approved pursuant to s. 402.40(3), a standardized competency-based curriculum for certification training for child protection staff.

(10) The department shall maintain the statewide adoptions website and provide information and training to the lead agencies relating to the website.

(11) The department shall provide training and assistance to lead agencies regarding the responsibility of lead agencies relating to children receiving supplemental security income, social security, railroad retirement, or veterans' benefits.

(12) With the assistance of a lead agency, the department shall develop and implement statewide and local interagency agreements needed to coordinate services for children and parents involved in the child welfare system who are also involved with the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Education, the Department of Health, and other governmental organizations that share responsibilities for children or parents in the child

welfare system.

(13) With the assistance of a lead agency, the department shall develop and implement a working agreement between the lead agency and the substance abuse and mental health managing entity to integrate services and supports for children and parents serviced in the child welfare system.

(14) The department shall work with the Agency for Health Care Administration to provide each Medicaid-eligible child with early and periodic screening, diagnosis, and treatment, including 72-hour screening, periodic child health checkups, and prescribed followup for ordered services, including, but not limited to, medical, dental, and vision care.

(15) The department shall assist lead agencies in developing an array of services in compliance with the Title IV-E waiver and shall monitor the provision of such services.

(16) The department shall provide a mechanism to allow lead agencies to request a waiver of department policies and procedures that create inefficiencies or inhibit the performance of the lead agency's duties.

(17) The department shall directly or through contract provide attorneys to prepare and present cases in dependency court and shall ensure that the court is provided with adequate information for informed decisionmaking in dependency cases, including a fact sheet for each case which lists the names and contact information for any child protective investigator, child protective investigation supervisor, case manager, and case manager supervisor, and the regional department official responsible for the lead agency contract. For the Sixth Judicial Circuit, the department shall contract with the state attorney

for the provision of these services.

(18) The department, in consultation with lead agencies, shall establish a quality assurance program for contracted services to dependent children. The quality assurance program shall be based on standards established by federal and state law and national accrediting organizations.

(a) The department must evaluate each lead agency under contract at least annually. These evaluations shall cover the programmatic, operational, and fiscal operations of the lead agency and must be consistent with the child welfare results-oriented accountability system required by s. 409.997. The department must consult with dependency judges in the circuit or circuits served by the lead agency on the performance of the lead agency.

(b) The department and each lead agency shall monitor out-of-home placements, including the extent to which sibling groups are placed together or provisions to provide visitation and other contacts if siblings are separated. The data shall identify reasons for sibling separation. Information related to sibling placement shall be incorporated into the results-oriented accountability system required pursuant to s. 409.997 and in the evaluation of the outcome specified in s. 409.986(2)(e). The information related to sibling placement shall also be made available to the institute established pursuant s. 1004.615 for use in assessing the performance of child welfare services in relation to the outcome specified in s. 409.986(2)(e).

(c) The department shall, to the extent possible, use independent financial audits provided by the lead agency to

eliminate or reduce the ongoing contract and administrative reviews conducted by the department. If the department determines that such independent financial audits are inadequate, other audits, as necessary, may be conducted by the department. This paragraph does not abrogate the requirements of s. 215.97.

(d) The department may suggest additional items to be included in such independent financial audits to meet the department's needs.

(e) The department may outsource programmatic, administrative, or fiscal monitoring oversight of lead agencies.

(f) A lead agency must assure that all subcontractors are subject to the same quality assurance activities as the lead agency.

(19) The department and its attorneys have the responsibility to ensure that the court is fully informed about issues before it, to make recommendations to the court, and to present competent evidence, including testimony by the department's employees, contractors, and subcontractors, as well as other individuals, to support all recommendations made to the court. The department's attorneys shall coordinate lead agency or subcontractor staff to ensure that dependency cases are presented appropriately to the court, giving deference to the information developed by the case manager and direction to the case manager if more information is needed.

(20) The department, in consultation with lead agencies, shall develop a dispute resolution process so that disagreements between legal staff, investigators, and case management staff can be resolved in the best interest of the child in question

before court appearances regarding that child.

Section 38. Section 409.997, Florida Statutes, is created to read:

409.997 Child welfare results-oriented accountability system.—

(1) The department and its contract providers, including lead agencies, community-based care providers, and other community partners participating in the state's child protection and child welfare system, share the responsibility for achieving the outcome goals specified in s. 409.986(2).

(2) In order to assess the achievement of the outcome goals specified in s. 409.986(2), the department shall maintain a comprehensive, results-oriented accountability system that monitors the use of resources, the quality and amount of services provided, and child and family outcomes through data analysis, research review, evaluation, and quality improvement. The system shall provide information about individual entities' performance as well as the performance of groups of entities working together as an integrated system of care on a local, regional, and statewide basis. In maintaining the accountability system, the department shall:

(a) Identify valid and reliable outcome measures for each of the goals specified in this subsection. The outcome data set must consist of a limited number of understandable measures using available data to quantify outcomes as children move through the system of care. Such measures may aggregate multiple variables that affect the overall achievement of the outcome goals. Valid and reliable measures must be based on adequate sample sizes, be gathered over suitable time periods, and

reflect authentic rather than spurious results, and may not be susceptible to manipulation.

(b) Implement a monitoring system to track the identified outcome measures on a statewide, regional, and provider-specific basis. The monitoring system must identify trends and chart progress toward achievement of the goals specified s. 409.986(2). The requirements of the monitoring system may be incorporated into the quality assurance program required under s. 409.996(18).

(c) Develop and maintain an analytical system that builds on the outcomes monitoring system to assess the statistical validity of observed associations between child welfare interventions and the measured outcomes. The analysis must use quantitative methods to adjust for variations in demographic or other conditions. The analysis must include longitudinal studies to evaluate longer-term outcomes such as continued safety, family permanence, and transition to self-sufficiency. The analysis may also include qualitative research methods to provide insight into statistical patterns.

(d) Develop and maintain a program of research review to identify interventions that are supported by evidence as causally linked to improved outcomes.

(e) Support an ongoing process of evaluation to determine the efficacy and effectiveness of various interventions. Efficacy evaluation is intended to determine the validity of a causal relationship between an intervention and an outcome. Effectiveness evaluation is intended to determine the extent to which the results can be generalized.

(f) Develop and maintain an inclusive, interactive, and

evidence-supported program of quality improvement which promotes individual skill building as well as organizational learning.

(g) Develop and implement a method for making the results of the accountability system transparent for all parties involved in the child welfare system as well as policymakers and the public. The presentation of the results shall provide a comprehensible, visual report card for the state and each community-based care region, indicating the current status relative to each goal and trends in that status over time. The presentation shall identify and report outcome measures that assess the performance of the department, the community-based care lead agency, and the lead agency's subcontractors working together as an integrated system of care.

(3) The department shall establish a technical advisory panel consisting of representatives from the Florida Institute for Child Welfare established in s. 1004.615, lead agencies, community-based care providers, other contract providers, community alliances, and family representatives. The President of the Senate and the Speaker of the House of Representatives shall each appoint a member to serve as a legislative liaison to the panel. The technical advisory panel shall advise the department on meeting the requirements of this section.

(4) The accountability system may not rank or compare performance among community-based care regions unless adequate and specific adjustments are adopted that account for the diversity in regions' demographics, resources, and other relevant characteristics.

(5) The results of the accountability system must provide the basis for performance incentives if funds for such payments

are made available through the General Appropriations Act.

(6) At least quarterly, the department shall make the results of the accountability system available to the public through publication on its website. The website must allow for custom searches of the performance data.

(7) By October 1 of each year, the department shall submit a report on the statewide and individual community-based care lead agency results for child protection and child welfare systems. The department shall use the accountability system and consult with the community alliance and the chief judge or judges in the community-based care service area to prepare the report. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 39. Section 409.998, Florida Statutes, is created to read:

409.998 Community-based care; assessment by community alliances.—To provide independent, community-focused assessment of child protection and child welfare services and the local system of community-based care, community alliances created in s. 20.19(5) shall, with the assistance of the department, perform the following duties:

(1) Conduct a needs assessment and establish community priorities for child protection and child welfare services.

(2) Review the performance of the department, the sheriff's office, if the office provides child protective services, and the lead agency individually and as an integrated system of care, and advise the department, the sheriff's office, if applicable, and the lead agency regarding concerns and suggested

areas of improvement.

(3) Recommend a competitive procurement for the lead agency if programmatic or financial performance is poor. The community alliance shall make recommendations on the development of the procurement document for such competitive procurement and may suggest specific requirements relating to local needs and services.

(4) Recommend a contract extension for the lead agency if programmatic and financial performance is superior.

(5) In partnership with the Florida Institute for Child Welfare established in s. 1004.615, develop recommendations and submit such recommendations to the department and the community-based care lead agency to improve child protection and child welfare policies and practices.

(6) Promote greater community involvement in community-based care through participation in community-based care lead agency services and activities, recruitment and retention of community volunteers, and public awareness efforts.

Section 40. Section 827.10, Florida Statutes, is created to read:

827.10 Unlawful desertion of a child.—

(1) As used in this section, the term:

(a) "Care" means support and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child.

(b) "Caregiver" has the same meaning as provided in s. 39.01.

(c) "Child" means a child for whose care the caregiver is legally responsible.

(d) "Desertion" or "deserts" means to leave a child in a place or with a person other than a relative with the intent not to return to the child and with the intent not to provide for the care of the child.

(e) "Relative" has the same meaning as provided in s. 39.01.

(2) A caregiver who deserts a child under circumstances in which the caregiver knew or should have known that the desertion exposes the child to unreasonable risk of harm commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not apply to a person who surrenders a newborn infant in compliance with s. 383.50.

(4) This section does not preclude prosecution for a criminal act under any other law, including, but not limited to, prosecution of child abuse or neglect of a child under s. 827.03.

Section 41. Paragraph (d) of subsection (4) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

(4)

(d) The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is ~~an~~ alleged to have committed juvenile sexual abuse ~~offender,~~ as defined in s. 39.01; or has pled guilty or nolo

contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 42. Section 1004.615, Florida Statutes, is created to read:

1004.615 Florida Institute for Child Welfare.—

(1) There is established the Florida Institute for Child Welfare within the Florida State University College of Social Work. The purpose of the institute is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development. The institute shall consist of a consortium of public and private universities offering degrees in social work and shall be housed within the Florida State University College of Social Work.

(2) Using such resources as authorized in the General Appropriations Act, the Department of Children and Families shall contract with the institute for performance of the duties described in subsection (4) using state appropriations, public and private grants, and other resources obtained by the institute.

(3) The institute shall work with the department, sheriffs providing child protective investigative services, community-based care lead agencies, community-based care provider organizations, the court system, the Department of Juvenile

Justice, the federally recognized statewide association for Florida's certified domestic violence centers, and other partners who contribute to and participate in providing child protection and child welfare services.

(4) The institute shall:

(a) Maintain a program of research which contributes to scientific knowledge and informs both policy and practice related to child safety, permanency, and child and family well-being.

(b) Advise the department and other organizations participating in the child protection and child welfare system regarding scientific evidence on policy and practice related to child safety, permanency, and child and family well-being.

(c) Provide advice regarding management practices and administrative processes used by the department and other organizations participating in the child protection and child welfare system and recommend improvements that reduce burdensome, ineffective requirements for frontline staff and their supervisors while enhancing their ability to effectively investigate, analyze, problem solve, and supervise.

(d) Assess the performance of child protection and child welfare services based on specific outcome measures.

(e) Evaluate the scope and effectiveness of preservice and inservice training for child protection and child welfare employees and advise and assist the department in efforts to improve such training.

(f) Assess the readiness of social work graduates to assume job responsibilities in the child protection and child welfare system and identify gaps in education which can be addressed

through the modification of curricula or the establishment of industry certifications.

(g) Develop and maintain a program of professional support including training courses and consulting services that assist both individuals and organizations in implementing adaptive and resilient responses to workplace stress.

(h) Participate in the department's critical incident response team, assist in the preparation of reports about such incidents, and support the committee review of reports and development of recommendations.

(i) Identify effective policies and promising practices, including, but not limited to, innovations in coordination between entities participating in the child protection and child welfare system, data analytics, working with the local community, and management of human service organizations, and communicate these findings to the department and other organizations participating in the child protection and child welfare system.

(j) Develop a definition of a child or family at high risk of abuse or neglect. Such a definition must consider characteristics associated with a greater probability of abuse and neglect.

(5) The President of the Florida State University shall appoint a director of the institute. The director must be a child welfare professional with a degree in social work who holds a faculty appointment in the Florida State University College of Social Work. The institute shall be administered by the director, and the director's office shall be located at the Florida State University. The director is responsible for

overall management of the institute and for developing and executing the work of the institute consistent with the responsibilities in subsection (4). The director shall engage individuals in other state universities with accredited colleges of social work to participate in the institute. Individuals from other university programs relevant to the institute's work, including, but not limited to, economics, management, law, medicine, and education, may also be invited by the director to contribute to the institute. The universities participating in the institute shall provide facilities, staff, and other resources to the institute to establish statewide access to institute programs and services.

(6) By October 1 of each year, the institute shall provide a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which outlines its activities in the preceding year, reports significant research findings, as well as results of other programs, and provides specific recommendations for improving child protection and child welfare services.

(a) The institute shall include an evaluation of the results of the educational and training requirements for child protection and child welfare personnel established under this act and recommendations for application of the results to child protection personnel employed by sheriff's offices providing child protection services in its report due October 1, 2017.

(b) The institute shall include an evaluation of the effects of the other provisions of this act and recommendations for improvements in child protection and child welfare services in its report due October 1, 2018.

(7) The institute shall submit a report with recommendations for improving the state's child welfare system. The report shall address topics including, but not limited to, enhancing working relationships between the entities involved in the child protection and child welfare system, identification of and replication of best practices, reducing paperwork, increasing the retention of child protective investigators and case managers, and caring for medically complex children within the child welfare system, with the goal of allowing the child to remain in the least restrictive and most nurturing environment. The institute shall submit an interim report by February 1, 2015, and final report by November 1, 2015, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 43. Paragraph (h) is added to subsection (1) of section 1009.25, Florida Statutes, to read:

1009.25 Fee exemptions.—

(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs, Florida College System institution, or state university:

(h) Pursuant to s. 402.403, child protection and child welfare personnel as defined in s. 402.402 who are enrolled in an accredited bachelor's degree or master's degree in social work program or completing coursework required pursuant to s. 402.402(2), provided that the student attains at least a grade of "B" in all courses for which tuition and fees are exempted.

Section 44. Section 402.401, Florida Statutes, is repealed.

Section 45. Section 409.1671, Florida Statutes, is

repealed.

Section 46. Section 409.16715, Florida Statutes, is repealed.

Section 47. Section 409.16745, Florida Statutes, is repealed.

Section 48. Section 1004.61, Florida Statutes, is repealed.

Section 49. Paragraph (g) of subsection (1) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(1)

(g) Nothing in this chapter or in the contracting with community-based care providers for foster care and related services as specified in s. 409.987 ~~s. 409.1671~~ shall be construed to remove or reduce the duty and responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

Section 50. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(32) ~~s. 39.01(33)~~ or (47), acting in an official capacity, has committed an act of child abuse,

abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 51. Subsection (1) of section 39.524, Florida Statutes, is amended to read:

39.524 Safe-harbor placement.—

(1) Except as provided in s. 39.407 or s. 985.801, a dependent child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01(68)(g) ~~s. 39.01(67)(g)~~ must be assessed for placement in a safe house as provided in s. 409.1678. The assessment shall be conducted by the department or its agent and shall incorporate and address current and historical information from any law enforcement reports; psychological testing or evaluation that has occurred; current and historical information from the guardian ad litem, if one has been assigned; current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; and any other information concerning the availability and suitability of safe-house placement. If such placement is determined to be appropriate as a result of this assessment, the child may be placed in a safe house, if one is available. As used in this section, the term "available" as it relates to a placement means a placement that is located within the circuit or otherwise reasonably accessible.

Section 52. Subsection (6) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(6) The child restraint requirements imposed by this section do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation. It is the obligation and responsibility of the parent, guardian, or other person

responsible for a child's welfare~~,~~ as defined in s. 39.01~~(47),~~ to comply with the requirements of this section.

Section 53. Subsections (1), (3), and (5) of section 409.1676, Florida Statutes, are amended to read:

409.1676 Comprehensive residential group care services to children who have extraordinary needs.—

(1) It is the intent of the Legislature to provide comprehensive residential group care services, including residential care, case management, and other services, to children in the child protection system who have extraordinary needs. These services are to be provided in a residential group care setting by a not-for-profit corporation or a local government entity under a contract with the Department of Children and Families ~~Family Services~~ or by a lead agency as described in s. 409.987 ~~s. 409.1671~~. These contracts should be designed to provide an identified number of children with access to a full array of services for a fixed price. Further, it is the intent of the Legislature that the Department of Children and Families ~~Family Services~~ and the Department of Juvenile Justice establish an interagency agreement by December 1, 2002, which describes respective agency responsibilities for referral, placement, service provision, and service coordination for dependent and delinquent youth who are referred to these residential group care facilities. The agreement must require interagency collaboration in the development of terms, conditions, and performance outcomes for residential group care contracts serving the youth referred who have been adjudicated both dependent and delinquent.

(3) The department, in accordance with a specific

appropriation for this program, shall contract with a not-for-profit corporation, a local government entity, or the lead agency that has been established in accordance with s. 409.987 ~~s. 409.1671~~ for the performance of residential group care services described in this section. A lead agency that is currently providing residential care may provide this service directly with the approval of the local community alliance. The department or a lead agency may contract for more than one site in a county if that is determined to be the most effective way to achieve the goals set forth in this section.

(5) The department may transfer all casework responsibilities for children served under this program to the entity that provides this service, including case management and development and implementation of a case plan in accordance with current standards for child protection services. When the department establishes this program in a community that has a lead agency as described in s. 409.987 ~~s. 409.1671~~, the casework responsibilities must be transferred to the lead agency.

Section 54. Subsection (2) of section 409.1677, Florida Statutes, is amended to read:

409.1677 Model comprehensive residential services programs.—

(2) The department shall establish a model comprehensive residential services program in Manatee and Miami-Dade Counties through a contract with the designated lead agency established in accordance with s. 409.987 ~~s. 409.1671~~ or with a private entity capable of providing residential group care and home-based care and experienced in the delivery of a range of services to foster children, if no lead agency exists. These

model programs are to serve that portion of eligible children within each county which is specified in the contract, based on funds appropriated, to include a full array of services for a fixed price. The private entity or lead agency is responsible for all programmatic functions necessary to carry out the intent of this section.

Section 55. Paragraph (d) of subsection (1) of section 409.1678, Florida Statutes, is amended to read:

409.1678 Safe harbor for children who are victims of sexual exploitation.—

(1) As used in this section, the term:

(d) "Sexually exploited child" means a dependent child who has suffered sexual exploitation as defined in s. 39.01(68)(g) ~~s. 39.01(67)(g)~~ and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

Section 56. Subsection (24) of section 409.906, Florida Statutes, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees,

reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(24) CHILD-WELFARE-TARGETED CASE MANAGEMENT.—The Agency for Health Care Administration, in consultation with the Department of Children and Families ~~Family Services~~, may establish a targeted case-management project in those counties identified by the Department of Children and Families ~~Family Services~~ and for all counties with a community-based child welfare project, as authorized under s. 409.987 ~~s. 409.1671,~~ which have been specifically approved by the department. The covered group of individuals who are eligible to receive targeted case management include children who are eligible for Medicaid; who are between the ages of birth through 21; and who are under protective supervision or postplacement supervision, under foster-care supervision, or in shelter care or foster care. The number of individuals who are eligible to receive targeted case management is limited to the number for whom the Department of Children and Families ~~Family Services~~ has matching funds to cover the costs. The general revenue funds required to match the funds for services provided by the community-based child welfare projects

are limited to funds available for services described under s. 409.990 ~~s. 409.1671~~. The Department of Children and Families ~~Family Services~~ may transfer the general revenue matching funds as billed by the Agency for Health Care Administration.

Section 57. Paragraph (b) of subsection (4) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. part 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a

provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records,

clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(4) The agency may contract with:

(b) An entity that is providing comprehensive behavioral health care services to certain Medicaid recipients through a capitated, prepaid arrangement pursuant to the federal waiver provided for by s. 409.905(5). Such entity must be licensed under chapter 624, chapter 636, or chapter 641, or authorized under paragraph (c) or paragraph (d), and must possess the clinical systems and operational competence to manage risk and provide comprehensive behavioral health care to Medicaid recipients. As used in this paragraph, the term "comprehensive behavioral health care services" means covered mental health and substance abuse treatment services that are available to Medicaid recipients. The secretary of the Department of Children and Families ~~Family Services~~ shall approve provisions of procurements related to children in the department's care or custody before enrolling such children in a prepaid behavioral health plan. Any contract awarded under this paragraph must be competitively procured. In developing the behavioral health care prepaid plan procurement document, the agency shall ensure that

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the procurement document requires the contractor to develop and implement a plan to ensure compliance with s. 394.4574 related to services provided to residents of licensed assisted living facilities that hold a limited mental health license. Except as provided in subparagraph 5., and except in counties where the Medicaid managed care pilot program is authorized pursuant to s. 409.91211, the agency shall seek federal approval to contract with a single entity meeting these requirements to provide comprehensive behavioral health care services to all Medicaid recipients not enrolled in a Medicaid managed care plan authorized under s. 409.91211, a provider service network authorized under paragraph (d), or a Medicaid health maintenance organization in an AHCA area. In an AHCA area where the Medicaid managed care pilot program is authorized pursuant to s. 409.91211 in one or more counties, the agency may procure a contract with a single entity to serve the remaining counties as an AHCA area or the remaining counties may be included with an adjacent AHCA area and are subject to this paragraph. Each entity must offer a sufficient choice of providers in its network to ensure recipient access to care and the opportunity to select a provider with whom they are satisfied. The network shall include all public mental health hospitals. To ensure unimpaired access to behavioral health care services by Medicaid recipients, all contracts issued pursuant to this paragraph must require 80 percent of the capitation paid to the managed care plan, including health maintenance organizations and capitated provider service networks, to be expended for the provision of behavioral health care services. If the managed care plan expends less than 80 percent of the capitation paid for the

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provision of behavioral health care services, the difference shall be returned to the agency. The agency shall provide the plan with a certification letter indicating the amount of capitation paid during each calendar year for behavioral health care services pursuant to this section. The agency may reimburse for substance abuse treatment services on a fee-for-service basis until the agency finds that adequate funds are available for capitated, prepaid arrangements.

1. The agency shall modify the contracts with the entities providing comprehensive inpatient and outpatient mental health care services to Medicaid recipients in Hillsborough, Highlands, Hardee, Manatee, and Polk Counties, to include substance abuse treatment services.

2. Except as provided in subparagraph 5., the agency and the Department of Children and Families ~~Family Services~~ shall contract with managed care entities in each AHCA area except area 6 or arrange to provide comprehensive inpatient and outpatient mental health and substance abuse services through capitated prepaid arrangements to all Medicaid recipients who are eligible to participate in such plans under federal law and regulation. In AHCA areas where eligible individuals number less than 150,000, the agency shall contract with a single managed care plan to provide comprehensive behavioral health services to all recipients who are not enrolled in a Medicaid health maintenance organization, a provider service network authorized under paragraph (d), or a Medicaid capitated managed care plan authorized under s. 409.91211. The agency may contract with more than one comprehensive behavioral health provider to provide care to recipients who are not enrolled in a Medicaid capitated

managed care plan authorized under s. 409.91211, a provider service network authorized under paragraph (d), or a Medicaid health maintenance organization in AHCA areas where the eligible population exceeds 150,000. In an AHCA area where the Medicaid managed care pilot program is authorized pursuant to s. 409.91211 in one or more counties, the agency may procure a contract with a single entity to serve the remaining counties as an AHCA area or the remaining counties may be included with an adjacent AHCA area and shall be subject to this paragraph. Contracts for comprehensive behavioral health providers awarded pursuant to this section shall be competitively procured. Both for-profit and not-for-profit corporations are eligible to compete. Managed care plans contracting with the agency under subsection (3) or paragraph (d) shall provide and receive payment for the same comprehensive behavioral health benefits as provided in AHCA rules, including handbooks incorporated by reference. In AHCA area 11, the agency shall contract with at least two comprehensive behavioral health care providers to provide behavioral health care to recipients in that area who are enrolled in, or assigned to, the MediPass program. One of the behavioral health care contracts must be with the existing provider service network pilot project, as described in paragraph (d), for the purpose of demonstrating the cost-effectiveness of the provision of quality mental health services through a public hospital-operated managed care model. Payment shall be at an agreed-upon capitated rate to ensure cost savings. Of the recipients in area 11 who are assigned to MediPass under s. 409.9122(2)(k), a minimum of 50,000 of those MediPass-enrolled recipients shall be assigned to the existing

provider service network in area 11 for their behavioral care.

3. Children residing in a statewide inpatient psychiatric program, or in a Department of Juvenile Justice or a Department of Children and Families ~~Family Services~~ residential program approved as a Medicaid behavioral health overlay services provider may not be included in a behavioral health care prepaid health plan or any other Medicaid managed care plan pursuant to this paragraph.

4. Traditional community mental health providers under contract with the Department of Children and Families ~~Family Services~~ pursuant to part IV of chapter 394, child welfare providers under contract with the Department of Children and Families ~~Family Services~~ in areas 1 and 6, and inpatient mental health providers licensed pursuant to chapter 395 must be offered an opportunity to accept or decline a contract to participate in any provider network for prepaid behavioral health services.

5. All Medicaid-eligible children, except children in area 1 and children in Highlands County, Hardee County, Polk County, or Manatee County of area 6, which ~~that~~ are open for child welfare services in the statewide automated child welfare information system, shall receive their behavioral health care services through a specialty prepaid plan operated by community-based lead agencies through a single agency or formal agreements among several agencies. The agency shall work with the specialty plan to develop clinically effective, evidence-based alternatives as a downward substitution for the statewide inpatient psychiatric program and similar residential care and institutional services. The specialty prepaid plan must result

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in savings to the state comparable to savings achieved in other Medicaid managed care and prepaid programs. Such plan must provide mechanisms to maximize state and local revenues. The specialty prepaid plan shall be developed by the agency and the Department of Children and Families ~~Family Services~~. The agency may seek federal waivers to implement this initiative. Medicaid-eligible children whose cases are open for child welfare services in the statewide automated child welfare information system and who reside in AHCA area 10 shall be enrolled in a capitated provider service network or other capitated managed care plan, which, in coordination with available community-based care providers specified in s. 409.987 ~~s. 409.1671~~, shall provide sufficient medical, developmental, and behavioral health services to meet the needs of these children.

Effective July 1, 2012, in order to ensure continuity of care, the agency is authorized to extend or modify current contracts based on current service areas or on a regional basis, as determined appropriate by the agency, with comprehensive behavioral health care providers as described in this paragraph during the period prior to its expiration. This paragraph expires October 1, 2014.

Section 58. Paragraph (dd) of subsection (3) of section 409.91211, Florida Statutes, is amended to read:

409.91211 Medicaid managed care pilot program.—

(3) The agency shall have the following powers, duties, and responsibilities with respect to the pilot program:

(dd) To implement service delivery mechanisms within a specialty plan in area 10 to provide behavioral health care

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services to Medicaid-eligible children whose cases are open for child welfare services in the HomeSafeNet system. These services must be coordinated with community-based care providers as specified in s. 409.986 ~~s. 409.1671~~, where available, and be sufficient to meet the developmental, behavioral, and emotional needs of these children. Children in area 10 who have an open case in the HomeSafeNet system shall be enrolled into the specialty plan. These service delivery mechanisms must be implemented no later than July 1, 2011, in AHCA area 10 in order for the children in AHCA area 10 to remain exempt from the statewide plan under s. 409.912(4)(b)5. An administrative fee may be paid to the specialty plan for the coordination of services based on the receipt of the state share of that fee being provided through intergovernmental transfers.

Section 59. Paragraph (d) of subsection (1) of section 420.628, Florida Statutes, is amended to read:

420.628 Affordable housing for children and young adults leaving foster care; legislative findings and intent.—

(1)

(d) The Legislature intends that the Florida Housing Finance Corporation, agencies within the State Housing Initiative Partnership Program, local housing finance agencies, public housing authorities, and their agents, and other providers of affordable housing coordinate with the Department of Children and Families ~~Family Services~~, their agents, and community-based care providers who provide services under s. 409.986 ~~s. 409.1671~~ to develop and implement strategies and procedures designed to make affordable housing available whenever and wherever possible to young adults who leave the

child welfare system.

Section 60. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(68)(g) ~~s. 39.01(67)(g)~~.

Section 61. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1666
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senators Sobel and Gibson
SUBJECT:	Child Abuse and Child Welfare Services
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Sanford	Hendon		**CF SPB 7072 as introduced**
1.	Brown/Sanford	Pigott	AHS	**Fav/CS**
2.	Brown/Sanford	Kynoch	AP	**Fav/CS**

I. Summary:

CS/SB 1666 makes numerous changes to statutes designed to protect children from abuse and neglect. The bill seeks to improve the quality of child abuse investigations conducted by the Department of Children and Families (DCF) and certain sheriff's offices. The bill increases child welfare expertise in the DCF, improves child abuse investigator qualifications, and creates a consortium of schools of social work to advise the state on child welfare policy.

The bill directs the DCF to conduct immediate investigations of deaths and other significant incidents involving children who have been known to the child protection and child welfare system. The purpose of the investigations is to identify root causes and to rapidly determine the need to change policies and practices related to child protection and child welfare.

The bill provides a definition of "medical neglect" and requires improvements in the care of medically complex children and the investigation of child abuse cases involving such children.

The bill creates a new part V of ch. 409, F.S., to be entitled "Community-Based Child Welfare." In this new part, current law relating to community-based care is reorganized, obsolete provisions are removed, and some provisions are clarified.

The bill has a fiscal impact that is anticipated to be addressed in the General Appropriations Act.

II. Present Situation:

Child Abuse, Neglect, and Death

Child abuse and child neglect, known collectively as child maltreatment, have been identified as serious social issues in the United States. Most recent studies show that the most common child maltreatment is neglect, which accounts for about 78 percent of the cases. Other common maltreatments are physical abuse (approximately 17 percent of cases) and sexual abuse (approximately 9 percent of cases). Victims less than one year old have the highest rate of victimization.

Many factors are associated with child maltreatment, including poverty, substance abuse, domestic violence, and mental illness.[1] The presence of an adult male unrelated to the child in the household has also been identified as a major risk factor for child maltreatment.

Child maltreatment is one of the nation's most serious problems.[2] In federal fiscal year 2011, the most recent year for which national data is available,[3] an estimated 3.4 million reports of abuse were received by child protection agencies.[4] After investigation, the number of unduplicated child victims nationally was estimated to be 681,000. Florida reported 208,437 calls to the national child abuse hotline, of which 55,770 resulted in substantiated allegations of abuse.[5]

In addition to the human cost of child abuse and neglect, there is a significant fiscal impact to state government. The DCF has made a conservative estimate of $72,709 annually per child to provide child welfare, hospitalization, special education, and juvenile justice services to care for an abused or neglected child.[6] Just the cost of child and adult protective investigations in Florida (of which the great majority are child investigations) was reported to be $312,493,471 in Fiscal Year 2012-2013.

The most serious result of child maltreatment is the death of the child. Nationally, 1,545 child fatalities resulting from child abuse or neglect were identified for federal fiscal year 2011.[7] Florida reported 133 child fatalities for that year resulting from child abuse or neglect.[8] In some instances the family was not previously known to the DCF, and in others the child was previously known. For cases in which the family was previously or currently known to the DCF, understanding the reasons that the previous or current intervention was not effective in avoiding the death is of critical importance.

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[1] Myers, John E.B., *Child Protection in America: Past, Present, and Future,* Oxford University Press, 2006, pp. 134-156.
[2] U.S. Department of Health and Human Services, *Child Maltreatment 2011*, p. 1, *available at* http://www.acf.hhs.gov/sites/default/files/cb/cm11.pdf (last visited March 25, 2014).
[3] All data in this paragraph are for FFY 2011 so that all are comparable.
[4] *Id.* at vii. The report adds that the rate of referrals have remained fairly constant for at least five years.
[5] *Id.* at 11, 29.
[6] Department of Children and Families, *2013 Annual Report*, p. 27, *available at* http://www.dcf.state.fl.us/admin/publications/docs/CFSAP-2013June.pdf (last visited March 25, 2014).
[7] U.S. Department of Health and Human Services, *ibid.* at 63.
[8] *Id.* at 63.

Child Protection and Child Welfare Services in Florida

Florida's system for providing services to children alleged to have been abused, neglected, or abandoned is complex, involving the DCF, six sheriff's offices, the Office of the Attorney General, one state attorney's office, the Department of Health, 17 eligible lead community-based providers (lead agencies),[9] and innumerable lead agency subcontractors.

A child protective investigation begins with a report by any person to the Florida Abuse Hotline. The state is required to maintain a non-stop ability and capacity for receiving reports of maltreatments. The reports are sent out to child protective investigators (CPIs) across the state to investigate.

CPIs are most commonly DCF employees, but in six counties, the local sheriff performs the investigative function.[10] The DCF child protective services are delivered through six regional offices, using 1,300 investigators and 300 supervisors. The sheriff's offices employ 387 CPIs and 70 supervisors.

Court hearings are required whenever a child is removed from his or her home. The attorneys in these cases are either DCF employees or employees of the Attorney General's Office under contract to DCF or, in one case, a state attorney's office.

The lead agencies and their subcontractors are the primary providers of services to children and families in the child welfare system. There are currently 17 lead agencies with contracts covering all 20 judicial circuits. The lead agencies and their subcontractors employ case managers and supervisors to oversee the provision of services to children in the child welfare system. Many of the services are not directly provided by the lead agencies or the case management subcontractors, but by providers of substance abuse services or mental health services, or other specialized community-based providers.

There is variation across the state in deciding the point at which the lead agency assumes responsibility for the case management of a child welfare case, with varying degrees of cooperation and overlap between CPIs and lead agencies. In addition, special problems arise when multiple areas of the state are involved in either the investigation or the placement of children.

Child Welfare Workforce

History

The college degrees most tailored to and associated with child welfare are the bachelor's and master's degrees in social work. During the first half of the 20th century, the federal government, in cooperation with universities and local agencies, established a child welfare system staffed by

[9] The term "eligible lead community-based provider" is defined as a single agency with which the DCF is required to contract for the provision of child protective services in a community that is no smaller than a county. *See* s. 409.1671(1)(e), F.S. These entities are commonly known as community-based care lead agencies or "lead agencies."

[10] As authorized under s. 39.3065, F.S., and the General Appropriations Act, sheriffs in Broward, Hillsborough, Manatee, Pasco, Pinellas and Seminole counties investigate child abuse and neglect reported to the abuse hotline rather than the DCF.

individuals with professional social work educations. Child welfare came to be viewed as a prestigious specialty within the social work profession.[11]

In the 1990's, an increased recognition of child abuse led to enactment of state child abuse and neglect reporting laws and toll-free numbers to report abuse. This resulted in a large increase of child abuse reports, and resources for the preparation and support of additional staff needed to respond to the reports became inadequate. States moved quickly to hire additional employees to investigate abuse. One way to expand the workforce was to reduce staff qualifications. In response to having a varied workforce without similar expertise and training, agencies began to structure child welfare work to reduce its complexity and make it possible for people with fewer qualifications to adequately perform required tasks.[12]

Current Qualifications

The current qualifications for child protective investigators are not specified in statute or rule, but the DCF's internal hiring practices require that new protective investigators have a bachelor's degree in any field and at least one year of child welfare related experience, or a master's degree in any field. Preference is given to candidates with a human services related degree. The DCF is not involved in the hiring practices or standards established by the sheriff's offices.[13]

The current qualifications for child welfare case managers operating in the community-based care system are established by rule and are a bachelor's degree in social work or related field.[14] Since employment decisions for child welfare case managers are made by individual lead agencies, and since the DCF does not collect data on their practices, the extent to which this rule is actually observed by the lead agencies is not clear. The DCF has authority to exempt employees from the rule and often does so.

In addition to these qualifications, the 2012 Legislature required that both child protective investigators and child welfare case managers obtain child welfare certification from a third-party credentialing entity.[15] This certification requires the individual to demonstrate core competency in any child welfare practice area. A "core competency" is defined in statute to be the minimum knowledge, skills, and abilities necessary to carry out child welfare work responsibilities.[16]

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[11] Child Welfare Workforce, Research Roundup, Child Welfare League of America, (Sept. 2002) *available at* http://www.cwla.org/programs/r2p/rrnews0209.pdf. (last visited March 3, 2014).
[12] Jones, L.P. and Okamura, A. Reprofessionalizing Child Welfare Services: An Evaluation of a Title IV-E Training Program, Research on Social Work Practice, Vol. 10 No. 5, September 2000 and Zlotnik, J.L., Preparing Social Workers for Child Welfare Practice: Lessons from an Historical Review of the Literature, Journal of Health & Social Policy, Vol. 15, No. 3/4, 2002.
[13] Communication from the Department of Children and Family Services, Family Safety Office, (Sept. 16, 2010) (on file with the Committee on Children, Families, and Elder Affairs).
[14] Section 409.1671(5)(a), F.S., requires that each community-based lead agency must be licensed as a child-caring or child-placing agency. Section 65C-15.017(2) and (3), F.A.C., sets the education and experience requirements for such agencies.
[15] Currently, the Florida Certification Board.
[16] Section 402.40, F.S.

Social Workers in Child Welfare

The DCF has records on the post-secondary degrees for 1,214 of the state's CPIs.[17] These data do not include information on the degrees of the investigators in the six county sheriff's offices. Approximately 10 percent of the DCF's CPIs have a social work degree, either bachelor's or master's. See Table 1 below:

Table 1. Degrees of DCF Child Protective Investigators

Degree Major	Number	Percent of Workforce
Other	388	32.0%
Criminal Justice	361	29.7%
Other Health and Human Service	350	28.8%
Social Work	115	9.5%
Total	1,214	100%

There were 4,728 students enrolled statewide in programs leading to a bachelor's or master's degree in social work in the fall of 2012.[18] (See Table 2.) There were 1,684 graduates from the state's 14 schools of social work in 2011-2012.[19] The bachelor's level program in social work requires a structured internship with approximately 512 hours of supervision by a master's level social worker and 50 hours of coursework. In contrast, a psychology or a criminology major requires no internship and 36 hours of coursework, and a sociology major requires no internship and 30 hours of coursework.[20]

[17] Data provided by the Department of Children and Families, (Jan. 27, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[18] Informal communication, Florida State University School of Social Work, (Mar. 3, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[19] Data provided by the Florida Board of Governors and the Independent Colleges and Universities for 2011-2012, (Nov. 18, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[20] *Id.*

Table 2. 2011-12 BSW and MSW Enrollment and Degrees

	Public Universities	**Enrollment**	**Degrees**
1	Florida Agricultural and Mechanical University	356	81
2	Florida Atlantic University	687	171
3	Florida Gulf Coast University	176	65
4	Florida International University	515	171
5	Florida State University	885	333
6	University of Central Florida	709	255
7	University of North Florida[21]	0	0
8	University of South Florida	327	184
9	University of West Florida	285	113
	Private Universities	**Enrollment**	**Degrees**
10	Barry University	420	209
11	Florida Memorial University	50	15
12	Saint Leo University	218	50
13	Southeastern University	70	31
14	Warner University	30	6
	Total	4,728	1,684

In 2014, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed child welfare systems in Florida and 16 other states with large child populations.[22] Among the issues studied by OPPAGA were the qualifications required by states in hiring child protection workers. The results are as follows:

[21] According to the Board of Governors, the University of North Florida's BSW program was approved for fall of 2013.
[22] OPPAGA, *Research Memorandum, State Child Welfare Systems: Key Components and Performance Indicators,* March 10, 2014.

Table 3: Qualifications for Child Protective Workers in 17 States

State	Any Bachelor's Degree	Bachelor's Degree in Human Services Field	BSW
Arizona		x	
California			x
Florida	**x**		
Georgia	x		
Illinois			x
Indiana	x		
Michigan		x	
Missouri		x	
New Jersey	x		
New York	x		
N. Carolina			x
Ohio		x	
Pennsylvania	x		
Tennessee	x		
Texas	x		
Virginia			
Washington			x

In addition, Kansas requires a social work degree.[23]

The impact of child welfare workers with a social work degree has been examined by researchers. Education is the variable that child welfare workforce researchers have explored most often in relation to performance.[24] Much of the research on the effect of education has focused on agency/university partnership programs that have been established over the past decade using federal funding provided under Title IV-E of the Social Security Act. While there is variation among these programs, they generally aim to increase educational opportunities for agency staff to add to the pool of potential child welfare employees and enhance the relevance of curricula in schools of social work. Research to examine their effects found that students score significantly higher on measures of job-related competencies than non-students. Graduates of the specialized child welfare program in New York State, for example, had higher levels of skills, confidence, and sensitivity to clients.[25]

[23] Informal communication, Florida State University School of Social Work (March 3, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

[24] *Id*. Several studies have found evidence that social work education, at either the bachelors of social work (BSW) or masters of social work (MSW) level, positively correlates with performance. A study conducted in Maryland public child welfare agencies found an MSW to be the best predictor of overall performance as measured by supervisory ratings and employee reports of work related competencies. A national study that measured competencies related to 32 job-related duties found that both MSW and BSW staff were better prepared for child welfare work than their colleagues without social work education. Research conducted with staff in Kentucky's public child welfare agency also revealed that staff with social work degrees scored significantly better on state merit examinations, received somewhat higher ratings from their supervisors, and had higher levels of work commitment than other staff. A Nevada study showed that caseworkers who had a social work degree were significantly more likely to create a permanent plan for children in their caseloads within three years than their colleagues without social work education.

[25] *Id*. Also see Lewandowski, K. (1998). *Retention outcomes of a public child welfare long-term training program*. Professional Development: International Journal of Continuing Social Work Education, 1 and Zlotnik, J.L. *Enhancing Child*

Issues Identified in Child Abuse Deaths

Agency Structure and Stability

Since 1998 the DCF has had eight secretaries. In July 2013, the agency secretary resigned[26] and an interim secretary was named who has agreed to remain through the 2014 Legislative Session.[27] With each new secretary typically comes a somewhat new vision and a new strategic plan that includes substantial changes to both the structure of the DCF and staff assignments, all of which may result in some degree of disruption to the functioning of the department. Frequent changes to federal and state laws and to rules and operating procedures, combined with these leadership changes, have made long-term stability at the DCF difficult to achieve.

Currently, the structure of the DCF is provided in law, which requires the appointment of a secretary, a deputy secretary, and an assistant secretary for substance abuse and mental health. The law also provides that DCF offices may be consolidated, restructured, or rearranged by the secretary, in consultation with the Executive Office of the Governor, and that the secretary may appoint additional managers and administrators as he or she determines are necessary for the effective management of the department.[28]

Child Welfare Workforce Issues

A number of commissions and task forces have been established over the past 25 years, often after deaths of children from child abuse or neglect. The commissions and task forces have often found that child protective and child welfare staff did not follow procedures or lacked the training and ability to perform their duties. The commissions and task forces have recommended ways to improve the qualifications of child welfare staff. Some of the findings are as follows:

- The Study Commission on Child Welfare was established by the Florida Legislature in November 1989 after several children died while in state care. [29] At that time, CPIs reported that prior to employment, they worked most frequently in social service/welfare, law enforcement, and in education positions (54 percent). The rest previously held positions as sales personnel, law clerks, real estate agents, and members of the U.S. military.[30] The

Welfare Service Delivery: Promoting Agency-Social Work Education Partnerships, Policy and Practice, 2001. Although the evidence related to educational qualifications is not unequivocal, it provides support for social work education as the best preparation for practice in child welfare. These findings tend to be most consistent with regard to graduates of specialized education programs offering enhanced child welfare content and internships in child welfare settings.

[26] Marbin Miller, C. and Klas, M.E., *DCF Secretary David Wilkins Resigns Amid Escalating Controversy over Child Deaths*, TAMPA BAY TIMES, July 18, 2013 a*vailable at* http://www.tampabay.com/news/politics/gubernatorial/dcf-secretary-david-wilkins-resigns-amid-escalating-scandal-over-child/2132083 (last visited Mar. 3, 2014).

[27] Koff, R., *Interim DCF Boss to Stay on Through Spring*. TAMPA BAY TIMES, Dec. 11, 2013 *available at* http://www.tampabay.com/news/politics/stateroundup/interim-dcf-boss-to-stay-on-through-spring/2156688 (last visited Mar. 3, 2014).

[28] Section 20.19, F.S.

[29] *Id*. Also see Lewandowski, K. (1998). *Retention outcomes of a public child welfare long-term training program*. Professional Development: International Journal of Continuing Social Work Education, 1 and Zlotnik, J.L. *Enhancing Child Welfare Service Delivery: Promoting Agency-Social Work Education Partnerships,* Policy and Practice, 2001. Although the evidence related to educational qualifications is not unequivocal, it provides support for social work education as the best preparation for practice in child welfare. These findings tend to be most consistent with regard to graduates of specialized education programs offering enhanced child welfare content and internships in child welfare settings.

[30] *Id*.

commission recommended that the state should recruit CPIs with bachelor's degrees in social work, child development, or guidance and counseling.[31]

- On April 25, 2002, the DCF revealed that a child in its care, five-year-old Rilya Wilson, had disappeared 15 months earlier from her custodial home and had not been seen since. In response, Gov. Jeb Bush appointed a four-member Governor's Blue-Ribbon Panel on Child Protection.[32] The panel recommended that DCF compare the performance and longevity of child welfare staff who had degrees in social work or other behavioral sciences to staff who had other degrees.[33]
- In a 2013 Florida case involving a two-year-old child who died from physical abuse, the Child Welfare League of America (CWLA) was commissioned to study the death and make recommendations. The family included two adult women, five adult men, and 10 children, including the victim. These people had varying connections and living arrangements throughout the child's life, and the family had been reported to the child abuse hotline 16 times between 2005 and 2013. The CWLA report stated the family had experienced substance abuse, domestic violence, a "chronic lack of even marginal parental nurturing," developmental delays in several of the children in the home, referrals for services that were not followed through, lack of managerial review, and "many years of systemic failure." In the words of the report, "(c)hanging a checklist or hiring additional staff cannot solve these pervasive problems."[34]

One of the problems highlighted by the various commissions and panels is the turnover of child protective investigator workforce. Experience among child abuse investigators suffers with significant employee turnover. The annual turnover rate of department CPIs has been 32 percent, 19 percent, and 22 percent over the last three years. The negative impact of turnover is well known – increased training costs ($6.2 million each year) and inexperienced workers.

Child welfare workers with degrees in social work are not immune from turnover. During the period from 2004-2013, Florida State University (FSU) placed and supervised a total of 293 interns in child welfare settings in the northwest region of Florida. While many of the interns were hired for positions with the DCF, retention was difficult, with few staying more than a few years. As a result, FSU began surveying students leaving employment within the field to determine the reasons for leaving. The top five reasons were:

- Poor overall management/administration by upper-level management;
- Lack of professional support from supervisors;
- Lack of respect and lack of feeling valued by supervisors and upper-level management;
- Lack of focus on teamwork, with employees often feeling like they were pitted against each other by upper-level management and supervisors; and
- No support for professional development or advancement.[35]

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[31] Report of the Study Commission on Child Welfare, *Part One Recommendations* (Mar. 1991) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[32] Governor's Blue Ribbon Panel on Child Protection, (May 2002) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[33] *Id*. In spite of continuing dialog with the Schools of Social Work statewide, the department does not appear to have made progress towards increasing the number of staff with degrees in social work.
[34] Child Welfare League of America, *Special Review Report re JVM*, submitted December 19, 2013, p. 15.
[35] *Id*.

While respondents indicated that caseloads were indeed high at some points and that salaries could be better, neither of these issues were cited as primary reasons for leaving.[36]

As part of its review of child welfare systems, OPPAGA conducted a series of focus groups with both child protective service investigators and child welfare case managers. They found a variety of problems in the working conditions of CPIs and case managers.[37] These problems included:

- A lack of mentoring and management support across the state:
  Some case managers noted that high turnover rates among workers resulted in supervisors carrying caseloads themselves, leaving little time for supervision or mentoring. In addition, most case managers reported that supervisors' primarily focused on meeting DCF performance measures rather than encouraging quality work or mentoring new case managers.
- Administrative tasks that detract from time spent with families and children:
  Investigators estimated that they spend 60 percent to 80 percent of their time on the administrative requirements associated with each case rather than with families. Investigators stated they could not complete required case-related tasks in the standard 40-hour work week and that they routinely work nights and weekends.
- Concern about the sometimes volatile work environment:
  Both investigators and case managers reported that they are required to go into unsafe neighborhoods and dangerous, violent homes, but they do not feel that the DCF is concerned for their safety. While investigators can request law enforcement agencies to have officers accompany them, they reported that law enforcement agencies are sometimes not responsive to their requests or that it takes hours for officers to arrive.
- Outdated technology:
  CPIs and case managers reported that their electronic equipment has not kept up with prevailing technology. For example, they reported they are issued laptop computers that are not enabled for wireless Internet connection and that DCF-issued mobile phones often have poor or no reception, depending on the investigator's location. As a result, staff must use personal phones at their own expense.

According to the U.S. Administration on Children and Families, a supportive organizational culture is a key ingredient in building a stable and effective child welfare workforce. Core elements of organizational culture include agency leadership, workforce management, supervision, and support. Organizational culture and employee relations significantly influence an agency's ability to recruit and retain staff as well as make long-lasting workforce changes.

Efforts to Improve Child Protection

Florida has taken many actions to improve the quality of child abuse investigators over the years. Most recently, the Legislature has made significant investments in child protection and child welfare:

[36] *Id.*
[37] OPPAGA, *ibid. (*Mar. 6, 2014)

- In the 2010 Session, the Legislature required child abuse investigators and child welfare case workers to be certified.[38] The certification is outsourced and includes testing in child welfare and agreement to a set of ethics.
- In the 2011 Session, the Legislature provided $11 million to the DCF to redesign the central abuse hotline.
- In the 2012 Session, the Legislature made several improvements to the child protection system by:
  - Appropriating $10.8 million to provide additional permanent and temporary child abuse investigators.
  - Appropriating $7.9 million to improve the state's child welfare information system (Florida Safe Families Network, or FSFN).
  - Providing funding to raise CPI salaries by $4,300 per CPI per year.
- In the 2013 Session, the Legislature provided $4 million for CPI redesign (including sheriff's offices) and $1.8 million for FSFN.

University Partnerships with Child Welfare

Section 1004.61, F.S., currently directs the DCF to form partnerships with the schools of social work of state universities in order to encourage the development of graduates trained to work in child protection. The University of South Florida for example, coordinates child welfare training in the state.

The federal government provides both policy and financial resources to states for child welfare services under Title IV of the Social Security Act. One use of such funds is the education and training of child welfare workers. Some states use these funds to create partnerships between their child welfare agencies and colleges of social work at state universities. The universities provide the expertise in child welfare research, policy, and practices. They also develop and conduct on-the-job training to child welfare workers. The child welfare agency, in turn, advises the universities on the content of the training and education in the university so graduates are better prepared for child welfare work.

Care of Medically Complex Children

Current law requires that children in this state be provided with the following:
- Protections from abuse, abandonment, neglect, and exploitation;
- A permanent and stable home;
- A safe and nurturing environment, which will preserve a sense of personal dignity and integrity;
- Adequate nutrition, shelter, and clothing;
- Effective treatment to address physical, social, and emotional needs, regardless of geographical location;
- Equal opportunity and access to quality and effective education, which will meet the individual needs of each child, and to recreation and other community resources to develop individual abilities;
- Access to preventive services; and

[38] Chapter 2011-163, Laws of Florida

- An independent, trained advocate, when intervention is necessary, and a skilled guardian or caregiver in a safe environment when alternative placement is necessary.[39]

Special provisions for medically complex children are not currently provided in statute.

Section 39.01(43), F.S., provides a definition of "necessary medical treatment" as care that is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child. Additionally, s. 39.01(44), F.S., sets out the circumstances for neglect of a child. The statute specifically provides that certain circumstances may not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered and rejected by a parent. Also, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or specific religious organization who does not provide specific medical treatment for a child, may not, for that reason alone, be considered a negligent parent or legal guardian. However, ch. 39, F.S., does not include a definition of "medical neglect" or special provisions related to the investigation of allegations of abuse, neglect, or abandonment when children with serious medical conditions are the reported victims.

Suspected child abuse, neglect, or abandonment may be reported to the DCF child abuse hotline regarding children with significant medical issues, as with any other children. Child Protection Teams, operated by the Department of Health (DOH), provide medical expertise to the DCF if there are medical issues associated with child abuse or neglect. However, the current law does not require the teams to coordinate their findings with physicians who have special knowledge of the medical condition of the child who is alleged to be the victim of abuse or neglect. Without the information possessed by those familiar with a particular disease or disability processes, parents can be found to be neglectful or abusive even when observed problems are related to insufficient services or a natural change in medical conditions.

In order to maintain these children in a safe environment that is the least restrictive, families with children who have medical issues need access to various medical and social services. These services are sometimes most readily available to the child in placements outside of the home. It is the current policy of the state, supported by federal and state law, that the parent or legal guardian decides what is best for the child. The state respects the parent or legal guardian's decision made in consultation with medical professionals. Many children with complex medical needs live safely in their homes with supportive services through the Florida Medicaid program.

Florida Medicaid has a comprehensive medical service package to accommodate families that choose to care for their medically complex child at home. Medical services are made available in the home, including private duty nursing, personal care assistance, home health aide services, and occupational, physical, and speech therapy when medically necessary, in unlimited amounts or durations for children in the Medicaid program.

The DCF requires foster care caseworkers to obtain high-level approval before placing any dependent child in a nursing home. Foster children already placed in nursing homes are reviewed

[39] *See* s. 39.001, F.S.

monthly by the AHCA in an effort to return the children to their birth parents or place them in foster homes run by parents with specialized medical training.

The state is currently a party to a lawsuit related to the placement of medically complex children in settings such as nursing homes. The U.S. Department of Justice joined the lawsuit that alleges that the state violated the Americans with Disabilities Act (ADA).[40] The AHCA has worked with the families of over 200 children in nursing homes under the Medicaid program to ensure they are aware of in-home health services and have been offered those services. In addition, the DCF and the Agency for Persons with Disabilities (APD) have worked with the families of medically complex children served by APD to ensure the least restrictive placement.

Statewide Medicaid Managed Care

Part IV of ch. 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the Statewide Medicaid Managed Care program (SMMC). The program, authorized by two federal Medicaid waivers, is designed for the Agency for Health Care Administration (AHCA) to issue invitations to negotiate[41] and competitively procure contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most of the state's enrollees in the Medicaid program. SMMC has two components: managed medical assistance (MMA) and long-term care managed care (LTCMC).

The LTCMC component began enrolling Medicaid recipients in August 2013 and is scheduled to complete its statewide roll-out in March 2014.[42] The MMA component is scheduled to begin enrolling Medicaid recipients in May 2014 and finish its roll-out in August 2014.[43]

Provider Service Networks in SMMC

Types of managed care plans that are eligible for SMMC include health insurers, exclusive provider organizations, health maintenance organizations, provider service networks (PSNs), and federally-authorized accountable care organizations, among other entities.[44]

A PSN is defined as a type of managed care plan of which a controlling interest is owned by a health care provider, or group of affiliated providers, or a public agency or entity that delivers health services. For the purpose of this definition, "health care provider" includes Florida-licensed health care professionals or licensed health care facilities, federally qualified health care centers, and home health care agencies.[45]

The AHCA is required to procure a specified number of managed care plans per region or a number of plans that range between a minimum and maximum specified for each region. At least

[40] *A.R. et al. v. Dudek et al, United States V. Florida*, Consolidated Case No. 0:12-cv-60460-RSR, U.S. District Court for the Southern District of Florida.
[41] An "invitation to negotiate" is a written or electronically posted solicitation for vendors to submit competitive, sealed replies for the purpose of selecting one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. *See* s. 287.012(17), F.S.
[42] *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#LTCMC >, last visited March 20, 2014.
[43] *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#MMA >, last visited March 20, 2014.
[44] *See* s. 409.962(6), F.S.
[45] *See* s. 409.962(13), F.S.

two plans per region must be procured, and at least one plan per region must be a PSN, if a PSN submits a responsive bid during the procurement. If no PSN submits a responsive bid for a region, the AHCA is required to procure no more than one less than the maximum number of plans for that region during the initial procurement and, within 12 months after the initial invitation to negotiate, attempt once again to procure a PSN for that region.[46]

Siblings

Current law includes legislative intent that when siblings are placed in out-of-home care, the DCF must make every possible effort to place them together. If they are permanently placed, the DCF must attempt to place them in the same adoptive home, and if placement together is not possible, the DCF must attempt to keep them in contact with each other.[47] The term "sibling" is not defined and there is no provision at specific points in the child welfare system, such as at removal or at judicial review, to ensure that the DCF is attending to issues relating to siblings.

Relative Caregiver Program

The Florida Legislature established the Relative Caregiver Program in 1998.[48] This program offers monthly cash assistance and Medicaid for a child under the age of 18 who is placed by a dependency court with a relative after the child is removed from his or her home as a result of abuse, neglect, or abandonment. The monthly payment provides financial help for a relative who would not be able to afford to care for the child without assistance. The amount of the payment varies depending on the child's age and circumstances. Medicaid pays for the child's health care. The child may also be eligible for subsidized child care.

Only persons who are within the fifth degree of relationship by blood or marriage to the parent or stepparent of a dependent child or a half-brother or half-sister of a dependent child and who are caring full-time for the child, are eligible for the Program.

Under the Relative Caregiver Program, the child may be in temporary custody of the relative under the protective supervision of the DCF, may be placed under guardianship, [49] or may be placed permanently with the relative.[50] Either of the last two options is considered a permanency placement for the child. Continued supervision of the placement by the DCF is required under the permanent placement option, but not under the guardianship option.

Funding for the Relative Caregiver Program is through Florida's share of the block grant for Temporary Assistance for Needy Families (TANF), in accordance with Title IV-A of the Social Security Act (SSA). The SSA lists the purposes of the TANF program in Title IV-A, section 401. This section specifically states that one of the purposes is to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives."

[46] *See* s. 409.974(1), F.S.
[47] Section 39.001(1)(k), F.S.
[48] Chapter 98-403, s. 70, Laws of Florida.
[49] Section 39.6221, F.S.
[50] Section 39.6231, F.S.

The DCF currently places children with nonrelatives under court-ordered supervision, but has not been able to pay the nonrelatives due to restrictions on the TANF funding source. These children are placed in the nonrelative homes after studies by the DCF. The only current difference between relative and nonrelative placements is that relatives receive payments to offset the cost of caring for the children and nonrelatives do not. As of December 31, 2012, there were 1,552 children in the care of nonrelatives under DCF supervision. The estimated monthly Relative Caregiver cost per child is $257.09 for an average annual total of $3,087 per child.[51]

Public Disclosure of Child Deaths

There is currently no mechanism by which child deaths that have been reported to the DCF's child abuse hotline are made public. Arkansas has a database by which such deaths are reported, along with basic facts related to the case. This information is made available through the Arkansas social services website.[52]

Child Abuse Death Review Committee

The State Child Abuse Death Review Committee (CADR) was established in Florida in 1999 by statute.[53] Case reviews began in 2000 and were expanded in 2004 to include all verified child abuse deaths. Current law establishes the CADR and local child abuse death review committees within the Department of Health (DOH).[54] The CADR is composed of 18 members, including experts from the medical, law enforcement, social services, and advocacy professions.[55]

Members convene every other month to review facts and circumstances of the deaths of children whose deaths have been investigated by the DCF and closed with a "verified" finding of child abuse or neglect. The purpose of the child death review is to help prevent child deaths as a result of abuse or neglect by:[56]

- Developing a community-based approach to address child abuse deaths and contributing factors;
- Achieving a greater understanding of the causes and contributing factors of deaths resulting from child abuse or neglect;
- Identifying gaps, deficiencies, or problems in service delivery to children and families by public and private agencies that may be related to child abuse deaths; and
- Developing and implementing data-driven recommendations for reducing child abuse and neglect deaths.

The CADR is required to submit an annual statistical report to the governor and the Legislature by December 31 containing recommendations to reduce preventable child deaths.[57]

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[51] Department of Children and Families, *SB 770 Fiscal Analysis* (Feb. 4, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[52] Arkansas Department of Human Services, Child Fatality Notification, *available at* https://ardhs.sharepointsite.net/CFN/default.aspx (last visited March 4, 2014)
[53] Section 383.402, F.S.
[54] Section 383.402(1), F.S.
[55] Section 383.402(2)(a) and (b), F.S.
[56] Section 383.402(1), F.S.
[57] Section 383.402(3)(c), F.S.

Local child abuse death review committees also conduct reviews of the verified deaths of children in their respective communities to develop prevention campaigns and prepare recommendations for improving local practices in child protection and support services to families. There are 23 local committees that provide coverage for Florida's 67 counties.[58]

During 2011, 2,241 children under the age of 18 died in Florida. Of those deaths, 474 were reported to the Florida Abuse Hotline and 130 deaths were verified by the DCF as being related to child abuse or neglect. The CADR received 126 cases for review during the period of January through November 2012. The CADR is statutorily limited to the review of "verified" child death reports.[59]

Statutory Provisions Relating to Community-Based Care Lead Agencies

The transition from government-delivered to outsourced child welfare sources began in earnest in Florida in 1996, when the Legislature directed the DCF to contract with established community-based organizations to establish pilot projects for the provision of foster care and related services.[60] In 1998, the Legislature required the DCF to privatize the provision of all foster care and related services statewide. The transition was completed in Fiscal Year 2004-2005. Currently, there are 19 community-based care lead agencies (lead agencies) providing child welfare services statewide.

From the beginning of the outsourcing of child welfare services, s. 409.1671, F.S., has been the primary statute providing legislative direction for the process. Consequently, the statute contains many provisions that are obsolete, some which are current, and some which need clarification. For example, there is no provision in statute currently describing the duties of the DCF in an outsourced child welfare system.

In addition, currently there is not a statutory requirement that the lead agencies be incorporated under Florida law. Also, the duty to provide community input for lead agencies is buried in the other duties ascribed to DCF Community Alliances, which are at present located in the DCF organizational statute, ch. 20.19, F.S.

Unlawful Desertion of a Child

Adoption is a legal process, but the process is not always properly carried-out, which can put children in danger. Beginning on September 9, 2013, Reuters New Service published a five-part series, entitled "The Child Exchange," which exposed how American parents were using Internet message boards to find new families for children they regretted adopting – a practice that has been called "private re-homing." Reuters spent 18 months investigating eight message boards

[58] Child Abuse Death Review Committee, *Annual Report* (Dec. 2012), *available at* http://www.floridahealth.gov/alternatesites/flcadr/reports.html (last visited Dec. 9, 2013).
[59] *Id*.
[60] Chapter 96-402, Laws of Florida.

where participants advertised unwanted children and examined two dozen cases in which adopted children were re-homed.[61] The investigative series found:

- An advertisement for re-homing appeared, on average, at least once per week;
- The average range for children being advertised for re-homing is 6 to 14 years of age;
- Re-homing is accomplished through basic power of attorney documents which allow the new guardians of the child to enroll the child in school or secure government benefits;
- At least 70 percent of the children offered for re-homing on one Yahoo message board had been adopted from foreign countries;
- Only 29 states have laws that govern how children can be advertised for adoption;[62] and
- The Interstate Compact for the Placement of Children, which is meant to be a safeguard against the improper placement of children across state lines, is often not enforced by law enforcement.[63]

Florida law currently contains no criminal provisions specifically relating to re-homing.

III. Effect of Proposed Changes:

Section 1 amends s. 20.19, F.S., to direct the secretary of the Department of Children and Families (DCF) to appoint an assistant secretary for child welfare to spearhead the DCF's efforts to carry out its duties and responsibilities for child protection and child welfare, and specifies the qualifications for a person appointed to that position.

Section 2 amends s. 39.001, F.S., to:

- Provide that the safety of children is the paramount concern of the chapter;
- Emphasize the importance of siblings remaining in contact with one another;
- Preserve and strengthen families caring for medically complex children; and
- Make specific provisions relating to medically complex children.

Section 3 amends s. 39.01, F.S., to provide definitions for "impending danger," "medical neglect," "present danger," "safety plan," and "sibling" and to remove obsolete provisions.

Section 4 amends s. 39.013, F.S., to require that the DCF be represented by legal counsel in every dependency proceeding and to give direction to DCF lawyers.

Section 5 amends s. 39.201, F.S., to require that all incidents of juvenile sexual abuse involving a child who is in the custody of or under the supervision of the DCF to be reported to the child abuse hotline and to require the DCF to inform the court at the next hearing or in its next report to the court about the facts and results of such investigations of child sexual abuse.

Section 6 creates s. 39.2015, F.S., effective January 1, 2015, to establish a critical incident rapid response team within the DCF, to outline its duties and composition, and to require cooperative agreements with other entities and organizations to facilitate the work of the team. This section

[61] Megan Twohey, *The Child Exchange*, REUTERS, (Sept. 9, 2013), *available at* http://www.reuters.com/investigates/adoption/#article/part1 (last visited Mar. 3, 2014).
[62] Florida is one of the 29 states that have addressed this issue. *See* s. 63.212(1)(g), F.S.
[63] *Id*.

also requires that the reports of the team be published on the DCF website. The DCF secretary is required to develop guidelines and training for the teams, directing them to conduct a root-cause analysis for each incident. In addition, the secretary is directed to appoint an advisory committee to conduct an independent review of the reports of the critical incident rapid response teams and submit a report to the secretary, who is required to provide the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 7 creates s. 39.2022, F.S., to require the DCF to report on its website basic facts about all deaths of children reported to the DCF child abuse hotline and describes the information to be posted on the website.

Section 8 amends s. 39.301, F.S., to provide direction to investigators about the use of safety plans during the investigation of allegations of child abuse, neglect, or abandonment. The bill requires the investigator to work with the community-based care lead agency (lead agency) to implement the safety plan.

Section 9 amends s. 39.303, F.S., to require that child protection teams evaluating a report of medical neglect and assessing the health care needs of a medically complex child consult with a physician who has experience in treating children with the same condition.

Section 10 creates s. 39.3068, F.S., to describe special procedures to be followed by child protective investigators and child protection teams when investigating a report of medical neglect.

Section 11 amends s. 39.307, F.S., to describe procedures for the DCF to follow after receiving a report to the child abuse hotline alleging that a child is involved in child sexual abuse or inappropriate sexual behavior. The department must maintain certain records and consider the report in placement decisions for the dependent child.

Section 12 amends s. 39.402, F.S, to provide that the DCF must, as part of the information presented to the dependency court at a shelter hearing, describe its reasonable efforts to keep siblings together after removal, unless the court finds that placement together is not in the best interest of the children. Reasonable efforts to keep sibling together must include short-term placement in a group home with the ability to accommodate sibling groups if such a placement is available. This section also requires that, if siblings cannot be placed together, the DCF must provide a recommendation for frequent visitation or other ongoing interaction among the siblings unless this interaction would be contrary to a sibling's safety or well-being.

Section 13 amends s. 39.501, F.S., to add noncompliance with a safety plan as information to be included in a petition for dependency.

Section 14 amends s. 39.504, F.S., to add compliance with a safety plan to the actions which may be ordered by the court in issuing an injunction to protect a child.

Section 15 amends s. 39.5085, F.S., to add nonrelative caregivers to those who qualify for the DCF relative caregiver program. These placements are already approved by the court and used

by the DCF, but the bill will allow nonrelatives to be reimbursed for the cost of caring for the child.

Section 16 amends s. 39.604, F.S., (the Rilya Wilson Act) to change the beginning age when a child under court-ordered supervision or in the custody of the DCF must be enrolled in child care from age three to birth. Enrollment in such a program is made a part of the child's safety plan. The requirement extends until the child is enrolled in school.

Section 17 amends s. 39.701, F.S., to require the DCF to report to the court at the time of judicial review hearings the frequency, kind, and duration of contacts among siblings during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the children. It also adds the requirement that the court, at the time of the special judicial review hearing already required following the child's 17th birthday, to issue an order removing certain disabilities of non-age for the child if the court finds that removal of these disabilities is in the child's best interest.

Section 18 amends s. 39.802, F.S, to remove a requirement that petitions for termination of parental rights be signed by an employee of the DCF. The Florida Rules of Juvenile Procedure require that pleadings in dependency cases be signed by attorneys. In several parts of the state, legal services are provided by contracted attorneys through the Attorney General's Office or the Office of the State Attorney. The current requirement causes inefficiencies in preparing the petitions, as the attorneys must seek out a department employee to sign petitions which have been prepared by the attorneys. In parts of the state where attorneys employed by the DCF prepare the petitions, the attorneys sign the petitions.

Section 19 amends s. 39.806, F.S., to add additional grounds for filing a termination of parental rights petition. The first is that the child has been in care for 12 of the last 22 months and the parents have not substantially complied with the case plan, unless the failure results from financial inability or the failure of the DCF to make reasonable efforts to reunify. The second assumes a legal nexus between a conviction for serious crimes such as murder and the potential harm to a child in the family. The bill also clarifies that proof of a nexus between egregious conduct and the potential harm to a child's sibling is not required. Additionally, proof of a nexus between the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery to a child and the potential harm to a child or another child is not required. Finally, the conviction of a parent of an offense that requires the parent to register as a sexual predator is added as a grounds for termination of parental rights of a child.

Section 20 amends s. 63.212, F.S, to clarify provisions relating to the advertisement of minors available for adoption.

Section 21 amends s. 383.402, F.S., to direct the child abuse death review committees of the Department of Health to review all deaths of children reported to the DCF child abuse hotline, not just deaths verified as caused by abuse or neglect. It changes the requirement for a board certified pediatrician on the statewide team to a requirement that the Statewide Medical Director for Child Protection be a member. This section also changes the due date of the annual report of the statewide committee from December 31 to October 1 of each year. It requires that the

statewide team make available training on the dynamics and impact of domestic violence, substance abuse, or mental health disorders when there is a co-occurrence of these disorders with child abuse, and specifies the providers for this training.

Section 22 amends s. 402.40, F.S., to require that third-party credentialing entities maintain an advisory committee and specifies the membership of such committees. The bill also provides that the DCF may approve certifications involving specializations in serving specific populations or in skills relevant to child protection.

Section 23 creates s. 402.402, F.S., to define "child protection and child welfare personnel" to include child protective investigators and child protective investigation supervisors employed by the department and case managers and case manager supervisors employed by a community-based lead agency or a subcontractor of a community-based lead agency. It also defines "human services-related field" as psychology, sociology, counseling, special education, human development, child development, family development, marriage and family therapy, and nursing. It establishes a goal that, by July 1, 2019, at least half of all child protective investigators and child protective supervisors employed by the department have bachelor's or master's degrees in social work. It requires that the department, in collaboration with lead agencies, subcontracted provider organizations, the Florida Institute for Child Welfare, and other partners in the child welfare system, develop a protocol for screening candidates for child protective positions which reflects the preferences set forth in the section. It provides that the preferences serve only as guidance in hiring and do not limit the department's discretion to select the best available candidates. It requires the department to report by October 1 of each year on the educational qualifications, turnover, and working conditions of the child protective investigators and supervisors. This report is to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This section also describes training required for attorneys hired after July 1, 2014, to represent the DCF in child welfare cases.

Section 24 creates s. 402.403, F.S., to establish a child protection and child welfare personnel tuition exemption program and sets out the qualifications for obtaining the exemption. The program is for high-performing child protection and child welfare personnel who do not have a master's degree in social work or a certificate in an area related to child welfare. The bill requires that all child protection and child welfare personnel who participate in the tuition exemption program established under this section must remain employed by the department, a state agency, or a contracted provider for 5 years after completion of a graduate level social work program. It mandates that if employment ends before the 5-year period, the benefit must be repaid according to a pro rata calculation based on the number of years of service.

Section 25 creates s. 402.404, F.S., to establish a student loan forgiveness program for child protection and child welfare staff and sets out the qualifications for obtaining the loan forgiveness. Approximately half of all graduates from the state university system have a student loan debt.[64] The bill allows the DCF or a lead agency to pay up to $3,000 per year towards the

[64] Data provided by the Florida Board of Governors, (Feb. 11, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

student loan debt as an incentive for degreed social workers to become child protection or child welfare personnel. The bill requires that all child protection and child welfare personnel who participate in the tuition exemption program established under this section must remain employed by the department, a state agency, or a contracted provider for 5 years after completion of a graduate level social work program. It mandates that if employment ends before the 5-year period, the benefit must be repaid according to a pro rata calculation based on the number of years of service. The DCF is directed to prioritize the use of funds appropriated for this purpose to regions with high average caseloads and low workforce retention rates.

Section 26 amends s. 409.165, F.S., to direct the DCF to work with relevant state and local agencies to develop medical foster homes for medically complex children and to provide such services as may be necessary to maintain such children in the least restrictive and most nurturing environment consistent with their needs. The bill also provides that funds for the care of such *-children can be spent for care in their own homes or the homes of relatives if the children can be safely served and the cost is equal to or less than the cost of out-of-home placement.

Section 27 amends s. 409.967, F.S., to require managed care plans serving children in the care and custody of DCF to make information available to DCF for inclusion in the state's child welfare data system. It directs the DCF and the Agency for Health Care Administration (AHCA) to use the information provided to determine the plan's compliance with standards for access to medical, dental, and behavioral health services, the use of psychotropic medications, and follow-up on all medically necessary services recommended as a result of early and periodic screening diagnosis and treatment.

Section 28 amends s. 409.972, F.S., to exempt Medicaid recipients residing in a group home facility licensed under chapter 393, relating to developmental disabilities, from mandatory managed care enrollment.

Section 29 directs the Division of Law Revision and Information to create part V of ch. 409, F.S., to be entitled "Community-Based Child Welfare."

Section 30 moves and revises provisions from s. 409.1671, F.S., to create s. 409.986, F.S. The new section provides legislative findings, intent, outcomes, and definitions related to the care of children through community-based care.

Section 31 moves and revises provisions from s. 409.1671, F.S., to create s. 409.987, F.S. The new section clarifies the requirements for the DCF to procure community-based care lead agencies. The procurement must be conducted through a competitive process required by ch. 287, F.S. The bill sets the requirements for an entity to compete for the award of a contract as a lead agency. The bill requires that the procurement be done in consultation with local community alliances.

Section 32 moves and revises provisions from s. 409.1671, F.S., and 409.1675, F.S., to create s. 409.988, F.S. The new section outlines the duties of the lead agencies and to authorize subcontracting for the provision of child welfare services.

Section 33 moves and revises provisions from s. 409.1671, F.S., and 409.16745, F.S., to create s. 409.990, F.S. The new section describes general funding provisions for lead agencies.

Section 34 moves provisions from 409.16713, F.S., to create s. 409.991, F.S. The new section remains unchanged and describes the allocation of funds for lead agencies.

Section 35 moves and revises provisions from s. 409.1671, F.S., to create s. 409.992, F.S. The new section provides for lead agency expenditures, requiring that these expenditures be governed by financial guidelines developed by the DCF and must comply with applicable state and federal law as well as good business practices. The auditor general is authorized to provide technical assistance in the development of the guidelines.

Section 36 moves and clarifies provisions from s. 409.1671, F.S., to create s. 409.993, F.S., to describe lead agency and subcontractor liability. The contents of this section are currently found in s. 409.1671(1)(h)-(l), F.S.

Section 37 transfers and renumbers the current s. 409.1675, F.S., to create s. 409.994, F.S., describing lead agencies and receivership.

Section 38 creates s. 409.996, F.S., to describe the duties of the DCF in contracting for community-based child welfare services.

Section 39 creates s. 409.997, F.S., effective January 1, 2015, to direct the DCF to maintain a comprehensive results-oriented accountability system. The section requires that the DCF outsource the e accountability system that monitors the use of resources, the quality and amount of services provided, and the child and family outcomes through data analysis, research review, evaluation, and quality improvement. The DCF is directed to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2015, the results of its efforts to procure and implement the system. Additionally, the DCF is required to report the results of the accountability system at least quarterly on its website as well as annually by October 1 to the Governor, the President t of the Senate, and the Speaker of the House of Representatives. In preparing the annual report, the department is directed to consult with the community alliance and the chief judge or judges in the community-based care service area.

Section 40 creates s. 827.10, F.S., to establish the criminal offense of unlawful desertion of a child and provides definitions and penalties. This will provide a tool for prosecutors to stop the unlawful adoptions practice referred to as "re-homing."

Section 41 amends s. 985.04, F.S., to correct a term relative to juvenile sexual abuse.

Section 42 creates s. 1004.615, F.S., to establish the Florida Institute for Child Welfare (FICW) and to set forth the purpose, duties, and responsibilities of the institute. The FICW is defined as a consortium of the state's public and private university schools of social work. The FICW is charged to advise the state on child welfare policy, improve the curriculum for social work degree programs, and develop on-the-job training for child protective investigators and child welfare case managers. The bill requires the FICW to provide a report annually by October 1 to

the governor, the president of the Senate, and the speaker of the House of Representatives to describe its activities in the preceding fiscal year, present significant research findings and results of other programs, and make specific recommendations for improving child protection and child welfare services.

Section 43 amends s. 1009.25, F.S., to add child protection and child welfare personnel who meet specified criteria to the list of persons exempted from payment of tuition and fees at a state college or state university under certain circumstances.

Section 44 repeals s. 402.401, F.S., which contains provisions relating to student loan forgiveness. The bill makes this statute obsolete.

Section 45 repeals s. 409.1671, F.S., which this bill makes obsolete.

Section 46 repeals s. 409.16715, F.S., whose provisions are modified and included in this bill.

Section 47 repeals s. 409.16745, F.S., whose provisions are modified and included in this bill.

Section 48 repeals s. 1004.61, F.S., which contains the current-law provisions relating to partnerships between the DCF and state schools of social work. The bill makes this statute obsolete.

Section 49 corrects a cross-reference in s. 39.201, F.S.

Section 50 corrects a cross-reference to s. 39.302, F.S.

Section 51 corrects a cross-reference to s. 39.524, F.S.

Section 52 corrects a cross-reference to s. 316.613, F.S.

Section 53 corrects a cross-reference to s. 409.1676, F.S.

Section 54 corrects a cross-reference to s. 409.1677, F.S.

Section 55 corrects a cross-reference to s. 409.1678, F.S.

Section 56 corrects a cross-reference to s. 409.906, F.S.

Section 57 corrects a cross-reference to s. 409.912, F.S.

Section 58 corrects a cross-reference to s. 409.91211, F.S.

Section 59 corrects a cross-reference to s. 420.628, F.S.

Section 60 corrects a cross-reference to s. 960.065, F.S.

Section 61, except as otherwise provided, provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private schools of social work may see an increased enrollment of students as a result of CS/SB 1666.

C. Government Sector Impact:

The bill has fiscal impacts that are anticipated to be addressed in the General Appropriations Act, which could include the following:

The annual cost of an additional assistant secretary and an executive assistant in the DCF will be approximately $260,000.

The bill calls for the creation of critical incident rapid response teams to review certain child abuse deaths. The team members may be reimbursed for expenses and salaries. It is unknown how many cases each year would be investigated by the teams so the cost of these new investigations is unknown.

The bill requires the posting on the DCF website of information relating to child deaths reported to the DCF hotline. The information is currently collected and maintained in the Florida Safe Families Network (FSFN). The costs to post this information on the DCF website would be insignificant.

The bill allows for the payment to nonrelatives willing to assume custody and care of a dependent child. Based on the number of children currently in this placement, the DCF estimates that the cost could be up to $4.8 million each year.

The bill expands the cases reviewed by the State Child Abuse Death Review Committee. The reviews cost $714 each and the costs are paid from the expense budget of the

Department of Health. Based on these current costs and an estimated additional 346 cases to be reviewed under the bill, the increased costs could be $247,143 each year.

The requirement in the bill that the department pursue a goal of having 50 percent of its child protective investigators and supervisors hold a social work degree by July 1, 2019, should have little or no fiscal impact. The cost of the tuition exemption program to the state university system cannot be determined until the number of persons taking advantage of the program is known.

There will be costs associated with the loan forgiveness program. The costs will be limited by the amount of funding appropriated by the Legislature. Using the current number of department CPIs (1,522) and an average turnover rate of 24 percent, then an additional 365 CPIs would be hired each year. If all of these new hires are social workers and receive the loan repayment amount of $3,000, then the annual cost estimate could range as high as $1,095,000.

The establishment of the Institute for Child Welfare would have associated costs depending on the structure or the institute. Similar consortiums of Florida universities can cost between $500,000 and $2 million, according to the Florida Board of Governors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.19, 39.001, 39.01, 39.013, 39.201, 39.301, 39.302, 39.303, 39.307, 39.402, 39.501, 39.504, 39.5085, 39.524, 39.604, 39.701, 39.802, 39.806, 63.212, 316.613, 383.402, 402.40, 409.165, 409.16713, 409.1675, 409.1676, 409.1677, 409.1678, 409.906, 409.912, 409.91211, 409.967, 409.972, 420.628, 960.065, 985.04, and 1009.25.

This bill creates the following sections of the Florida Statutes: 39.2015, 39.2022, 39.3068, 402.402, 402.403, 402.404, 409.986, 409.987, 409.988, 409.990, 409.992, 409.993, 409.996, 409.997, 409.998, 827.10, and 1004.615.

This bill repeals the following sections of the Florida Statutes: 402.401, 409.1671, 409.16715, 409.16745, and 1004.61.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 22, 2014:
The Committee Substitute:

- Retains the current duties and membership for the DCF community alliances but adds an additional duty for Department of Children and Families (DCF) to periodically solicit input from alliances and other community groups, including prior to procuring a CBC.
- Revises the membership and means of operationalizing the critical incident response teams created by the bill;
- Removes the requirement for placing on the DCF website identifying information about children who have died;
- Adds an additional ground for termination of parental rights;
- Requires the Statewide Child Abuse Death Review Team to recommend improved policies and procedures to the DCF;
- Revises the qualifications of child protective investigations to set as a goal hiring social workers, but allows the DCF to consider experience as a qualification;
- Requires recipients of the tuition waiver program and the student loan repayment program to work for the DCF or a community-based care lead agency (lead agency) for a minimum of 5 years after receiving the waiver or loan repayment;
- Requires managed care plans to document behavioral health services provided to parents of foster children;
- Requires lead agencies to post on their websites their current IRS Form 990;
- Reverts to current law for lead agency and subcontractor liability insurance coverage;
- Requires DCF to post certain financial information on its website;
- Requires the child welfare worker certification board to work with the Institute for Child Welfare;
- Provides that dependency court receive the recommendations on cases made by case managers; and
- Adds a sibling tracking requirement to the accountability system established in the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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	.	
	.	

The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (3) through (5) of section 20.19, Florida Statutes, are renumbered as subsections (4) through (6), respectively, subsection (2) of that section is amended, and a new subsection (3) is added to that section, to read:

20.19 Department of Children and Families.—There is created

a Department of Children and Families.

(2) SECRETARY OF CHILDREN AND FAMILIES; DEPUTY SECRETARY.—

(a) The head of the department is the Secretary of Children and Families. The secretary is appointed by the Governor, subject to confirmation by the Senate. The secretary serves at the pleasure of the Governor.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary is directly responsible to the secretary, performs such duties as are assigned by the secretary, and serves at the pleasure of the secretary.

(3) ASSISTANT SECRETARIES.—

(a) *Child welfare.*—

1. The secretary shall appoint an Assistant Secretary for Child Welfare to lead the department in carrying out its duties and responsibilities for child protection and child welfare. The assistant secretary shall serve at the pleasure of the secretary.

2. The assistant secretary must have at least 7 years of experience working in organizations that deliver child protective or child welfare services.

(b) *Substance abuse and mental health.*—

~~(c)~~1. The secretary shall appoint an Assistant Secretary for Substance Abuse and Mental Health. The assistant secretary shall serve at the pleasure of the secretary and must have expertise in both areas of responsibility.

2. The secretary shall appoint a Director for Substance Abuse and Mental Health who has the requisite expertise and experience to head the state's Substance Abuse and Mental Health

Program Office.

Section 2. Paragraphs (b), (c), (g), and (k) of subsection (1) of section 39.001, Florida Statutes, are amended, paragraphs (o) and (p) are added to that subsection, present paragraphs (f) through (h) of subsection (3) are redesignated as paragraphs (g) through (i), respectively, and a new paragraph (f) is added to that subsection, present subsections (4) through (11) are renumbered as subsections (5) through (12), respectively, and a new subsection (4) is added to that section, and paragraph (c) of present subsection (8) and paragraph (b) of present subsection (10) of that section are amended, to read:

39.001 Purposes and intent; personnel standards and screening.—

(1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

(b) To recognize that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention through the department's child protection system should be based on the following principles:

1. The health and safety of the children served shall be of paramount concern.

2. The prevention and intervention should engage families in constructive, supportive, and nonadversarial relationships.

3. The prevention and intervention should intrude as little as possible into the life of the family, be focused on clearly defined objectives, and keep the safety of the child or children

as the paramount concern ~~take the most parsimonious path to remedy a family's problems~~.

4. The prevention and intervention should be based upon outcome evaluation results that demonstrate success in protecting children and supporting families.

(c) To provide a child protection system that reflects a partnership between the department, other agencies, the courts, law enforcement agencies, service providers, and local communities.

(g) To ensure that the parent or legal custodian from whose custody the child has been taken assists the department to the fullest extent possible in locating relatives suitable to serve as caregivers for the child and provides all medical and educational information, or consent for access thereto, needed to help the child.

(k) To make every possible effort, if ~~when~~ two or more children who are in the care or under the supervision of the department are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated while under the care or supervision of the department or in a permanent placement, to keep them in contact with each other.

(o) To preserve and strengthen families who are caring for medically complex children.

(p) To provide protective investigations that are conducted by trained persons in a complete and fair manner, that are promptly concluded, and that consider the purposes of this subsection and the general protections provided by law relating

to child welfare.

(3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with the following protections:

(f) Access to sufficient supports and services for medically complex children to allow them to remain in the least restrictive and most nurturing environment, which includes services in an amount and scope comparable to those services the child would receive in out-of-home care placement.

(4) SERVICES FOR MEDICALLY COMPLEX CHILDREN.—The department shall maintain a program of family-centered services and supports for medically complex children. The purpose of the program is to prevent abuse and neglect of medically complex children while enhancing the capacity of families to provide for their children's needs. Program services must include outreach, early intervention, and the provision of other supports and services to meet the child's needs. The department shall collaborate with all relevant state and local agencies to provide needed services.

(9) ~~(8)~~ OFFICE OF ADOPTION AND CHILD PROTECTION.—

(c) The office is authorized and directed to:

1. Oversee the preparation and implementation of the state plan established under subsection (10) ~~(9)~~ and revise and update the state plan as necessary.

2. Provide for or make available continuing professional education and training in the prevention of child abuse and neglect.

3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and

other public and private sources in order to ensure that sufficient funds are available for the promotion of adoption, support of adoptive families, and child abuse prevention efforts.

4. Make recommendations pertaining to agreements or contracts for the establishment and development of:

a. Programs and services for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

b. Training programs for the prevention of child abuse and neglect.

c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.

d. Efforts to promote adoption.

e. Postadoptive services to support adoptive families.

5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January 1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the head of each state agency affected by the report, and the appropriate substantive committees of the Legislature. The report shall include:

a. A summary of the activities of the office.

b. A summary of the adoption data collected and reported to the federal Adoption and Foster Care Analysis and Reporting

System (AFCARS) and the federal Administration for Children and Families.

c. A summary of the child abuse prevention data collected and reported to the National Child Abuse and Neglect Data System (NCANDS) and the federal Administration for Children and Families.

d. A summary detailing the timeliness of the adoption process for children adopted from within the child welfare system.

e. Recommendations, by state agency, for the further development and improvement of services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

f. Budget requests, adoption promotion and support needs, and child abuse prevention program needs by state agency.

6. Work with the direct-support organization established under s. 39.0011 to receive financial assistance.

(11) ~~(10)~~ FUNDING AND SUBSEQUENT PLANS.—

(b) The office and the other agencies and organizations listed in paragraph (10)(a) ~~(9)(a)~~ shall readdress the state plan and make necessary revisions every 5 years, at a minimum. Such revisions shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than June 30 of each year divisible by 5. At least biennially, the office shall review the state plan and make any necessary revisions based on changing needs and program evaluation results. An annual progress report shall be submitted to update the state plan in the years between the 5-year intervals. In order to avoid duplication of effort, these required plans may

be made a part of or merged with other plans required by either the state or Federal Government, so long as the portions of the other state or Federal Government plan that constitute the state plan for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect are clearly identified as such and are provided to the Speaker of the House of Representatives and the President of the Senate as required under this section ~~above~~.

Section 3. Present subsections (59) through (65) of section 39.01, Florida Statutes, are redesignated as subsections (60) through (66), respectively, present subsections (67) through (69) are redesignated as subsections (68) through (70), respectively, present subsections (70) through (76) are redesignated as subsections (72) through (78), respectively, new subsections (31), (41), (59), (67), and (71) are added to that section, and subsections (7), (14), (18), (22), (26), and (27) and present subsections (28) through (41), (59), and (65) of that section are amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(7) ~~"Alleged juvenile sexual offender" means:~~

~~(a) A child 12 years of age or younger who is alleged to have committed a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133; or~~

~~(b) A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse.~~

"Juvenile sexual abuse" means any sexual behavior which occurs without consent, without equality, or as a result of coercion. For purposes of this subsection ~~paragraph~~, the following

definitions apply:

(a)~~1.~~ "Coercion" means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

(b)~~2.~~ "Equality" means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

(c)~~3.~~ "Consent" means an agreement, including all of the following:

1.~~a.~~ Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.

2.~~b.~~ Knowledge of societal standards for what is being proposed.

3.~~c.~~ Awareness of potential consequences and alternatives.

4.~~d.~~ Assumption that agreement or disagreement will be accepted equally.

5.~~e.~~ Voluntary decision.

6.~~f.~~ Mental competence.

Juvenile sexual ~~offender~~ behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

(14) "Child who has exhibited inappropriate sexual behavior" means a child ~~who is 12 years of age or younger and~~ who has been found by the department or the court to have committed an inappropriate sexual act.

(18) "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a child's and caregiver's physical, psychiatric, psychological, or mental health; developmental delays or challenges; and~~,~~ educational, vocational, and social condition and family environment as they relate to the child's and caregiver's need for rehabilitative and treatment services, including substance abuse treatment services, mental health services, developmental services, literacy services, medical services, family services, and other specialized services, as appropriate.

(22) "Diligent efforts by a parent" means a course of conduct which results in a meaningful change in the behavior of a parent that reduces ~~reduction in~~ risk to the child in the child's home to the extent that ~~would allow~~ the child may ~~to~~ be safely placed permanently back in the home as set forth in the case plan.

~~(26) "District" means any one of the 15 service districts of the department established pursuant to s. 20.19.~~

~~(27) "District administrator" means the chief operating officer of each service district of the department as defined in s. 20.19(5) and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.~~

(26)~~(28)~~ "Expedited termination of parental rights" means proceedings wherein a case plan with the goal of reunification is not being offered.

(27)~~(29)~~ "False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a child; or

(d) Personal benefit for the reporting person in any other private dispute involving a child.

The term "false report" does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.

(28) ~~(30)~~ "Family" means a collective body of persons, consisting of a child and a parent, legal custodian, or adult relative, in which:

(a) The persons reside in the same house or living unit; or

(b) The parent, legal custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(29) ~~(31)~~ "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.

(30) ~~(32)~~ "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in

responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

k. Significant bruises or welts.

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a

child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of "harm," the term "abandoned the child" or "abandonment of the child" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this paragraph, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term "abandoned" does not include a surrendered newborn infant as described in s. 383.50, a child in need of services as defined in chapter 984, or a family in need of services as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(f) Neglects the child. Within the context of the definition of "harm," the term "neglects the child" means that the parent or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;

2. Prevent the department from investigating such a case; or

3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or

2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is

demonstrably adversely affected by such usage.

As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

(31) "Impending danger" means a situation in which family behaviors, attitudes, motives, emotions, or situations pose a threat that may not be currently active but that can be anticipated to become active and to have severe effects on a child at any time.

(32) ~~(33)~~ "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care

center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (47).

(33) ~~(34)~~ "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

(34) ~~(35)~~ "Legal custody" means a legal status created by a court which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(35) ~~(36)~~ "Licensed child-caring agency" means a person, society, association, or agency licensed by the department to care for, receive, and board children.

(36) ~~(37)~~ "Licensed child-placing agency" means a person, society, association, or institution licensed by the department to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.

(37) ~~(38)~~ "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

(38) ~~(39)~~ "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict

serious bodily harm on himself or herself.

(39)~~(40)~~ "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

(40)~~(41)~~ "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(41) "Medical neglect" means the failure to provide or the failure to allow needed care as recommended by a health care practitioner for a physical injury, illness, medical condition, or impairment, or the failure to seek timely and appropriate medical care for a serious health problem that a reasonable person would have recognized as requiring professional medical attention. Medical neglect does not occur if the parent or legal guardian of the child has made reasonable attempts to obtain necessary health care services or the immediate health condition giving rise to the allegation of neglect is a known and expected complication of the child's diagnosis or treatment and:

(a) The recommended care offers limited net benefit to the child and the morbidity or other side effects of the treatment may be considered to be greater than the anticipated benefit; or

(b) The parent or legal guardian received conflicting medical recommendations for treatment from multiple

practitioners and did not follow all recommendations.

(59) "Present danger" means a significant and clearly observable family condition that is occurring at the current moment and is already endangering or threatening to endanger the child. Present danger threats are conspicuous and require that an immediate protective action be taken to ensure the child's safety.

(60) ~~(59)~~ "Preventive services" means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's developmental needs and need for physical, mental, and emotional health and a safe, stable, living environment; ~~,~~ shall promote family autonomy; ~~,~~ and shall strengthen family life, whenever possible.

(66) ~~(65)~~ "Reunification services" means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, developmental, mental, and emotional health and a safe, stable, living environment; ~~,~~

shall promote family autonomy;~~,~~ and shall strengthen family life, whenever possible.

(67) "Safety plan" means a plan created to control present or impending danger using the least intrusive means appropriate to protect a child when a parent, caregiver, or legal custodian is unavailable, unwilling, or unable to do so.

(71) "Sibling" means:

(a) A child who shares a birth parent or legal parent with one or more other children; or

(b) A child who has lived together in a family with one or more other children whom he or she identifies as siblings.

Section 4. Subsection (12) is added to section 39.013, Florida Statutes, to read:

39.013 Procedures and jurisdiction; right to counsel.—

(12) The department shall be represented by counsel in each dependency proceeding. Through its attorneys, the department shall make recommendations to the court on issues before the court and may support its recommendations through testimony and other evidence by its own employees, employees of sheriff's offices providing child protection services, employees of its contractors, employees of its contractor's subcontractors, or from any other relevant source.

Section 5. Paragraph (c) of subsection (2) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(2)

(c) Reports involving ~~a known or suspected~~ juvenile sexual abuse ~~offender~~ or a child who has exhibited inappropriate sexual

behavior shall be made and received by the department. An alleged incident of juvenile sexual abuse involving a child who is in the custody of or protective supervision of the department shall be reported to the department's central abuse hotline.

1. ~~The department shall determine the age of the alleged offender, if known.~~

~~2. If the alleged offender is 12 years of age or younger,~~ The central abuse hotline shall immediately electronically transfer the report or call to the county sheriff's office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

2. The department shall ensure that the facts and results of any investigation of child sexual abuse involving a child in the custody of or under the protective supervision of the department are made known to the court at the next hearing or included in the next report to the court concerning the child.

~~3. If the alleged offender is 13 years of age or older, the central abuse hotline shall immediately electronically transfer the report or call to the appropriate county sheriff's office and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the central abuse hotline.~~

Section 6. Effective January 1, 2015, section 39.2015, Florida Statutes, is created to read:

39.2015 Critical incident rapid response team.—

(1) As part of the department's quality assurance program,

the department shall provide an immediate multiagency investigation of certain child deaths or other serious incidents. The purpose of such investigation is to identify root causes and rapidly determine the need to change policies and practices related to child protection and child welfare.

(2) An immediate onsite investigation conducted by a critical incident rapid response team is required for all child deaths reported to the department if the child or another child in his or her family was the subject of a verified report of suspected abuse or neglect during the previous 12 months. The secretary may direct an immediate investigation for other cases involving serious injury to a child.

(3) Each investigation shall be conducted by a multiagency team of at least five professionals with expertise in child protection, child welfare, and organizational management. The team may consist of employees of the department, community-based care lead agencies, Children's Medical Services, and community-based care provider organizations; faculty from the institute consisting of public and private universities offering degrees in social work established pursuant to s. 1004.615; or any other person with the required expertise. The majority of the team must reside in judicial circuits outside the location of the incident. The secretary shall appoint a team leader for each group assigned to an investigation.

(4) An investigation shall be initiated as soon as possible, but not later than 2 business days after the case is reported to the department. A preliminary report on each case shall be provided to the secretary no later than 30 days after the investigation begins.

(5) Each member of the team is authorized to access all information in the case file.

(6) All employees of the department or other state agencies and all personnel from community-based care lead agencies and community-based care lead agency subcontractors must cooperate with the investigation by participating in interviews and timely responding to any requests for information. The members of the team may only access the records and information of contracted provider organizations which are available to the department by law.

(7) The secretary shall develop cooperative agreements with other entities and organizations as necessary to facilitate the work of the team.

(8) The members of the team may be reimbursed by the department for per diem, mileage, and other reasonable expenses as provided in s. 112.061. The department may also reimburse the team member's employer for the associated salary and benefits during the time the team member is fulfilling the duties required under this section.

(9) Upon completion of the investigation, the department shall make the team's final report, excluding any confidential information, available on its website.

(10) The secretary, in conjunction with the institute established pursuant to s. 1004.615, shall develop guidelines for investigations conducted by critical incident rapid response teams and provide training to team members. Such guidelines must direct the teams in the conduct of a root-cause analysis that identifies, classifies, and attributes responsibility for both direct and latent causes for the death or other incident,

including organizational factors, preconditions, and specific acts or omissions resulting from either error or a violation of procedures.

(11) The secretary shall appoint an advisory committee made up of experts in child protection and child welfare, including the Statewide Medical Director for Child Protection under the Department of Health, to conduct an independent review of investigative reports from the critical incident rapid response teams and make recommendations to improve policies and practices related to child protection and child welfare services. By October 1 of each year, the advisory committee shall submit a report to the secretary that includes findings and recommendations. The secretary shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 7. Section 39.2022, Florida Statutes, is created to read:

39.2022 Public disclosure of reported child deaths.—

(1) It is the intent of the Legislature to provide prompt disclosure of the basic facts of all deaths of children from birth through 18 years of age which occur in this state and which are reported to the department’s central abuse hotline. Disclosure shall be posted on the department’s public website. This section does not limit the public access to records under any other provision of law.

(2) Notwithstanding s. 39.202, if a child death is reported to the central abuse hotline, the department shall post on its website all of the following:

(a) The date of the child’s death.

(b) Any allegations of the cause of death or the preliminary cause of death, and the verified cause of death, if known.

(c) The county where the child resided.

(d) The name of the community-based care lead agency, case management agency, or out-of-home licensing agency involved with the child, family, or licensed caregiver, if applicable.

(e) Whether the child has been the subject of any prior verified reports to the department's central abuse hotline.

Section 8. Subsections (9) and (14) of section 39.301, Florida Statutes, are amended to read:

39.301 Initiation of protective investigations.—

(9)(a) For each report received from the central abuse hotline and accepted for investigation, the department or the sheriff providing child protective investigative services under s. 39.3065, shall perform the following child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person

making the report should be contacted before the face-to-face interviews with the child and family members.

2. Conduct face-to-face interviews with the child; other siblings, if any; and the parents, legal custodians, or caregivers.

3. Assess the child's residence, including a determination of the composition of the family and household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

4. Determine whether there is any indication that any child in the family or household has been abused, abandoned, or neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

5. Complete assessment of immediate child safety for each child based on available records, interviews, and observations with all persons named in subparagraph 2. and appropriate collateral contacts, which may include other professionals. The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect. This information shall be used solely

for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and may not be further disseminated or used for any other purpose.

6. Document the present and impending dangers to each child based on the identification of inadequate protective capacity through utilization of a standardized safety assessment instrument. If present or impending danger is identified, the child protective investigator must implement a safety plan or take the child into custody. If present danger is identified and the child is not removed, the child protective investigator shall create and implement a safety plan before leaving the home or the location where there is present danger. If impending danger is identified, the child protective investigator shall create and implement a safety plan as soon as necessary to protect the safety of the child. The child protective investigator may modify the safety plan if he or she identifies additional impending danger.

a. If the child protective investigator implements a safety plan, the plan must be specific, sufficient, feasible, and sustainable in response to the realities of the present or impending danger. A safety plan may be an in-home plan or an out-of-home plan, or a combination of both. A safety plan may not rely solely on promissory commitments by the parent, caregiver, or legal custodian who is currently not able to protect the child or on services that are not available or will not result in the safety of the child. A safety plan may not be implemented if for any reason the parents, guardian, or legal

765 custodian lacks the capacity or ability to comply with the plan.
766 If the department is not able to develop a plan that is
767 specific, sufficient, feasible, and sustainable, the department
768 shall file a shelter petition. A child protective investigator
769 shall implement separate safety plans for the perpetrator of
770 domestic violence and the parent who is a victim of domestic
771 violence as defined in s. 741.28. If the perpetrator of domestic
772 violence is not the parent, guardian, or legal custodian of the
773 child, the child protective investigator shall seek issuance of
774 an injunction authorized by s. 39.504 to implement a safety plan
775 for the perpetrator and impose any other conditions to protect
776 the child. The safety plan for the parent who is a victim of
777 domestic violence may not be shared with the perpetrator. If any
778 party to a safety plan fails to comply with the safety plan
779 resulting in the child being unsafe, the department shall file a
780 shelter petition.
781 b. The child protective investigator shall collaborate with
782 the community-based care lead agency in the development of the
783 safety plan as necessary to ensure that the safety plan is
784 specific, sufficient, feasible, and sustainable. The child
785 protective investigator shall identify services necessary for
786 the successful implementation of the safety plan. The child
787 protective investigator and the community-based care lead agency
788 shall mobilize service resources to assist all parties in
789 complying with the safety plan. The community-based care lead
790 agency shall prioritize safety plan services to families who
791 have multiple risk factors, including, but not limited to, two
792 or more of the following:
793 (I) The parent or legal custodian is of young age;

(II) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has a history of substance abuse, mental illness, or domestic violence;

(III) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has been previously found to have physically or sexually abused a child;

(IV) The parent or legal custodian or an adult currently living in or frequently visiting the home has been the subject of multiple allegations by reputable reports of abuse or neglect;

(V) The child is physically or developmentally disabled; or

(VI) The child is 3 years of age or younger.

c. The child protective investigator shall monitor the implementation of the plan to ensure the child's safety until the case is transferred to the lead agency at which time the lead agency shall monitor the implementation.

~~(b) Upon completion of the immediate safety assessment, the department shall determine the additional activities necessary to assess impending dangers, if any, and close the investigation.~~

(b) ~~(c)~~ For each report received from the central abuse hotline, the department or the sheriff providing child protective investigative services under s. 39.3065, shall determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the child's safety and well-being and development, and cause the delivery of those services through the early intervention of the department or its agent. As applicable, child protective investigators must inform parents and caregivers how and when to use the injunction

process under s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

1. If the department or the sheriff providing child protective investigative services determines that the interests of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and the parents or legal custodians, the parent or legal custodian and child may be referred for such care, case management, or other community resources.

2. If the department or the sheriff providing child protective investigative services determines that the child is in need of protection and supervision, the department may file a petition for dependency.

3. If a petition for dependency is not being filed by the department, the person or agency originating the report shall be advised of the right to file a petition pursuant to this part.

4. At the close of an investigation, the department or the sheriff providing child protective services shall provide to the person who is alleged to have caused the abuse, neglect, or abandonment and the parent or legal custodian a summary of findings from the investigation and provide information about their right to access confidential reports in accordance with s. 39.202.

(14)(a) If the department or its agent determines that a child requires immediate or long-term protection through~~:~~

~~1.~~ medical or other health care~~;~~ or

~~2.~~ homemaker care, day care, protective supervision, or other services to stabilize the home environment, including intensive family preservation services through the Intensive

Crisis Counseling Program, such services shall first be offered for voluntary acceptance unless:

1. There are high-risk factors that may impact the ability of the parents or legal custodians to exercise judgment. Such factors may include the parents' or legal custodians' young age or history of substance abuse, mental illness, or domestic violence; or

2. There is a high likelihood of lack of compliance with voluntary services, and such noncompliance would result in the child being unsafe.

(b) The parents or legal custodians shall be informed of the right to refuse services, as well as the responsibility of the department to protect the child regardless of the acceptance or refusal of services. If the services are refused, a collateral contact shall include a relative, if the protective investigator has knowledge of and the ability to contact a relative. If the services are refused and the department deems that the child's need for protection ~~so~~ requires services, the department shall take the child into protective custody or petition the court as provided in this chapter. At any time after the commencement of a protective investigation, a relative may submit in writing to the protective investigator or case manager a request to receive notification of all proceedings and hearings in accordance with s. 39.502. The request shall include the relative's name, address, and phone number and the relative's relationship to the child. The protective investigator or case manager shall forward such request to the attorney for the department. The failure to provide notice to either a relative who requests it pursuant to this subsection or

to a relative who is providing out-of-home care for a child may not result in any previous action of the court at any stage or proceeding in dependency or termination of parental rights under any part of this chapter being set aside, reversed, modified, or in any way changed absent a finding by the court that a change is required in the child's best interests.

(c) The department, in consultation with the judiciary, shall adopt by rule:

1. Criteria that are factors requiring that the department take the child into custody, petition the court as provided in this chapter, or, if the child is not taken into custody or a petition is not filed with the court, conduct an administrative review. Such factors must include, but are not limited to, noncompliance with a safety plan or the case plan developed by the department, and the family under this chapter, and prior abuse reports with findings that involve the child, the child's sibling, or the child's caregiver.

2. Requirements that if after an administrative review the department determines not to take the child into custody or petition the court, the department shall document the reason for its decision in writing and include it in the investigative file. For all cases that were accepted by the local law enforcement agency for criminal investigation pursuant to subsection (2), the department must include in the file written documentation that the administrative review included input from law enforcement. In addition, for all cases that must be referred to child protection teams pursuant to s. 39.303(2) and (3), the file must include written documentation that the administrative review included the results of the team's

evaluation. ~~Factors that must be included in the development of the rule include noncompliance with the case plan developed by the department, or its agent, and the family under this chapter and prior abuse reports with findings that involve the child or caregiver.~~

Section 9. Section 39.303, Florida Statutes, is amended to read:

39.303 Child protection teams; services; eligible cases.—The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of the Department of Children and Families ~~Family Services~~. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. ~~The Legislature finds that optimal coordination of child protection teams and sexual abuse treatment programs requires collaboration between~~ The Department of Health and the Department of Children and Families ~~Family Services. The two departments~~ shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Families ~~Family Services~~, shall maintain the responsibility for the screening, employment, and, if necessary, the termination of child protection team medical directors, at headquarters and in the 15 districts. Child protection team medical directors shall be responsible for oversight of the

teams in the districts.

(1) The Department of Health shall use ~~utilize~~ and convene the teams to supplement the assessment and protective supervision activities of the family safety and preservation program of the Department of Children and Families ~~Family Services~~. ~~Nothing in~~ This section does not ~~shall be construed to~~ remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or neglect or sexual abuse of a child. The role of the teams shall be to support activities of the program and to provide services deemed by the teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a child protection team shall be capable of providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of related findings ~~relative thereto~~.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or

neglect case, as the team may determine to be needed.

(e) Expert medical, psychological, and related professional testimony in court cases.

(f) Case staffings to develop treatment plans for children whose cases have been referred to the team. A child protection team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such child protection team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.

(g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(h) Such training services for program and other employees of the Department of Children and Families ~~Family Services~~, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.

(i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.

(j) Child protection team assessments that include, as

appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.

All medical personnel participating on a child protection team must successfully complete the required child protection team training curriculum as set forth in protocols determined by the Deputy Secretary for Children's Medical Services and the Statewide Medical Director for Child Protection. A child protection team that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child shall consult with a physician who has experience in treating children with the same condition.

(2) The child abuse, abandonment, and neglect reports that must be referred by the department to child protection teams of the Department of Health for an assessment and other appropriate available support services as set forth in subsection (1) must include cases involving:

(a) Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.

(b) Bruises anywhere on a child 5 years of age or under.

(c) Any report alleging sexual abuse of a child.

(d) Any sexually transmitted disease in a prepubescent child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care

facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.

(3) All abuse and neglect cases transmitted for investigation to a district by the hotline must be simultaneously transmitted to the Department of Health child protection team for review. For the purpose of determining whether face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (2) must be timely reviewed by:

(a) A physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(b) A physician licensed under chapter 458 or chapter 459 who holds board certification in a specialty other than pediatrics, who may complete the review only when working under the direction of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(c) An advanced registered nurse practitioner licensed under chapter 464 who has a specialty ~~speciality~~ in pediatrics or family medicine and is a member of a child protection team;

(d) A physician assistant licensed under chapter 458 or chapter 459, who may complete the review only when working under the supervision of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a

member of a child protection team; or

(e) A registered nurse licensed under chapter 464, who may complete the review only when working under the direct supervision of a physician licensed under chapter 458 or chapter 459 who holds certification in pediatrics and is a member of a child protection team.

(4) A face-to-face medical evaluation by a child protection team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team board-certified pediatrician, advanced registered nurse practitioner, physician assistant working under the supervision of a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

(b) The child protective investigator, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in paragraphs (2)(a)-(h) as reported; or

(c) The child protection team board-certified pediatrician, as authorized in subsection (3), determines that a medical evaluation is not required.

Notwithstanding paragraphs (a), (b), and (c), a child protection team pediatrician, as authorized in subsection (3), may determine that a face-to-face medical evaluation is necessary.

(5) In all instances in which a child protection team is

providing certain services to abused, abandoned, or neglected children, other offices and units of the Department of Health, and offices and units of the Department of Children and Families ~~Family Services~~, shall avoid duplicating the provision of those services.

(6) The Department of Health child protection team quality assurance program and the Family Safety Program Office of the Department of Children and Families ~~Family Services' Family Safety Program Office quality assurance program~~ shall collaborate to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate. Each quality assurance program shall include a review of records in which there are no findings of abuse, abandonment, or neglect, and the findings of these reviews shall be included in each department's quality assurance reports.

Section 10. Section 39.3068, Florida Statutes, is created to read:

39.3068 Reports of medical neglect.—

(1) Upon receiving a report alleging medical neglect, the department or sheriff's office shall assign the case to a child protective investigator who has specialized training in addressing medical neglect or working with medically complex children, if such investigator is available. If a child protective investigator with specialized training is not available, the child protective investigator shall consult with department staff with such expertise.

(2) The child protective investigator who has interacted with the child and the child's family shall promptly contact and provide information to the child protection team. The child

protection team shall assist the child protective investigator in identifying immediate responses to address the medical needs of the child with the priority of maintaining the child in the home if the parents will be able to meet the needs of the child with additional services. The child protective investigator and the child protection team must use a family-centered approach to assess the capacity of the family to meet those needs. A family-centered approach is intended to increase independence on the part of the family, accessibility to programs and services within the community, and collaboration between families and their service providers. The ethnic, cultural, economic, racial, social, and religious diversity of families must be respected and considered in the development and provision of services.

(3) The child shall be evaluated by the child protection team as soon as practicable. After receipt of the report from the child protection team, the department shall convene a case staffing which shall be attended, at a minimum, by the child protective investigator; department legal staff; and representatives from the child protection team that evaluated the child, Children's Medical Services, the Agency for Health Care Administration, the community-based care lead agency, and any providers of services to the child. However, the Agency for Health Care Administration is not required to attend the staffing if the child is not Medicaid-eligible. The staffing shall consider, at a minimum, available services, given the family's eligibility for services; services that are effective in addressing conditions leading to medical neglect allegations; and services that would enable the child to safely remain at home. Any services that are available and effective, shall be

provided.

Section 11. Section 39.307, Florida Statutes, is amended to read:

39.307 Reports of child-on-child sexual abuse.—

(1) Upon receiving a report alleging juvenile sexual abuse or inappropriate sexual behavior as defined in s. 39.01~~(7)~~, the department shall assist the family, child, and caregiver in receiving appropriate services to address the allegations of the report.

(a) The department shall ensure that information describing the child's history of child sexual abuse is included in the child's electronic record. This record must also include information describing the services the child has received as a result of his or her involvement with child sexual abuse.

(b) Placement decisions for a child who has been involved with child sexual abuse must include consideration of the needs of the child and any other children in the placement.

(c) The department shall monitor the occurrence of child sexual abuse and the provision of services to children involved in child sexual abuse, juvenile sexual abuse, or who have displayed inappropriate sexual behavior.

(2) The department, contracted sheriff's office providing protective investigation services, or contracted case management personnel responsible for providing services, at a minimum, shall adhere to the following procedures:

(a) The purpose of the response to a report alleging juvenile sexual abuse behavior or inappropriate sexual behavior shall be explained to the caregiver.

1. The purpose of the response shall be explained in a

manner consistent with legislative purpose and intent provided in this chapter.

2. The name and office telephone number of the person responding shall be provided to the caregiver of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

3. The possible consequences of the department's response, including outcomes and services, shall be explained to the caregiver of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

(b) The caregiver of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior and the victim's caregiver shall be involved to the fullest extent possible in determining the nature of the sexual behavior concerns and the nature of any problem or risk to other children.

(c) The assessment of risk and the perceived treatment needs of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers shall be conducted by the district staff, the child protection team of the Department of Health, and other providers under contract with the department to provide services to the caregiver of the alleged offender, the victim, and the victim's caregiver.

(d) The assessment shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.

(e) If necessary, the child protection team of the

Department of Health shall conduct a physical examination of the victim, which is sufficient to meet forensic requirements.

(f) Based on the information obtained from the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, his or her caregiver, the victim, and the victim's caregiver, an assessment of service and treatment needs must be completed and, if needed, a case plan developed within 30 days.

(g) The department shall classify the outcome of the report as follows:

1. Report closed. Services were not offered because the department determined that there was no basis for intervention.

2. Services accepted by alleged abuser ~~juvenile sexual offender~~. Services were offered to the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior and accepted by the caregiver.

3. Report closed. Services were offered to the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, but were rejected by the caregiver.

4. Notification to law enforcement. The risk to the victim's safety and well-being cannot be reduced by the provision of services or the caregiver rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.

5. Services accepted by victim. Services were offered to the victim and accepted by the caregiver.

6. Report closed. Services were offered to the victim but were rejected by the caregiver.

(3) If services have been accepted by the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers, the department shall designate a case manager and develop a specific case plan.

(a) Upon receipt of the plan, the caregiver shall indicate its acceptance of the plan in writing.

(b) The case manager shall periodically review the progress toward achieving the objectives of the plan in order to:

1. Make adjustments to the plan or take additional action as provided in this part; or

2. Terminate the case if indicated by successful or substantial achievement of the objectives of the plan.

(4) Services provided to the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers or family must be voluntary and of necessary duration.

(5) If the family or caregiver of the alleged abuser ~~juvenile sexual offender~~ or child who has exhibited inappropriate sexual behavior fails to adequately participate or allow for the adequate participation of the child in the services or treatment delineated in the case plan, the case manager may recommend that the department:

(a) Close the case;

(b) Refer the case to mediation or arbitration, if available; or

(c) Notify the appropriate law enforcement agency of failure to comply.

(6) At any time, as a result of additional information,

findings of facts, or changing conditions, the department may pursue a child protective investigation as provided in this chapter.

(7) The department may adopt ~~is authorized to develop~~ rules ~~and other policy directives necessary~~ to administer ~~implement the provisions of~~ this section.

Section 12. Paragraph (h) of subsection (8) and subsection (9) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

(h) The order for placement of a child in shelter care must identify the parties present at the hearing and must contain written findings:

1. That placement in shelter care is necessary based on the criteria in subsections (1) and (2).

2. That placement in shelter care is in the best interest of the child.

3. That continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services.

4. That based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent or that the court needs additional time, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child.

5. That the department has made reasonable efforts to

prevent or eliminate the need for removal of the child from the home. A finding of reasonable effort by the department to prevent or eliminate the need for removal may be made and the department is deemed to have made reasonable efforts to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal of the home situation by the department indicates that the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services;

c. The child cannot safely remain at home, either because there are no preventive services that can ensure the health and safety of the child or because, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or

d. The parent or legal custodian is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights in s. 39.806(1)(f)-(i).

6. That the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. Reasonable efforts shall include short-term placement in a group home with the ability to accommodate sibling groups if such a placement is available. The department shall report to the court its efforts to place siblings together unless the court finds that such placement is not in the best interest of a child or his or her sibling.

7.~~6.~~ That the court notified the parents, relatives that are providing out-of-home care for the child, or legal custodians of the time, date, and location of the next dependency hearing and of the importance of the active participation of the parents, relatives that are providing out-of-home care for the child, or legal custodians in all proceedings and hearings.

8.~~7.~~ That the court notified the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013.

9.~~8.~~ That the court notified relatives who are providing out-of-home care for a child as a result of the shelter petition being granted that they have the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child, if they so desire.

(9)(a) At any shelter hearing, the department shall provide to the court a recommendation for scheduled contact between the child and parents, if appropriate. The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child. Any order for visitation or other contact must conform to ~~the provisions of~~ s. 39.0139. If visitation is ordered but will not commence within 72 hours of the shelter hearing, the department shall provide justification to the court.

(b) If siblings who are removed from the home cannot be placed together, the department shall provide to the court a recommendation for frequent visitation or other ongoing

interaction between the siblings unless this interaction would be contrary to a sibling's safety or well-being. If visitation among siblings is ordered but will not commence within 72 hours after the shelter hearing, the department shall provide justification to the court for the delay.

Section 13. Paragraph (d) of subsection (3) of section 39.501, Florida Statutes, is amended to read:

39.501 Petition for dependency.—

(3)

(d) The petitioner must state in the petition, if known, whether:

1. A parent or legal custodian named in the petition has previously unsuccessfully participated in voluntary services offered by the department;

2. A parent or legal custodian named in the petition has participated in mediation and whether a mediation agreement exists;

3. A parent or legal custodian has rejected the voluntary services offered by the department;

4. A parent or legal custodian named in the petition has not fully complied with a safety plan; or

5.~~4.~~ The department has determined that voluntary services are not appropriate for the parent or legal custodian and the reasons for such determination.

If the department is the petitioner, it shall provide all safety plans as defined in s. 39.01 involving the parent or legal custodian to the court.

Section 14. Paragraph (a) of subsection (4) of section

39.504, Florida Statutes, is amended to read:

39.504 Injunction pending disposition of petition; penalty.—

(4) If an injunction is issued under this section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.

(a) The injunction applies to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the court, which may include ordering the alleged or actual offender to:

1. Refrain from further abuse or acts of domestic violence.

2. Participate in a specialized treatment program.

3. Limit contact or communication with the child victim, other children in the home, or any other child.

4. Refrain from contacting the child at home, school, work, or wherever the child may be found.

5. Have limited or supervised visitation with the child.

6. Vacate the home in which the child resides.

7. Comply with the terms of a safety plan implemented in the injunction pursuant to s. 39.301.

Section 15. Section 39.5085, Florida Statutes, is amended to read:

39.5085 Relative Caregiver Program.—

(1) It is the intent of the Legislature in enacting this section to:

(a) Provide for the establishment of procedures and protocols that serve to advance the continued safety of children

by acknowledging the valued resource uniquely available through grandparents, ~~and~~ relatives of children, and specified nonrelatives of children pursuant to subparagraph (2)(a)3.

(b) Recognize family relationships in which a grandparent or other relative is the head of a household that includes a child otherwise at risk of foster care placement.

(c) Enhance family preservation and stability by recognizing that most children in such placements with grandparents and other relatives do not need intensive supervision of the placement by the courts or by the department.

(d) Recognize that permanency in the best interests of the child can be achieved through a variety of permanency options, including permanent guardianship under s. 39.6221 if the guardian is a relative, by permanent placement with a fit and willing relative under s. 39.6231, by a relative, guardianship under chapter 744, or adoption, by providing additional placement options and incentives that will achieve permanency and stability for many children who are otherwise at risk of foster care placement because of abuse, abandonment, or neglect, but who may successfully be able to be placed by the dependency court in the care of such relatives.

(e) Reserve the limited casework and supervisory resources of the courts and the department for those cases in which children do not have the option for safe, stable care within the family.

(f) Recognize that a child may have a close relationship with a person who is not a blood relative or a relative by marriage and that such person should be eligible for financial assistance under this section if he or she is able and willing

to care for the child and provide a safe, stable home environment.

(2)(a) The Department of Children and Families ~~Family Services~~ shall establish and operate the Relative Caregiver Program pursuant to eligibility guidelines established in this section as further implemented by rule of the department. The Relative Caregiver Program shall, within the limits of available funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

2. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

3. Nonrelatives who are willing to assume custody and care of a dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the nonrelative caregiver under this chapter. The court must find that a proposed placement under this subparagraph is in the best interest of the child.

The placement may be court-ordered temporary legal custody to the relative or nonrelative under protective supervision of the department pursuant to s. 39.521(1)(b)3., or court-ordered placement in the home of a relative or nonrelative as a permanency option under s. 39.6221 or s. 39.6231 or under former s. 39.622 if the placement was made before July 1, 2006. The Relative Caregiver Program shall offer financial assistance to caregivers ~~who are relatives and~~ who would be unable to serve in that capacity without the ~~relative~~ caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

(b) Caregivers ~~who are relatives and~~ who receive assistance under this section must be capable, as determined by a home study, of providing a physically safe environment and a stable, supportive home for the children under their care~~,~~ and must assure that the children's well-being is met, including, but not limited to, the provision of immunizations, education, and mental health services as needed.

(c) Relatives or nonrelatives who qualify for and participate in the Relative Caregiver Program are not required to meet foster care licensing requirements under s. 409.175.

(d) Relatives or nonrelatives who are caring for children placed with them by the court pursuant to this chapter shall receive a special monthly ~~relative~~ caregiver benefit established by rule of the department. The amount of the special benefit payment shall be based on the child's age within a payment schedule established by rule of the department and subject to availability of funding. The statewide average monthly rate for children judicially placed with relatives or nonrelatives who

are not licensed as foster homes may not exceed 82 percent of the statewide average foster care rate, and ~~nor may~~ the cost of providing the assistance described in this section to any ~~relative~~ caregiver may not exceed the cost of providing out-of-home care in emergency shelter or foster care.

(e) Children receiving cash benefits under this section are not eligible to simultaneously receive WAGES cash benefits under chapter 414.

(f) Within available funding, the Relative Caregiver Program shall provide ~~relative~~ caregivers with family support and preservation services, flexible funds in accordance with s. 409.165, school readiness, and other available services in order to support the child's safety, growth, and healthy development. Children living with ~~relative~~ caregivers who are receiving assistance under this section shall be eligible for Medicaid coverage.

(g) The department may use appropriate available state, federal, and private funds to operate the Relative Caregiver Program. The department may develop liaison functions to be available to relatives or nonrelatives who care for children pursuant to this chapter to ensure placement stability in extended family settings.

Section 16. Subsections (3) and (4) of section 39.604, Florida Statutes, are amended to read:

39.604 Rilya Wilson Act; short title; legislative intent; requirements; attendance and reporting responsibilities.—

(3) REQUIREMENTS.—A child from birth to the age of ~~who is age 3 years to~~ school entry, under court-ordered ~~court ordered~~ protective supervision or in the custody of the Family Safety

Program Office of the Department of Children and Families ~~Family Services~~ or a community-based lead agency, and enrolled in a licensed early education or child care program must attend ~~be enrolled to participate in~~ the program 5 days a week. Notwithstanding ~~the requirements of~~ s. 39.202, the Department of Children and Families ~~Family Services~~ must notify operators of the licensed early education or child care program, subject to the reporting requirements of this act, of the enrollment of any child from birth to the age of ~~age 3 years to~~ school entry, under court-ordered ~~court ordered~~ protective supervision or in the custody of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or a community-based lead agency. When a child is enrolled in an early education or child care program regulated by the department, the child's attendance in the program must be a required action in the safety plan or the case plan developed for the ~~a~~ child pursuant to this chapter ~~who is enrolled in a licensed early education or child care program must contain the participation in this program as a required action~~. An exemption to participating in the licensed early education or child care program 5 days a week may be granted by the court.

(4) ATTENDANCE AND REPORTING REQUIREMENTS.—

(a) A child enrolled in a licensed early education or child care program who meets the requirements of subsection (3) may not be withdrawn from the program without the prior written approval of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or the community-based lead agency.

(b)1. If a child covered by this section is absent from the

program on a day when he or she is supposed to be present, the person with whom the child resides must report the absence to the program by the end of the business day. If the person with whom the child resides, whether the parent or caregiver, fails to timely report the absence, the absence is considered to be unexcused. The program shall report any unexcused absence or seven consecutive excused absences of a child who is enrolled in the program and covered by this act to the local designated staff of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or the community-based lead agency by the end of the business day following the unexcused absence or seventh consecutive excused absence.

2. The department or community-based lead agency shall conduct a site visit to the residence of the child upon receiving a report of two consecutive unexcused absences or seven consecutive excused absences.

3. If the site visit results in a determination that the child is missing, the department or community-based lead agency shall report the child as missing to a law enforcement agency and proceed with the necessary actions to locate the child pursuant to procedures for locating missing children.

4. If the site visit results in a determination that the child is not missing, the parent or caregiver shall be notified that failure to ensure that the child attends the licensed early education or child care program is a violation of the safety plan or the case plan. If more than two site visits are conducted pursuant to this subsection, staff shall initiate action to notify the court of the parent or caregiver's noncompliance with the case plan.

Section 17. Paragraph (c) of subsection (2) and paragraph (a) of subsection (3) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(c) *Review determinations.*—The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or legal custodian, the guardian ad litem or surrogate parent for educational decisionmaking if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

1. If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.

2. If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.

3. If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously been appointed or if there is a need to continue a guardian ad litem in a case in which a guardian ad litem has been appointed.

4. Who holds the rights to make educational decisions for the child. If appropriate, the court may refer the child to the district school superintendent for appointment of a surrogate parent or may itself appoint a surrogate parent under the Individuals with Disabilities Education Act and s. 39.0016.

5. The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.

6. The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and results of the parent-child visitation and the reason for any noncompliance.

7. The frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the child.

8.~~7.~~ The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply, if applicable ~~such is the case~~.

9.~~8.~~ Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as

close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement, as documented by assurances from the community-based care provider that:

a. The placement of the child takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

b. The community-based care agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

10.~~9.~~ A projected date likely for the child's return home or other permanent placement.

11.~~10.~~ When appropriate, the basis for the unwillingness or inability of the parent to become a party to a case plan. The court and the citizen review panel shall determine if the efforts of the social service agency to secure party participation in a case plan were sufficient.

12.~~11.~~ For a child who has reached 13 years of age but is not yet 18 years of age, the adequacy of the child's preparation for adulthood and independent living.

13.~~12.~~ If amendments to the case plan are required. Amendments to the case plan must be made under s. 39.6013.

(3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

(a) In addition to the review and report required under paragraphs (1)(a) and (2)(a), respectively, the court shall hold a judicial review hearing within 90 days after a child's 17th

birthday. The court shall also issue an order, separate from the order on judicial review, that the disability of nonage of the child has been removed pursuant to ss. 743.044, 743.045, and 743.046, and for any of these disabilities that the court finds is in the child's best interest to remove. The court ~~s. 743.045 and~~ shall continue to hold timely judicial review hearings. If necessary, the court may review the status of the child more frequently during the year before the child's 18th birthday. At each review hearing held under this subsection, in addition to any information or report provided to the court by the foster parent, legal custodian, or guardian ad litem, the child shall be given the opportunity to address the court with any information relevant to the child's best interest, particularly in relation to independent living transition services. The department shall include in the social study report for judicial review written verification that the child has:

1. A current Medicaid card and all necessary information concerning the Medicaid program sufficient to prepare the child to apply for coverage upon reaching the age of 18, if such application is appropriate.

2. A certified copy of the child's birth certificate and, if the child does not have a valid driver license, a Florida identification card issued under s. 322.051.

3. A social security card and information relating to social security insurance benefits if the child is eligible for those benefits. If the child has received such benefits and they are being held in trust for the child, a full accounting of these funds must be provided and the child must be informed as to how to access those funds.

4. All relevant information related to the Road-to-Independence Program, including, but not limited to, eligibility requirements, information on participation, and assistance in gaining admission to the program. If the child is eligible for the Road-to-Independence Program, he or she must be advised that he or she may continue to reside with the licensed family home or group care provider with whom the child was residing at the time the child attained his or her 18th birthday, in another licensed family home, or with a group care provider arranged by the department.

5. An open bank account or the identification necessary to open a bank account and to acquire essential banking and budgeting skills.

6. Information on public assistance and how to apply for public assistance.

7. A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and the educational program or school in which he or she will be enrolled.

8. Information related to the ability of the child to remain in care until he or she reaches 21 years of age under s. 39.013.

9. A letter providing the dates that the child is under the jurisdiction of the court.

10. A letter stating that the child is in compliance with financial aid documentation requirements.

11. The child’s educational records.

12. The child’s entire health and mental health records.

13. The process for accessing his or her case file.

14. A statement encouraging the child to attend all judicial review hearings occurring after the child's 17th birthday.

Section 18. Subsection (2) of section 39.802, Florida Statutes, is amended to read:

39.802 Petition for termination of parental rights; filing; elements.—

(2) The form of the petition is governed by the Florida Rules of Juvenile Procedure. The petition must be in writing and signed by the petitioner ~~or, if the department is the petitioner, by an employee of the department,~~ under oath stating the petitioner's good faith in filing the petition.

Section 19. Paragraphs (e), (f), and (h) of subsection (1) of section 39.806, Florida Statutes, are amended to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. The failure of the parent or parents to substantially comply with the case plan for a period of 12 months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. The 12-month period

begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the court's approval of a case plan having the goal of reunification with the parent, whichever occurs first; or

2. The parent or parents have materially breached the case plan. Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents have materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents are unlikely or unable to substantially comply with the case plan before time to comply with the case plan expires.

3. The child has been in care for any 12 of the last 22 months and the parents have not substantially complied with the case plan so as to permit reunification under s. 39.522(2) unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child.

(f) The parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling. Proof of a nexus between egregious conduct to a child and the potential harm to the child's sibling is not required.

1. As used in this subsection, the term "sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by

consanguinity.

2. As used in this subsection, the term "egregious conduct" means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(h) The parent or parents have committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child. Proof of a nexus between the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery to a child and the potential harm to a child or another child is not required.

Section 20. Paragraph (g) of subsection (1) of section 63.212, Florida Statutes, is amended to read:

63.212 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person:

(g) Except an adoption entity, to advertise or offer to the public, in any way, by any medium whatever that a minor is available for adoption or that a minor is sought for adoption; and, further, it is unlawful for any person to publish or broadcast any such advertisement or assist an unlicensed person or entity in publishing or broadcasting any such advertisement without including a Florida license number of the agency or attorney placing the advertisement.

1. Only a person who is an attorney licensed to practice

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law in this state or an adoption entity licensed under the laws of this state may place a paid advertisement or paid listing of the person's telephone number, on the person's own behalf, in a telephone directory that:

a. A child is offered or wanted for adoption; or

b. The person is able to place, locate, or receive a child for adoption.

2. A person who publishes a telephone directory that is distributed in this state~~:~~

~~a.~~ shall include, at the beginning of any classified heading for adoption and adoption services, a statement that informs directory users that only attorneys licensed to practice law in this state and licensed adoption entities may legally provide adoption services under state law.

3.~~b.~~ A person who places ~~may publish~~ an advertisement described in subparagraph 1. in a ~~the~~ telephone directory must include ~~only if the advertisement contains~~ the following information:

a.~~(I)~~ For an attorney licensed to practice law in this state, the person's Florida Bar number.

b.~~(II)~~ For a child placing agency licensed under the laws of this state, the number on the person's adoption entity license.

Section 21. Subsection (1), paragraph (b) of subsection (2), and paragraphs (c) and (d) of subsection (3) of section 383.402, Florida Statutes, are amended to read:

383.402 Child abuse death review; State Child Abuse Death Review Committee; local child abuse death review committees.—

(1) It is the intent of the Legislature to establish a

statewide multidisciplinary, multiagency child abuse death assessment and prevention system that consists of state and local review committees. The state and local review committees shall review the facts and circumstances of all deaths of children from birth through age 18 which occur in this state and are reported to the central abuse hotline of the Department of Children and Families ~~as the result of verified child abuse or neglect~~. The purpose of the review shall be to:

(a) Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse.

(b) Whenever possible, develop a communitywide approach to address such cases and contributing factors.

(c) Identify any gaps, deficiencies, or problems in the delivery of services to children and their families by public and private agencies which may be related to deaths that are the result of child abuse.

(d) Make and implement recommendations for changes in law, rules, and policies, as well as develop practice standards that support the safe and healthy development of children and reduce preventable child abuse deaths.

(2)

(b) In addition, the State Surgeon General shall appoint the following members to the state committee, based on recommendations from the Department of Health and the agencies listed in paragraph (a), and ensuring that the committee represents the regional, gender, and ethnic diversity of the state to the greatest extent possible:

1. The Statewide Medical Director for Child Protection ~~A board-certified pediatrician~~.

2. A public health nurse.

3. A mental health professional who treats children or adolescents.

4. An employee of the Department of Children and Family Services who supervises family services counselors and who has at least 5 years of experience in child protective investigations.

5. The medical director of a child protection team.

6. A member of a child advocacy organization.

7. A social worker who has experience in working with victims and perpetrators of child abuse.

8. A person trained as a paraprofessional in patient resources who is employed in a child abuse prevention program.

9. A law enforcement officer who has at least 5 years of experience in children's issues.

10. A representative of the Florida Coalition Against Domestic Violence.

11. A representative from a private provider of programs on preventing child abuse and neglect.

(3) The State Child Abuse Death Review Committee shall:

(c) Prepare an annual statistical report on the incidence and causes of death resulting from reported child abuse in the state during the prior calendar year. The state committee shall submit a copy of the report by October 1 ~~December 31~~ of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include recommendations to the Department of Children and Families regarding ~~for state and local action, including specific~~ policy and~~,~~ procedural changes to the child protection and child

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welfare system and~~,~~ regulatory~~,~~ or statutory changes~~,~~ and any other recommended preventive action.

(d) Provide training to ~~Encourage and assist in developing the~~ local child abuse death review committee members on the dynamics and impact of domestic violence, substance abuse, or mental health disorders when there is a co-occurrence of child abuse ~~committees~~. Training shall be provided by the Florida Coalition Against Domestic Violence, the Florida Alcohol and Drug Abuse Association, and the Florida Council for Community Mental Health in each entity's respective area of expertise.

Section 22. Subsection (5) of section 402.40, Florida Statutes, is amended, and paragraph (g) is added to subsection (3) of that section, to read:

402.40 Child welfare training and certification.—

(3) THIRD-PARTY CREDENTIALING ENTITIES.—The department shall approve one or more third-party credentialing entities for the purpose of developing and administering child welfare certification programs for persons who provide child welfare services. A third-party credentialing entity shall request such approval in writing from the department. In order to obtain approval, the third-party credentialing entity must:

(g) Maintain an advisory committee, including representatives from each region of the department, each sheriff's office providing child protective services, and each community-based care lead agency, who shall be appointed by the organization they represent. The third-party credentialing entity may appoint additional members to the advisory committee.

(5) CORE COMPETENCIES AND SPECIALIZATIONS.—

(a) The Department of Children and Families ~~Family Services~~

shall approve the core competencies and related preservice curricula that ensures that each person delivering child welfare services obtains the knowledge, skills, and abilities to competently carry out his or her work responsibilities.

(b) The identification of these core competencies and development of preservice curricula shall be a collaborative effort that includes professionals who have expertise in child welfare services, department-approved third-party credentialing entities, and providers that will be affected by the curriculum, including, but not limited to, representatives from the community-based care lead agencies, the Florida Coalition Against Domestic Violence, the Florida Alcohol and Drug Abuse Association, the Florida Council for Community Mental Health, sheriffs' offices conducting child protection investigations, and child welfare legal services providers.

(c) Community-based care agencies, sheriffs' offices, and the department may contract for the delivery of preservice and any additional training for persons delivering child welfare services if the curriculum satisfies the department-approved core competencies.

(d) The department may also approve certifications involving specializations in serving specific populations or in skills relevant to child protection to be awarded to persons delivering child welfare services by a third-party credentialing entity approved pursuant to subsection (3).

(e) ~~(d)~~ Department-approved credentialing entities shall, for a period of at least 12 months after implementation of the third-party child welfare certification programs, grant reciprocity and award a child welfare certification to

individuals who hold current department-issued child welfare certification in good standing, at no cost to the department or the certificateholder.

Section 23. Section 402.402, Florida Statutes, is created to read:

402.402 Child protection and child welfare personnel; attorneys employed by the department.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Child protection and child welfare personnel" includes child protective investigators and child protective investigation supervisors employed by the department and case managers and case manager supervisors employed by a community-based care lead agency or a subcontractor of a community-based care lead agency.

(b) "Human services-related field" means psychology, sociology, counseling, special education, human development, child development, family development, marriage and family therapy, and nursing.

(2) CHILD PROTECTIVE INVESTIGATION PROFESSIONAL STAFF REQUIREMENTS.—The department is responsible for recruitment of qualified professional staff to serve as child protective investigators and child protective investigation supervisors. The department shall make every effort to recruit and hire persons qualified by their education and experience to perform social work functions. The department's efforts shall be guided by the goal that by July 1, 2019, at least half of all child protective investigators and supervisors will have a bachelor's degree or a master's degree in social work from a college or university social work program accredited by the Council on

Social Work Education. The department, in collaboration with the lead agencies, subcontracted provider organizations, the Florida Institute for Child Welfare created pursuant to s. 1004.615, and other partners in the child welfare system, shall develop a protocol for screening candidates for child protective positions which reflects the preferences specified in paragraphs (a)-(f). The following persons shall be given preference in the recruitment of qualified professional staff, but the preferences serve only as guidance and do not limit the department's discretion to select the best available candidates:

(a) Child protective investigators with bachelor's degrees in social work and child protective investigation supervisors with master's degrees in social work from a college or university social work program accredited by the Council on Social Work Education.

(b) Child protective investigators and supervisors with baccalaureate or master's degrees in a human service-related field such as counseling, sociology, special education, human development, child development, family development, marriage and family therapy, and nursing.

(c) Child protective investigators and supervisors with work experience demonstrating critical thinking skills, formal assessment processes, communication skills, problem solving, and empathy.

(d) Child protective investigators and supervisors with a combination of work and volunteer experience in public service fields, especially those related to children's services.

(e) Child protective investigators and supervisors with a commitment to helping children and families, a capacity to work

as part of a team, and an interest in continuous development of skills and knowledge.

(f) Child protective investigators and supervisors with personal strength and resilience to manage competing demands and handle workplace stresses.

(3) REPORT.—By each October 1, the department shall submit a report on the educational qualifications, turnover, and working conditions of the child protective investigators and supervisors to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(4) ATTORNEYS EMPLOYED BY THE DEPARTMENT TO HANDLE CHILD WELFARE CASES.—Attorneys hired on or after July 1, 2014, whose primary responsibility is representing the department in child welfare cases shall, within the first 6 months of employment, receive training in:

(a) The dependency court process, including the attorney's role in preparing and reviewing documents prepared for dependency court for accuracy and completeness;

(b) Preparing and presenting child welfare cases, including at least 1 week shadowing an experienced children's legal services attorney preparing and presenting cases;

(c) Safety assessment, safety decisionmaking tools, and safety plans;

(d) Developing information presented by investigators and case managers to support decisionmaking in the best interest of children; and

(e) The experiences and techniques of case managers and investigators, including shadowing an experienced child protective investigator and an experienced case manager for at

least 8 hours.

Section 24. Section 402.403, Florida Statutes, is created to read:

402.403 Child Protection and Child Welfare Personnel Tuition Exemption Program.—

(1) There is established within the department the Child Protection and Child Welfare Personnel Tuition Exemption Program for the purpose of recruiting and retaining high-performing individuals who are employed as child protection and child welfare personnel as defined in s. 402.402 and who do not possess a master's degree in social work or a certificate in an area related to child welfare.

(2) Child protection and child welfare personnel who meet the requirements specified in subsection (3) are exempt from the payment of tuition and fees at a state university.

(3) The department may approve child protection and child welfare personnel for the tuition and fee exemption if such personnel:

(a) Are employed as child protection and child welfare personnel and are determined by their employers to perform at a high level as established by their personnel evaluations; and

(b) Are accepted in a graduate-level social work program or a certificate program related to child welfare which is accredited by the Council on Social Work Education.

(4) Child protection and child welfare personnel who meet the requirements specified in subsection (3) may enroll for up to 6 credit hours of courses per term.

(5) Child protection and child welfare personnel who are accepted into a graduate-level social work program or a

certificate program related to child welfare which is accredited by the Council on Social Work Education shall take courses associated with the degree or certificate program online if such courses are offered online.

(6) All child protection and child welfare personnel who participate in the tuition exemption program established under this section must remain employed by the department, a state agency, or a contracted provider for 5 years after completion of a graduate level social work program. If employment ends before the 5-year period, the benefit shall be repaid according to a pro rata calculation based on the number of years of service.

Section 25. Section 402.404, Florida Statutes, is created to read:

402.404 Child Protection and Child Welfare Personnel Student Loan Forgiveness Program.—

(1) There is established within the department the Child Protection and Child Welfare Personnel Student Loan Forgiveness Program. The purpose of the program is to increase employment and retention of high-performing individuals who have either a bachelor's degree or a master's degree in social work and work in child protection or child welfare for the department, a community-based care lead agency, or a community-based care subcontractor by making payments toward loans received by students from federal or state programs or commercial lending institutions for the support of prior postsecondary study in accredited social work programs.

(2) To be eligible for the program, a candidate must:

(a) Be employed by the department as a child protective investigator or a child protective investigation supervisor or

be employed by a community-based care lead agency or subcontractor as a case manager or case manager supervisor;

(b) Be determined by the department or his or her employer to have a high level of performance based on his or her personal evaluation; and

(c) Have graduated from an accredited social work program with either a bachelor's degree or a master's degree in social work.

(3) Only loans to pay the costs of tuition, books, fees, and living expenses shall be covered.

(4) The department or lead agency may make loan payments of up to $3,000 each year for up to 4 years on behalf of selected graduates of an accredited social work program from the funds appropriated for this purpose. All payments are contingent upon continued proof of employment and shall be made directly to the holder of the loan.

(5) A student who receives a tuition exemption pursuant to s. 402.403 is not eligible to participate in the Child Protection and Child Welfare Personnel Student Loan Forgiveness Program.

(6) All child protection and child welfare personnel who participate in the student loan forgiveness program established under this section must remain employed by the department, a state agency, or a contracted provider for 5 years after completion of a graduate level social work program. If employment ends before the 5-year period, the benefit shall be repaid according to a pro rata calculation based on the number of years of service.

(7) The department shall prioritize funds appropriated for

this purpose to regions with high average caseloads and low workforce retention rates.

Section 26. Section 409.165, Florida Statutes, is amended to read:

409.165 Alternate care for children.—

(1) Within funds appropriated, the department shall establish and supervise a program of emergency shelters, runaway shelters, foster homes, group homes, agency-operated group treatment homes, nonpsychiatric residential group care facilities, psychiatric residential treatment facilities, and other appropriate facilities to provide shelter and care for dependent children who must be placed away from their families. The department, in accordance with outcome ~~established~~ goals established in s. 409.986, shall contract for the provision of such shelter and care by counties, municipalities, nonprofit corporations, and other entities capable of providing needed services if:

(a) The services ~~so~~ provided comply with all department standards, policies, and procedures ~~are available~~;

(b) The services can be ~~so~~ provided at a reasonable cost ~~are more cost-effective than those provided by the department~~; and

(c) Unless otherwise provided by law, such providers of shelter and care are licensed by the department.

~~It is the legislative intent that the~~

(2) Funds appropriated for the alternate care of children as described in this section may be used to meet the needs of children in their own homes or those of relatives if the

children can be safely served in such settings ~~their own homes, or the homes of relatives,~~ and the expenditure of funds in such manner is equal to or less than the cost of out-of-home placement ~~calculated by the department to be an eventual cost savings over placement of children~~.

(3) ~~(2)~~ The department shall ~~may~~ cooperate with all child service institutions or agencies within the state which meet the department's standards in order to maintain a comprehensive, coordinated, and inclusive system for promoting and protecting the well-being of children, consistent with the goals established in s. 409.986 ~~rules for proper care and supervision prescribed by the department for the well-being of children~~.

(a) The department shall work with the Department of Health in the development, use, and monitoring of medical foster homes for medically complex children.

(b) The department shall collaborate with all relevant state and local agencies to provide such supports and services as may be necessary to maintain medically complex children in the least restrictive and most nurturing environment.

(4) ~~(3)~~ With the written consent of parents, custodians, or guardians, or in accordance with those provisions in chapter 39 that relate to dependent children, the department, under rules properly adopted, may place a child:

(a) With a relative;

(b) With an adult nonrelative approved by the court for long-term custody;

(c) With a person who is considering the adoption of a child in the manner provided for by law;

(d) When limited, except as provided in paragraph (b), to

temporary emergency situations, with a responsible adult approved by the court;

(e) With a person or family approved by the department to serve as a medical foster home;

(f) ~~(e)~~ With a person or agency licensed by the department in accordance with s. 409.175; or

(g) ~~(f)~~ In a subsidized independent living situation, subject to the provisions of s. 409.1451(4)(c),

under such conditions as are determined to be for the best interests or the welfare of the child. Any child placed in an institution or in a family home by the department or its agency may be removed by the department or its agency, and such other disposition may be made as is for the best interest of the child, including transfer of the child to another institution, another home, or the home of the child. Expenditure of funds appropriated for out-of-home care can be used to meet the needs of a child in the child's own home or the home of a relative if the child can be safely served in the child's own home or that of a relative if placement can be avoided by the expenditure of such funds, and if the expenditure of such funds in this manner is equal to or less than the cost of out-of-home placement ~~calculated by the department to be a potential cost savings~~.

Section 27. Paragraph (c) of subsection (2) of section 409.967, Florida Statutes, is amended to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem

necessary, the contract must require:

(c) *Access.*—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1, 2013, and a final order has issued in any civil or administrative challenge. Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to both the agency and the public and have the capability to compare the availability of providers to network adequacy standards and to accept and display feedback from each provider's patients. Each plan shall submit quarterly reports to the agency identifying the number of enrollees assigned to each primary care provider.

2. Each managed care plan must publish any prescribed drug

formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers. The plan must update the list within 24 hours after making a change. Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers. For Medicaid recipients diagnosed with hemophilia who have been prescribed anti-hemophilic-factor replacement products, the agency shall provide for those products and hemophilia overlay services through the agency's hemophilia disease management program.

3. Managed care plans, and their fiscal agents or intermediaries, must accept prior authorization requests for any service electronically.

4. Managed care plans serving children in the care and custody of the Department of Children and Families or serving parents of such children must maintain complete medical, dental, and behavioral health information and provide such information to the department for inclusion in the state's child welfare data system. Using such documentation, the agency and the department shall determine the plan's compliance with standards for access to medical, dental, and behavioral health services; the use of psychotropic medications; and followup on all medically necessary services recommended as a result of early and periodic screening, diagnosis, and treatment.

Section 28. Paragraph (f) is added to subsection (2) of section 409.972, Florida Statutes, to read:

409.972 Mandatory and voluntary enrollment.—

(2) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(f) Medicaid recipients residing in a group home facility licensed under chapter 393.

Section 29. The Division of Law Revision and Information is directed to create part V of chapter 409, Florida Statutes, consisting of ss. 409.986-409.997, to be entitled "Community-based child welfare."

Section 30. Section 409.986, Florida Statutes, is created to read:

409.986 Legislative findings and intent; child protection and child welfare outcomes; definitions.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) It is the intent of the Legislature that the Department of Children and Families provide child protection and child welfare services to children through contracting with community-based care lead agencies. Counties that provide children and family services with at least 40 licensed residential group care beds by July 1, 2003, and that provide at least $2 million annually in county general revenue funds to supplement foster and family care services shall continue to contract directly with the state. It is the further intent of the Legislature that communities have responsibility for and participate in ensuring safety, permanence, and well-being for all children in the state.

(b) The Legislature finds that when private entities assume responsibility for the care of children in the child protection

and child welfare system, comprehensive oversight of the programmatic, administrative, and fiscal operation of those entities is essential. The Legislature further finds that the appropriate care of children is ultimately the responsibility of the state and that outsourcing such care does not relieve the state of its responsibility to ensure that appropriate care is provided.

(2) CHILD PROTECTION AND CHILD WELFARE OUTCOMES.—It is the goal of the department to protect the best interest of children by achieving the following outcomes in conjunction with the community-based care lead agency, community-based subcontractors, and the community alliance:

(a) Children are first and foremost protected from abuse and neglect.

(b) Children are safely maintained in their homes, if possible and appropriate.

(c) Services are provided to protect children and prevent their removal from their home.

(d) Children have permanency and stability in their living arrangements.

(e) Family relationships and connections are preserved for children.

(f) Families have enhanced capacity to provide for their children's needs.

(g) Children receive appropriate services to meet their educational needs.

(h) Children receive services to meet their physical and mental health needs.

(i) Children develop the capacity for independent living

and competence as an adult.

(3) DEFINITIONS.—As used in this part, except as otherwise provided, the term:

(a) "Care" means services of any kind which are designed to facilitate a child remaining safely in his or her own home, returning safely to his or her own home if he or she is removed from the home, or obtaining an alternative permanent home if he or she cannot remain at home or be returned home. The term includes, but is not be limited to, prevention, diversion, and related services.

(b) "Child" or "children" has the same meaning as provided in s. 39.01.

(c) "Community alliance" or "alliance" means the group of stakeholders, community leaders, client representatives, and funders of human services established pursuant to s. 20.19(5) to provide a focal point for community participation and oversight of community-based services.

(d) "Community-based care lead agency" or "lead agency" means a single entity with which the department has a contract for the provision of care for children in the child protection and child welfare system in a community that is no smaller than a county and no larger than two contiguous judicial circuits. The secretary of the department may authorize more than one eligible lead agency within a single county if doing so will result in more effective delivery of services to children.

(e) "Related services" includes, but is not limited to, family preservation, independent living, emergency shelter, residential group care, foster care, therapeutic foster care, intensive residential treatment, foster care supervision, case

management, coordination of mental health services, postplacement supervision, permanent foster care, and family reunification.

Section 31. Section 409.987, Florida Statutes, is created to read:

409.987 Lead agency procurement.—

(1) Community-based care lead agencies shall be procured by the department through a competitive process as required under chapter 287.

(2) The department shall produce a schedule for the procurement of community-based care lead agencies and provide the schedule to the community alliances established pursuant to s. 20.19(5) and post the schedule on the department's website.

(3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies.

(4) In order to serve as a lead agency, an entity must:

(a) Be organized as a Florida corporation or a governmental entity.

(b) Be governed by a board of directors or a board committee composed of board members. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must consist of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

1. At least 75 percent of the membership of the board of

directors must consist of persons residing in this state, and at least 51 percent of the membership of the board of directors must consist of persons residing within the service area of the lead agency. If a board committee governs the lead agency, 100 percent of its membership must consist of persons residing within the service area of the lead agency.

2. The powers of the board of directors or board committee include, are not limited to, approving the lead agency's budget and setting the lead agency's operational policy and procedures. A board of directors must additionally have the power to hire the lead agency's executive director, unless a board committee governs the lead agency, in which case the board committee must have the power to confirm the selection of the lead agency's executive director.

(c) Demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a performance bond.

(5) The department's procurement team procuring any lead agencies' contracts must include individuals from the community alliance in the area to be served under the contract. All meetings at which vendors make presentations to or negotiate with the procurement team shall be held in the area to be served by the contract.

Section 32. Section 409.988, Florida Statutes, is created to read:

409.988 Lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(a) Shall serve all children referred as a result of a report of abuse, neglect, or abandonment to the department's

central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject of verified reports but who are at moderate to extremely high risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred. The lead agency may also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.

(b) Shall provide accurate and timely information necessary for oversight by the department pursuant to the child welfare results-oriented accountability system required by s. 409.997.

(c) Shall follow the financial guidelines developed by the department and provide for a regular independent auditing of its financial activities. Such financial information shall be provided to the community alliance established under s. 20.19(5).

(d) Shall post on its website the current budget for the lead agency, including the Internal Revenue Service Form 990 for the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents.

(e) Shall prepare all judicial reviews, case plans, and other reports necessary for court hearings for dependent children, except those related to the investigation of a referral from the department's child abuse hotline, and shall submit these documents timely to the department's attorneys for review, any necessary revision, and filing with the court. The

lead agency shall make the necessary staff available to department attorneys for preparation for dependency proceedings, and shall provide testimony and other evidence required for dependency court proceedings in coordination with the department's attorneys. This duty does not include the preparation of legal pleadings or other legal documents, which remain the responsibility of the department.

(f) Shall ensure that all individuals providing care for dependent children receive appropriate training and meet the minimum employment standards established by the department.

(g) Shall maintain eligibility to receive all available federal child welfare funds.

(h) Shall maintain written agreements with Healthy Families Florida lead entities in its service area pursuant to s. 409.153 to promote cooperative planning for the provision of prevention and intervention services.

(i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services.

(j) May subcontract for the provision of services required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services provided.

(k) Shall post on its website by the 15th day of each month at a minimum the information contained in subparagraphs 1.-4.

for the preceding calendar month regarding its case management services. The following information shall be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:

1. The average caseload of case managers, including only filled positions;

2. The turnover rate for case managers and case management supervisors for the previous 12 months;

3. The percentage of required home visits completed; and

4. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months.

(2) LICENSURE.—

(a) A lead agency must be licensed as a child-caring or child-placing agency by the department under this chapter.

(b) Each foster home, therapeutic foster home, emergency shelter, or other placement facility operated by the lead agency must be licensed by the department under chapter 402 or this chapter.

(c) Substitute care providers who are licensed under s. 409.175 and who have contracted with a lead agency are also authorized to provide registered or licensed family day care under s. 402.313 if such care is consistent with federal law and if the home has met the requirements of s. 402.313.

(d) In order to eliminate or reduce the number of duplicate inspections by various program offices, the department shall coordinate inspections required for licensure of agencies under this subsection.

(e) The department may adopt rules to administer this subsection.

(3) SERVICES.—A lead agency must serve dependent children through services that are supported by research or are best child welfare practices. The agency may also provide innovative services, including, but not limited to, family-centered, cognitive-behavioral, trauma-informed interventions designed to mitigate out-of-home placements.

(4) LEAD AGENCY ACTING AS GUARDIAN.—

(a) If a lead agency or other provider has accepted case management responsibilities for a child who is sheltered or found to be dependent and who is assigned to the care of the lead agency or other provider, the agency or provider may act as the child's guardian for the purpose of registering the child in school if a parent or guardian of the child is unavailable and his or her whereabouts cannot reasonably be ascertained.

(b) The lead agency or other provider may also seek emergency medical attention for the child, but only if a parent or guardian of the child is unavailable, the parent or guardian's whereabouts cannot reasonably be ascertained, and a court order for such emergency medical services cannot be obtained because of the severity of the emergency or because it is after normal working hours.

(c) A lead agency or other provider may not consent to sterilization, abortion, or termination of life support.

(d) If a child's parents' rights have been terminated, the lead agency shall act as guardian of the child in all circumstances.

Section 33. Section 409.990, Florida Statutes, is created

to read:

409.990 Funding for lead agencies.—A contract established between the department and a lead agency must be funded by a grant of general revenue, other applicable state funds, or applicable federal funding sources.

(1) The method of payment for a fixed-price contract with a lead agency must provide for a 2-month advance payment at the beginning of each fiscal year and equal monthly payments thereafter.

(2) Notwithstanding s. 215.425, all documented federal funds earned for the current fiscal year by the department and lead agencies which exceed the amount appropriated by the Legislature shall be distributed to all entities that contributed to the excess earnings based on a schedule and methodology developed by the department and approved by the Executive Office of the Governor.

(a) Distribution shall be pro rata, based on total earnings, and shall be made only to those entities that contributed to excess earnings.

(b) Excess earnings of lead agencies shall be used only in the service district in which they were earned.

(c) Additional state funds appropriated by the Legislature for lead agencies or made available pursuant to the budgetary amendment process described in s. 216.177 shall be transferred to the lead agencies.

(d) The department shall amend a lead agency's contract to permit expenditure of the funds.

(3) Notwithstanding any other provision of this section, the amount of the annual contract for a lead agency may be

increased by excess federal funds earned in accordance with s. 216.181(11).

(4) Each contract with a lead agency shall provide for the payment by the department to the lead agency of a reasonable administrative cost in addition to funding for the provision of services.

(5) A lead agency may carry forward documented unexpended state funds from one fiscal year to the next; however, the cumulative amount carried forward may not exceed 8 percent of the total contract. Any unexpended state funds in excess of that percentage must be returned to the department.

(a) The funds carried forward may not be used in any way that would create increased recurring future obligations, and such funds may not be used for any type of program or service that is not currently authorized by the existing contract with the department.

(b) Expenditures of funds carried forward must be separately reported to the department.

(c) Any unexpended funds that remain at the end of the contract period shall be returned to the department.

(d) Funds carried forward may be retained through any contract renewals and any new procurements as long as the same lead agency is retained by the department.

(6) It is the intent of the Legislature to improve services and local participation in community-based care initiatives by fostering community support and providing enhanced prevention and in-home services, thereby reducing the risk otherwise faced by lead agencies. A community partnership matching grant program is established and shall be operated by the department to

encourage local participation in community-based care for children in the child welfare system. A children's services council or another local entity that makes a financial commitment to a community-based care lead agency may be eligible for a matching grant. The total amount of the local contribution may be matched on a one-to-one basis up to a maximum annual amount of $500,000 per lead agency. Awarded matching grant funds may be used for any prevention or in-home services that can be reasonably expected to reduce the number of children entering the child welfare system. Funding available for the matching grant program is subject to legislative appropriation of nonrecurring funds provided for this purpose.

(7)(a) The department, in consultation with the Florida Coalition for Children, Inc., shall develop and implement a community-based care risk pool initiative to mitigate the financial risk to eligible lead agencies. This initiative must include:

1. A risk pool application and protocol developed by the department which outlines submission criteria, including, but not limited to, financial and program management, descriptive data requirements, and timeframes for submission of applications. Requests for funding from risk pool applicants must be based on relevant and verifiable service trends and changes that have occurred during the current fiscal year. The application must confirm that expenditure of approved risk pool funds by the lead agency will be completed within the current fiscal year.

2. A risk pool peer review committee, appointed by the secretary and consisting of department staff and representatives

from at least three nonapplicant lead agencies, which reviews and assesses all risk pool applications. Upon completion of each application review, the peer review committee shall report its findings and recommendations to the secretary, providing, at a minimum, the following information:

a. Justification for the specific funding amount required by the risk pool applicant based on the current year's service trend data, including validation that the applicant's financial need was caused by circumstances beyond the control of the lead agency management;

b. Verification that the proposed use of risk pool funds meets at least one of the purposes specified in paragraph (c); and

c. Evidence of technical assistance provided in an effort to avoid the need to access the risk pool and recommendations for technical assistance to the lead agency to ensure that risk pool funds are expended effectively and that the agency's need for future risk pool funding is diminished.

(b) Upon approval by the secretary of a risk pool application, the department may request funds from the risk pool in accordance with s. 216.181(6)(a).

(c) The purposes for which the community-based care risk pool shall be used include:

1. Significant changes in the number or composition of clients eligible to receive services.

2. Significant changes in the services that are eligible for reimbursement.

3. Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a lead

agency.

4. Significant changes in the mix of available funds.

(d) The department may also request in its annual legislative budget request, and the Governor may recommend, that the funding necessary to effect paragraph (c) be appropriated to the department. In addition, the department may request the allocation of funds from the community-based care risk pool in accordance with s. 216.181(6)(a). Funds from the pool may be used to match available federal dollars.

1. Such funds shall constitute partial security for contract performance by lead agencies and shall be used to offset the need for a performance bond.

2. The department may separately require a bond to mitigate the financial consequences of potential acts of malfeasance or misfeasance or criminal violations by the service provider.

Section 34. Section 409.16713, Florida Statutes, is transferred and renumbered as section 409.991, Florida Statutes, and paragraph (a) of subsection (1) of that section is amended, to read:

409.991 ~~409.16713~~ Allocation of funds for community-based care lead agencies.—

(1) As used in this section, the term:

(a) "Core services funding" means all funds allocated to community-based care lead agencies operating under contract with the department pursuant to s. 409.987 ~~s. 409.1671~~, with the following exceptions:

1. Funds appropriated for independent living;

2. Funds appropriated for maintenance adoption subsidies;

3. Funds allocated by the department for protective

investigations training;

4. Nonrecurring funds;

5. Designated mental health wrap-around services funds; and

6. Funds for special projects for a designated community-based care lead agency.

Section 35. Section 409.992, Florida Statutes, is created to read:

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies shall be governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

(2) Notwithstanding any other provision of law, a community-based care lead agency may make expenditures for staff cellular telephone allowances, contracts requiring deferred payments and maintenance agreements, security deposits for office leases, related agency professional membership dues other than personal professional membership dues, promotional materials, and grant writing services. Expenditures for food and refreshments, other than those provided to clients in the care of the agency or to foster parents, adoptive parents, and caseworkers during training sessions, are not allowable.

(3) A lead community-based care agency and its subcontractors are exempt from state travel policies as provided in s. 112.061(3)(a) for their travel expenses incurred in order to comply with the requirements of this section.

Section 36. Section 409.993, Florida Statutes, is created

to read:

409.993 Lead agencies and subcontractor liability.—

(1) FINDINGS.—

(a) The Legislature finds that the state has traditionally provided foster care services to children who are the responsibility of the state. As such, foster children have not had the right to recover for injuries beyond the limitations specified in s. 768.28. The Legislature has determined that foster care and related services should be outsourced pursuant to this section and that the provision of such services is of paramount importance to the state. The purpose of such outsourcing is to increase the level of safety, security, and stability of children who are or become the responsibility of the state. One of the components necessary to secure a safe and stable environment for such children is the requirement that private providers maintain liability insurance. As such, insurance needs to be available and remain available to nongovernmental foster care and related services providers without the resources of such providers being significantly reduced by the cost of maintaining such insurance.

(b) The Legislature further finds that, by requiring the following minimum levels of insurance, children in outsourced foster care and related services will gain increased protection and rights of recovery in the event of injury than currently provided in s. 768.28.

(2) LEAD AGENCY LIABILITY.—

(a) Other than an entity to which s. 768.28 applies, an eligible community-based care lead agency, or its employees or officers, except as otherwise provided in paragraph (b), shall,

as a part of its contract, obtain a minimum of $1 million per occurrence with a policy period aggregate limit of $3 million in general liability insurance coverage. The lead agency must also require that staff who transport client children and families in their personal automobiles in order to carry out their job responsibilities obtain minimum bodily injury liability insurance in the amount of $100,000 per person per any one automobile accident, and subject to such limits for each person, $300,000 for all damages resulting from any one automobile accident, on their personal automobiles. In lieu of personal motor vehicle insurance, the lead agency's casualty, liability, or motor vehicle insurance carrier may provide nonowned automobile liability coverage. This insurance provides liability insurance for an automobile that the lead agency uses in connection with the lead agency's business but does not own, lease, rent, or borrow. This coverage includes an automobile owned by an employee of the lead agency or a member of the employee's household but only while the automobile is used in connection with the lead agency's business. The nonowned automobile coverage for the lead agency applies as excess coverage over any other collectible insurance. The personal automobile policy for the employee of the lead agency shall be primary insurance, and the nonowned automobile coverage of the lead agency acts as excess insurance to the primary insurance. The lead agency shall provide a minimum limit of $1 million in nonowned automobile coverage. In a tort action brought against such a lead agency or employee, net economic damages shall be limited to $2 million per liability claim and $200,000 per automobile claim, including, but not limited to, past and future

medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In any tort action brought against a lead agency, noneconomic damages shall be limited to $400,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76. The lead agency is not liable in tort for the acts or omissions of its subcontractors or the officers, agents, or employees of its subcontractors.

(b) The liability of a lead agency described in this section shall be exclusive and in place of all other liability of such lead agency. The same immunities from liability enjoyed by such lead agencies shall extend to each employee of the lead agency if he or she is acting in furtherance of the lead agency's business, including the transportation of clients served, as described in this subsection, in privately owned vehicles. Such immunities are not applicable to a lead agency or an employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression if such acts result in injury or death or such acts proximately cause such injury or death. Such immunities are not applicable to employees of the same lead agency when each is operating in the furtherance of the agency's business, but they are assigned primarily to unrelated work within private or public employment. The same immunity provisions enjoyed by a lead agency also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who, in the course and scope of his

or her duties, acts in a managerial or policymaking capacity and the conduct that caused the alleged injury arose within the course and scope of those managerial or policymaking duties. As used in this subsection and subsection (3), the term "culpably negligent manner" means reckless indifference or grossly careless disregard of human life.

(3) SUBCONTRACTOR LIABILITY.—

(a) A subcontractor of an eligible community-based care lead agency that is a direct provider of foster care and related services to children and families, and its employees or officers, except as otherwise provided in paragraph (b), must, as a part of its contract, obtain a minimum of $1 million per occurrence with a policy period aggregate limit of $3 million in general liability insurance coverage. The subcontractor of a lead agency must also require that staff who transport client children and families in their personal automobiles in order to carry out their job responsibilities obtain minimum bodily injury liability insurance in the amount of $100,000 per person in any one automobile accident, and subject to such limits for each person, $300,000 for all damages resulting from any one automobile accident, on their personal automobiles. In lieu of personal motor vehicle insurance, the subcontractor's casualty, liability, or motor vehicle insurance carrier may provide nonowned automobile liability coverage. This insurance provides liability insurance for automobiles that the subcontractor uses in connection with the subcontractor's business but does not own, lease, rent, or borrow. This coverage includes automobiles owned by the employees of the subcontractor or a member of the employee's household but only while the automobiles are used in

connection with the subcontractor's business. The nonowned automobile coverage for the subcontractor applies as excess coverage over any other collectible insurance. The personal automobile policy for the employee of the subcontractor shall be primary insurance, and the nonowned automobile coverage of the subcontractor acts as excess insurance to the primary insurance. The subcontractor shall provide a minimum limit of $1 million in nonowned automobile coverage. In a tort action brought against such subcontractor or employee, net economic damages shall be limited to $2 million per liability claim and $200,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In a tort action brought against such subcontractor, noneconomic damages shall be limited to $400,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76.

(b) The liability of a subcontractor of a lead agency that is a direct provider of foster care and related services as described in this section is exclusive and in place of all other liability of such provider. The same immunities from liability enjoyed by such subcontractor provider extend to each employee of the subcontractor when such employee is acting in furtherance of the subcontractor's business, including the transportation of clients served, as described in this subsection, in privately owned vehicles. Such immunities are not applicable to a subcontractor or an employee who acts in a culpably negligent

manner or with willful and wanton disregard or unprovoked physical aggression if such acts result in injury or death or if such acts proximately cause such injury or death. Such immunities are not applicable to employees of the same subcontractor who are operating in the furtherance of the subcontractor's business but are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by a subcontractor also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who, in the course and scope of his or her duties, acts in a managerial or policymaking capacity and the conduct that caused the alleged injury arose within the course and scope of those managerial or policymaking duties.

(4) LIMITATIONS ON DAMAGES.—The Legislature is cognizant of the increasing costs of goods and services each year and recognizes that fixing a set amount of compensation has the effect of a reduction in compensation each year. Accordingly, the conditional limitations on damages in this section shall be increased at the rate of 5 percent each year, prorated from July 1, 2014, to the date at which damages subject to such limitations are awarded by final judgment or settlement.

Section 37. Section 409.1675, Florida Statutes, is transferred, renumbered as section 409.994, Florida Statutes, and amended to read:

409.994 ~~409.1675~~ ~~Lead~~ Community-based care lead agencies ~~providers~~; receivership.—

(1) The Department of Children and Families ~~Family Services~~ may petition a court of competent jurisdiction for the appointment of a receiver for a ~~lead~~ community-based care lead

agency ~~provider~~ established pursuant to s. 409.987 if ~~s. 409.1671 when~~ any of the following conditions exist:

(a) The lead agency ~~community-based provider~~ is operating without a license as a child-placing agency.

(b) The lead agency ~~community-based provider~~ has given less than 120 days' notice of its intent to cease operations, and arrangements have not been made for another lead agency ~~community-based provider~~ or for the department to continue the uninterrupted provision of services.

(c) The department determines that conditions exist in the lead agency ~~community-based provider~~ which present an imminent danger to the health, safety, or welfare of the dependent children under that agency's ~~provider's~~ care or supervision. Whenever possible, the department shall make a reasonable effort to facilitate the continued operation of the program.

(d) The lead agency ~~community-based provider~~ cannot meet its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities shall constitute prima facie evidence that the lead agency ~~community-based provider~~ lacks the financial ability to meet its financial obligations.

(2)(a) The petition for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having statutory precedence, has priority.

(b) A hearing shall be conducted within 5 days after the filing of the petition, at which time interested parties shall

have the opportunity to present evidence as to whether a receiver should be appointed. The department shall give reasonable notice of the hearing on the petition to the lead agency ~~community-based provider~~.

(c) The court shall grant the petition upon finding that one or more of the conditions in subsection (1) exists and the continued existence of the condition or conditions jeopardizes the health, safety, or welfare of dependent children. A receiver may be appointed ex parte when the court determines that one or more of the conditions in subsection (1) exists. After such finding, the court may appoint any person, including an employee of the department who is qualified by education, training, or experience to carry out the duties of the receiver pursuant to this section, except that the court may ~~shall~~ not appoint any member of the governing board or any officer of the lead agency ~~community-based provider~~. The receiver may be selected from a list of persons qualified to act as receivers which is developed by the department and presented to the court with each petition of receivership.

(d) A receiver may be appointed for up to 90 days, and the department may petition the court for additional 30-day extensions. Sixty days after appointment of a receiver and every 30 days thereafter until the receivership is terminated, the department shall submit to the court an assessment of the lead agency's ~~community-based provider's~~ ability to ensure the health, safety, and welfare of the dependent children under its supervision.

(3) The receiver shall take such steps as are reasonably necessary to ensure the continued health, safety, and welfare of

the dependent children under the supervision of the lead agency ~~community-based provider~~ and shall exercise those powers and perform those duties set out by the court, including, but not limited to:

(a) Taking such action as is reasonably necessary to protect or conserve the assets or property of the lead agency ~~community-based provider~~. The receiver may use the assets and property and any proceeds from any transfer thereof only in the performance of the powers and duties provided ~~set forth~~ in this section and by order of the court.

(b) Using the assets of the lead agency ~~community-based provider~~ in the provision of care and services to dependent children.

(c) Entering into contracts and hiring agents and employees to carry out the powers and duties of the receiver under this section.

(d) Having full power to direct, manage, hire, and discharge employees of the lead agency ~~community-based provider~~. The receiver shall hire and pay new employees at the rate of compensation, including benefits, approved by the court.

(e) Honoring all leases, mortgages, and contractual obligations of the lead agency ~~community-based provider~~, but only to the extent of payments that become due during the period of the receivership.

(4)(a) The receiver shall deposit funds received in a separate account and shall use this account for all disbursements.

(b) A payment to the receiver of any sum owing to the lead agency ~~community-based provider~~ shall discharge any obligation

to the provider to the extent of the payment.

(5) A receiver may petition the court for temporary relief from obligations entered into by the lead agency ~~community-based provider~~ if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was entered into, or if any material provision of the agreement was unreasonable when compared to contracts negotiated under similar conditions. Any relief in this form provided by the court shall be limited to the life of the receivership, unless otherwise determined by the court.

(6) The court shall set the compensation of the receiver, which shall be considered a necessary expense of a receivership and may grant to the receiver such other authority necessary to ensure the health, safety, and welfare of the children served.

(7) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts, or breaches of fiduciary duty. This section may ~~shall~~ not be interpreted to be a waiver of sovereign immunity should the department be appointed receiver.

(8) If the receiver is not the department, the court may require a receiver to post a bond to ensure the faithful performance of these duties.

(9) The court may terminate a receivership when:

(a) The court determines that the receivership is no longer necessary because the conditions that gave rise to the receivership no longer exist; or

(b) The department has entered into a contract with a new lead agency ~~community-based provider~~ pursuant to s. 409.987 ~~s.~~

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~~409.1671~~, and that contractor is ready and able to assume the duties of the previous lead agency ~~provider~~.

(10) Within 30 days after the termination, unless this time period is extended by the court, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed, and of the expenses of the receiversship.

(11) ~~Nothing in~~ This section does not ~~shall be construed to~~ relieve any employee of the lead agency ~~community-based provider~~ placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the employee before ~~prior to~~ the appointment of a receiver, and~~; nor shall anything contained in~~ this section does not ~~be construed to~~ suspend during the receivership any obligation of the employee for payment of taxes or other operating or maintenance expenses of the lead agency ~~community-based provider~~ or for the payment of mortgages or liens. The lead agency ~~community-based provider~~ shall retain the right to sell or mortgage any facility under receivership, subject to the prior approval of the court that ordered the receivership.

Section 38. Section 409.996, Florida Statutes, is created to read:

409.996 Duties of the Department of Children and Families.—The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility for the quality of contracted services and programs and shall ensure that services are delivered in accordance with applicable federal and state statutes and

regulations.

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies pursuant to s. 409.988. At a minimum, the contracts must:

(a) Provide for the services needed to accomplish the duties established in s. 409.988 and provide information to the department which is necessary to meet the requirements for a quality assurance program pursuant to subsection (18) and the child welfare results-oriented accountability system pursuant to s. 409.997.

(b) Provide for graduated penalties for failure to comply with contract terms. Such penalties may include financial penalties, enhanced monitoring and reporting, corrective action plans, and early termination of contracts or other appropriate action to ensure contract compliance.

(c) Ensure that the lead agency shall furnish current and accurate information on its activities in all cases in client case records in the state's statewide automated child welfare information system.

(d) Specify the procedures to be used by the parties to resolve differences in interpreting the contract or to resolve disputes as to the adequacy of the parties' compliance with their respective obligations under the contract.

(2) The department must adopt written policies and procedures for monitoring the contract for delivery of services by lead agencies which must be posted on the department's website. These policies and procedures must, at a minimum, address the evaluation of fiscal accountability and program operations, including provider achievement of performance

standards, provider monitoring of subcontractors, and timely followup of corrective actions for significant monitoring findings related to providers and subcontractors. These policies and procedures must also include provisions for reducing the duplication of the department's program monitoring activities both internally and with other agencies, to the extent possible. The department's written procedures must ensure that the written findings, conclusions, and recommendations from monitoring the contract for services of lead agencies are communicated to the director of the provider agency and the community alliance as expeditiously as possible.

(3) The department shall receive federal and state funds as appropriated for the operation of the child welfare system, transmit these funds to the lead agencies as agreed to in the contract, and provide information on its website of the distribution of the federal funds. The department retains responsibility for the appropriate spending of these funds. The department shall monitor lead agencies to assess compliance with the financial guidelines established pursuant to s. 409.992 and other applicable state and federal laws.

(4) The department shall provide technical assistance and consultation to lead agencies in the provision of care to children in the child protection and child welfare system.

(5) The department retains the responsibility for the review, approval or denial, and issuances of all foster home licenses.

(6) The department shall process all applications submitted by lead agencies for the Interstate Compact on the Placement of Children and the Interstate Compact on Adoption and Medical

Assistance.

(7) The department shall assist lead agencies with access to and coordination with other service programs within the department.

(8) The department shall determine Medicaid eligibility for all referred children and shall coordinate services with the Agency for Health Care Administration.

(9) The department shall develop, in cooperation with the lead agencies, a third-party credentialing entity approved pursuant to s. 402.40(3), and the Florida Institute for Child Welfare established pursuant to s. 1004.615, a standardized competency-based curriculum for certification training for child protection staff.

(10) The department shall maintain the statewide adoptions website and provide information and training to the lead agencies relating to the website.

(11) The department shall provide training and assistance to lead agencies regarding the responsibility of lead agencies relating to children receiving supplemental security income, social security, railroad retirement, or veterans' benefits.

(12) With the assistance of a lead agency, the department shall develop and implement statewide and local interagency agreements needed to coordinate services for children and parents involved in the child welfare system who are also involved with the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Education, the Department of Health, and other governmental organizations that share responsibilities for children or parents in the child welfare system.

(13) With the assistance of a lead agency, the department shall develop and implement a working agreement between the lead agency and the substance abuse and mental health managing entity to integrate services and supports for children and parents serviced in the child welfare system.

(14) The department shall work with the Agency for Health Care Administration to provide each Medicaid-eligible child with early and periodic screening, diagnosis, and treatment, including 72-hour screening, periodic child health checkups, and prescribed followup for ordered services, including, but not limited to, medical, dental, and vision care.

(15) The department shall assist lead agencies in developing an array of services in compliance with the Title IV-E waiver and shall monitor the provision of such services.

(16) The department shall provide a mechanism to allow lead agencies to request a waiver of department policies and procedures that create inefficiencies or inhibit the performance of the lead agency's duties.

(17) The department shall directly or through contract provide attorneys to prepare and present cases in dependency court and shall ensure that the court is provided with adequate information for informed decisionmaking in dependency cases, including a face sheet for each case which lists the names and contact information for any child protective investigator, child protective investigation supervisor, case manager, and case manager supervisor, and the regional department official responsible for the lead agency contract. The department shall provide to the court the case information and recommendations provided by the lead agency or subcontractor. For the Sixth

Judicial Circuit, the department shall contract with the state attorney for the provision of these services.

(18) The department, in consultation with lead agencies, shall establish a quality assurance program for contracted services to dependent children. The quality assurance program shall be based on standards established by federal and state law and national accrediting organizations.

(a) The department must evaluate each lead agency under contract at least annually. These evaluations shall cover the programmatic, operational, and fiscal operations of the lead agency and must be consistent with the child welfare results-oriented accountability system required by s. 409.997. The department must consult with dependency judges in the circuit or circuits served by the lead agency on the performance of the lead agency.

(b) The department and each lead agency shall monitor out-of-home placements, including the extent to which sibling groups are placed together or provisions to provide visitation and other contacts if siblings are separated. The data shall identify reasons for sibling separation. Information related to sibling placement shall be incorporated into the results-oriented accountability system required pursuant to s. 409.997 and in the evaluation of the outcome specified in s. 409.986(2)(e). The information related to sibling placement shall also be made available to the institute established pursuant s. 1004.615 for use in assessing the performance of child welfare services in relation to the outcome specified in s. 409.986(2)(e).

(c) The department shall, to the extent possible, use

independent financial audits provided by the lead agency to eliminate or reduce the ongoing contract and administrative reviews conducted by the department. If the department determines that such independent financial audits are inadequate, other audits, as necessary, may be conducted by the department. This paragraph does not abrogate the requirements of s. 215.97.

(d) The department may suggest additional items to be included in such independent financial audits to meet the department's needs.

(e) The department may outsource programmatic, administrative, or fiscal monitoring oversight of lead agencies.

(f) A lead agency must assure that all subcontractors are subject to the same quality assurance activities as the lead agency.

(19) The department and its attorneys have the responsibility to ensure that the court is fully informed about issues before it, to make recommendations to the court, and to present competent evidence, including testimony by the department's employees, contractors, and subcontractors, as well as other individuals, to support all recommendations made to the court. The department's attorneys shall coordinate lead agency or subcontractor staff to ensure that dependency cases are presented appropriately to the court, giving deference to the information developed by the case manager and direction to the case manager if more information is needed.

(20) The department, in consultation with lead agencies, shall develop a dispute resolution process so that disagreements between legal staff, investigators, and case management staff

can be resolved in the best interest of the child in question before court appearances regarding that child.

(21) The department shall periodically, and before procuring a lead agency, solicit comments and recommendations from the community alliance established in s. 20.19(5), any other community groups, or public hearings. The recommendations must include, but are not limited to:

(a) The current and past performance of a lead agency.

(b) The relationship between a lead agency and its community partners.

(c) Any local conditions or service needs in child protection and child welfare.

Section 39. Effective January 1, 2015, section 409.997, Florida Statutes, is created to read:

409.997 Child welfare results-oriented accountability system.—

(1) The department, the community-based care lead agencies, and the lead agencies' subcontractors share the responsibility for achieving the outcome goals specified in s. 409.986(2).

(2) In order to assess the achievement of the outcome goals specified in s. 409.986(2), the department shall maintain a comprehensive, results-oriented accountability system that monitors the use of resources, the quality and amount of services provided, and child and family outcomes through data analysis, research review, evaluation, and quality improvement. The system shall provide information about individual entities' performance as well as the performance of groups of entities working together as an integrated system of care on a local, regional, and statewide basis. The department shall issue a

request for information for the accountability system to identify system development and implementation approaches, technical and operational solutions, timeframes for implementation, pricing and costs, and implementation considerations; assess respondents' experience in providing similar systems and interest in providing the accountability system; and generate any other information determined by the department to be useful in establishing the system. The department shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2015, summarizing the responses and providing the department's recommendations regarding procurement and implementation of the system. In maintaining the accountability system, the department shall:

(a) Identify valid and reliable outcome measures for each of the goals specified in this subsection. The outcome data set must consist of a limited number of understandable measures using available data to quantify outcomes as children move through the system of care. Such measures may aggregate multiple variables that affect the overall achievement of the outcome goals. Valid and reliable measures must be based on adequate sample sizes, be gathered over suitable time periods, and reflect authentic rather than spurious results, and may not be susceptible to manipulation.

(b) Implement a monitoring system to track the identified outcome measures on a statewide, regional, and provider-specific basis. The monitoring system must identify trends and chart progress toward achievement of the goals specified s. 409.986(2). The requirements of the monitoring system may be

incorporated into the quality assurance program required under s. 409.996(18). The monitoring system shall track the placement of siblings in the child welfare system, including the extent to which siblings are placed together and, if the siblings are not placed together, the efforts to maintain the relationship between siblings through face-to-face visitation and written and electronic contact.

(c) Develop and maintain an analytical system that builds on the outcomes monitoring system to assess the statistical validity of observed associations between child welfare interventions and the measured outcomes. The analysis must use quantitative methods to adjust for variations in demographic or other conditions. The analysis must include longitudinal studies to evaluate longer-term outcomes such as continued safety, family permanence, and transition to self-sufficiency. The analysis may also include qualitative research methods to provide insight into statistical patterns.

(d) Develop and maintain a program of research review to identify interventions that are supported by evidence as causally linked to improved outcomes.

(e) Support an ongoing process of evaluation to determine the efficacy and effectiveness of various interventions. Efficacy evaluation is intended to determine the validity of a causal relationship between an intervention and an outcome. Effectiveness evaluation is intended to determine the extent to which the results can be generalized.

(f) Develop and maintain an inclusive, interactive, and evidence-supported program of quality improvement which promotes individual skill building as well as organizational learning.

(g) Develop and implement a method for making the results of the accountability system transparent for all parties involved in the child welfare system as well as policymakers and the public. The presentation of the results shall provide a comprehensible, visual report card for the state and each community-based care region, indicating the current status relative to each goal and trends in that status over time. The presentation shall identify and report outcome measures that assess the performance of the department, the community-based care lead agency, and the lead agency's subcontractors working together as an integrated system of care.

(3) The department shall establish a technical advisory panel consisting of representatives from the Florida Institute for Child Welfare established in s. 1004.615, lead agencies, community-based care providers, other contract providers, community alliances, and family representatives. The President of the Senate and the Speaker of the House of Representatives shall each appoint a member to serve as a legislative liaison to the panel. The technical advisory panel shall advise the department on meeting the requirements of this section.

(4) The accountability system may not rank or compare performance among community-based care regions unless adequate and specific adjustments are adopted that account for the diversity in regions' demographics, resources, and other relevant characteristics.

(5) The results of the accountability system must provide the basis for performance incentives if funds for such payments are made available through the General Appropriations Act.

(6) At least quarterly, the department shall make the

results of the accountability system available to the public through publication on its website. The website must allow for custom searches of the performance data.

(7) By October 1 of each year, the department shall submit a report on the statewide and individual community-based care lead agency results for child protection and child welfare systems. The department shall use the accountability system and consult with the community alliance and the chief judge or judges in the community-based care service area to prepare the report. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 40. Section 827.10, Florida Statutes, is created to read:

827.10 Unlawful desertion of a child.—

(1) As used in this section, the term:

(a) "Care" means support and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child.

(b) "Caregiver" has the same meaning as provided in s. 39.01.

(c) "Child" means a child for whose care the caregiver is legally responsible.

(d) "Desertion" or "deserts" means to leave a child in a place or with a person other than a relative with the intent not to return to the child and with the intent not to provide for the care of the child.

(e) "Relative" has the same meaning as provided in s. 39.01.

(2) A caregiver who deserts a child under circumstances in which the caregiver knew or should have known that the desertion exposes the child to unreasonable risk of harm commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not apply to a person who surrenders a newborn infant in compliance with s. 383.50.

(4) This section does not preclude prosecution for a criminal act under any other law, including, but not limited to, prosecution of child abuse or neglect of a child under s. 827.03.

Section 41. Paragraph (d) of subsection (4) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

(4)

(d) The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is ~~an~~ alleged to have committed juvenile sexual abuse ~~offender,~~ as defined in s. 39.01; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

775.083.

Section 42. Section 1004.615, Florida Statutes, is created to read:

1004.615 Florida Institute for Child Welfare.—

(1) There is established the Florida Institute for Child Welfare within the Florida State University College of Social Work. The purpose of the institute is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development. The institute shall consist of a consortium of public and private universities offering degrees in social work and shall be housed within the Florida State University College of Social Work.

(2) Using such resources as authorized in the General Appropriations Act, the Department of Children and Families shall contract with the institute for performance of the duties described in subsection (4) using state appropriations, public and private grants, and other resources obtained by the institute.

(3) The institute shall work with the department, sheriffs providing child protective investigative services, community-based care lead agencies, community-based care provider organizations, the court system, the Department of Juvenile Justice, the Florida Coalition Against Domestic Violence, and other partners who contribute to and participate in providing child protection and child welfare services.

(4) The institute shall:

(a) Maintain a program of research which contributes to scientific knowledge and informs both policy and practice

related to child safety, permanency, and child and family well-being.

(b) Advise the department and other organizations participating in the child protection and child welfare system regarding scientific evidence on policy and practice related to child safety, permanency, and child and family well-being.

(c) Provide advice regarding management practices and administrative processes used by the department and other organizations participating in the child protection and child welfare system and recommend improvements that reduce burdensome, ineffective requirements for frontline staff and their supervisors while enhancing their ability to effectively investigate, analyze, problem solve, and supervise.

(d) Assess the performance of child protection and child welfare services based on specific outcome measures.

(e) Evaluate the scope and effectiveness of preservice and inservice training for child protection and child welfare employees and advise and assist the department in efforts to improve such training.

(f) Assess the readiness of social work graduates to assume job responsibilities in the child protection and child welfare system and identify gaps in education which can be addressed through the modification of curricula or the establishment of industry certifications.

(g) Develop and maintain a program of professional support including training courses and consulting services that assist both individuals and organizations in implementing adaptive and resilient responses to workplace stress.

(h) Participate in the department’s critical incident

response team, assist in the preparation of reports about such incidents, and support the committee review of reports and development of recommendations.

(i) Identify effective policies and promising practices, including, but not limited to, innovations in coordination between entities participating in the child protection and child welfare system, data analytics, working with the local community, and management of human service organizations, and communicate these findings to the department and other organizations participating in the child protection and child welfare system.

(j) Develop a definition of a child or family at high risk of abuse or neglect. Such a definition must consider characteristics associated with a greater probability of abuse and neglect.

(5) The President of the Florida State University shall appoint a director of the institute. The director must be a child welfare professional with a degree in social work who holds a faculty appointment in the Florida State University College of Social Work. The institute shall be administered by the director, and the director's office shall be located at the Florida State University. The director is responsible for overall management of the institute and for developing and executing the work of the institute consistent with the responsibilities in subsection (4). The director shall engage individuals in other state universities with accredited colleges of social work to participate in the institute. Individuals from other university programs relevant to the institute's work, including, but not limited to, economics, management, law,

medicine, and education, may also be invited by the director to contribute to the institute. The universities participating in the institute shall provide facilities, staff, and other resources to the institute to establish statewide access to institute programs and services.

(6) By October 1 of each year, the institute shall provide a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which outlines its activities in the preceding year, reports significant research findings, as well as results of other programs, and provides specific recommendations for improving child protection and child welfare services.

(a) The institute shall include an evaluation of the results of the educational and training requirements for child protection and child welfare personnel established under this act and recommendations for application of the results to child protection personnel employed by sheriff's offices providing child protection services in its report due October 1, 2017.

(b) The institute shall include an evaluation of the effects of the other provisions of this act and recommendations for improvements in child protection and child welfare services in its report due October 1, 2018.

(7) The institute shall submit a report with recommendations for improving the state's child welfare system. The report shall address topics including, but not limited to, enhancing working relationships between the entities involved in the child protection and child welfare system, identification of and replication of best practices, reducing paperwork, increasing the retention of child protective investigators and

case managers, and caring for medically complex children within the child welfare system, with the goal of allowing the child to remain in the least restrictive and most nurturing environment. The institute shall submit an interim report by February 1, 2015, and final report by October 1, 2015, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 43. Paragraph (h) is added to subsection (1) of section 1009.25, Florida Statutes, to read:

1009.25 Fee exemptions.—

(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs, Florida College System institution, or state university:

(h) Pursuant to s. 402.403, child protection and child welfare personnel as defined in s. 402.402 who are enrolled in an accredited bachelor's degree or master's degree in social work program, provided that the student attains at least a grade of "B" in all courses for which tuition and fees are exempted.

Section 44. Section 402.401, Florida Statutes, is repealed.

Section 45. Section 409.1671, Florida Statutes, is repealed.

Section 46. Section 409.16715, Florida Statutes, is repealed.

Section 47. Section 409.16745, Florida Statutes, is repealed.

Section 48. Section 1004.61, Florida Statutes, is repealed.

Section 49. Paragraph (g) of subsection (1) of section 39.201, Florida Statutes, is amended to read:

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39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(1)

(g) Nothing in this chapter or in the contracting with community-based care providers for foster care and related services as specified in s. 409.987 ~~s. 409.1671~~ shall be construed to remove or reduce the duty and responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

Section 50. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(32) ~~s. 39.01(33)~~ or (47), acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the

department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 51. Subsection (1) of section 39.524, Florida Statutes, is amended to read:

39.524 Safe-harbor placement.—

(1) Except as provided in s. 39.407 or s. 985.801, a dependent child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01(68)(g) ~~s. 39.01(67)(g)~~ must be assessed for placement in a safe house as provided in s. 409.1678. The assessment shall be conducted by the department or its agent and shall incorporate and address current and historical information from any law enforcement

reports; psychological testing or evaluation that has occurred; current and historical information from the guardian ad litem, if one has been assigned; current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; and any other information concerning the availability and suitability of safe-house placement. If such placement is determined to be appropriate as a result of this assessment, the child may be placed in a safe house, if one is available. As used in this section, the term "available" as it relates to a placement means a placement that is located within the circuit or otherwise reasonably accessible.

Section 52. Subsection (6) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(6) The child restraint requirements imposed by this section do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation. It is the obligation and responsibility of the parent, guardian, or other person responsible for a child's welfare~~,~~ as defined in s. 39.01~~(47),~~ to comply with the requirements of this section.

Section 53. Subsections (1), (3), and (5) of section 409.1676, Florida Statutes, are amended to read:

409.1676 Comprehensive residential group care services to children who have extraordinary needs.—

(1) It is the intent of the Legislature to provide comprehensive residential group care services, including

residential care, case management, and other services, to children in the child protection system who have extraordinary needs. These services are to be provided in a residential group care setting by a not-for-profit corporation or a local government entity under a contract with the Department of Children and Families ~~Family Services~~ or by a lead agency as described in s. 409.987 ~~s. 409.1671~~. These contracts should be designed to provide an identified number of children with access to a full array of services for a fixed price. Further, it is the intent of the Legislature that the Department of Children and Families ~~Family Services~~ and the Department of Juvenile Justice establish an interagency agreement by December 1, 2002, which describes respective agency responsibilities for referral, placement, service provision, and service coordination for dependent and delinquent youth who are referred to these residential group care facilities. The agreement must require interagency collaboration in the development of terms, conditions, and performance outcomes for residential group care contracts serving the youth referred who have been adjudicated both dependent and delinquent.

(3) The department, in accordance with a specific appropriation for this program, shall contract with a not-for-profit corporation, a local government entity, or the lead agency that has been established in accordance with s. 409.987 ~~s. 409.1671~~ for the performance of residential group care services described in this section. A lead agency that is currently providing residential care may provide this service directly with the approval of the local community alliance. The department or a lead agency may contract for more than one site

in a county if that is determined to be the most effective way to achieve the goals set forth in this section.

(5) The department may transfer all casework responsibilities for children served under this program to the entity that provides this service, including case management and development and implementation of a case plan in accordance with current standards for child protection services. When the department establishes this program in a community that has a lead agency as described in s. 409.987 ~~s. 409.1671~~, the casework responsibilities must be transferred to the lead agency.

Section 54. Subsection (2) of section 409.1677, Florida Statutes, is amended to read:

409.1677 Model comprehensive residential services programs.—

(2) The department shall establish a model comprehensive residential services program in Manatee and Miami-Dade Counties through a contract with the designated lead agency established in accordance with s. 409.987 ~~s. 409.1671~~ or with a private entity capable of providing residential group care and home-based care and experienced in the delivery of a range of services to foster children, if no lead agency exists. These model programs are to serve that portion of eligible children within each county which is specified in the contract, based on funds appropriated, to include a full array of services for a fixed price. The private entity or lead agency is responsible for all programmatic functions necessary to carry out the intent of this section.

Section 55. Paragraph (d) of subsection (1) of section 409.1678, Florida Statutes, is amended to read:

409.1678 Safe harbor for children who are victims of sexual exploitation.—

(1) As used in this section, the term:

(d) "Sexually exploited child" means a dependent child who has suffered sexual exploitation as defined in s. 39.01(68)(g) ~~s. 39.01(67)(g)~~ and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

Section 56. Subsection (24) of section 409.906, Florida Statutes, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend

the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(24) CHILD-WELFARE-TARGETED CASE MANAGEMENT.—The Agency for Health Care Administration, in consultation with the Department of Children and Families ~~Family Services~~, may establish a targeted case-management project in those counties identified by the Department of Children and Families ~~Family Services~~ and for all counties with a community-based child welfare project, as authorized under s. 409.987 ~~s. 409.1671,~~ which have been specifically approved by the department. The covered group of individuals who are eligible to receive targeted case management include children who are eligible for Medicaid; who are between the ages of birth through 21; and who are under protective supervision or postplacement supervision, under foster-care supervision, or in shelter care or foster care. The number of individuals who are eligible to receive targeted case management is limited to the number for whom the Department of Children and Families ~~Family Services~~ has matching funds to cover the costs. The general revenue funds required to match the funds for services provided by the community-based child welfare projects are limited to funds available for services described under s. 409.990 ~~s. 409.1671~~. The Department of Children and Families ~~Family Services~~ may transfer the general revenue matching funds as billed by the Agency for Health Care Administration.

Section 57. Paragraph (b) of subsection (4) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients

in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. part 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or

particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as

defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(4) The agency may contract with:

(b) An entity that is providing comprehensive behavioral health care services to certain Medicaid recipients through a capitated, prepaid arrangement pursuant to the federal waiver provided for by s. 409.905(5). Such entity must be licensed under chapter 624, chapter 636, or chapter 641, or authorized under paragraph (c) or paragraph (d), and must possess the clinical systems and operational competence to manage risk and provide comprehensive behavioral health care to Medicaid recipients. As used in this paragraph, the term "comprehensive behavioral health care services" means covered mental health and substance abuse treatment services that are available to Medicaid recipients. The secretary of the Department of Children and Families ~~Family Services~~ shall approve provisions of procurements related to children in the department's care or custody before enrolling such children in a prepaid behavioral health plan. Any contract awarded under this paragraph must be competitively procured. In developing the behavioral health care prepaid plan procurement document, the agency shall ensure that the procurement document requires the contractor to develop and implement a plan to ensure compliance with s. 394.4574 related to services provided to residents of licensed assisted living facilities that hold a limited mental health license. Except as provided in subparagraph 5., and except in counties where the Medicaid managed care pilot program is authorized pursuant to s. 409.91211, the agency shall seek federal approval to contract with a single entity meeting these requirements to provide

comprehensive behavioral health care services to all Medicaid recipients not enrolled in a Medicaid managed care plan authorized under s. 409.91211, a provider service network authorized under paragraph (d), or a Medicaid health maintenance organization in an AHCA area. In an AHCA area where the Medicaid managed care pilot program is authorized pursuant to s. 409.91211 in one or more counties, the agency may procure a contract with a single entity to serve the remaining counties as an AHCA area or the remaining counties may be included with an adjacent AHCA area and are subject to this paragraph. Each entity must offer a sufficient choice of providers in its network to ensure recipient access to care and the opportunity to select a provider with whom they are satisfied. The network shall include all public mental health hospitals. To ensure unimpaired access to behavioral health care services by Medicaid recipients, all contracts issued pursuant to this paragraph must require 80 percent of the capitation paid to the managed care plan, including health maintenance organizations and capitated provider service networks, to be expended for the provision of behavioral health care services. If the managed care plan expends less than 80 percent of the capitation paid for the provision of behavioral health care services, the difference shall be returned to the agency. The agency shall provide the plan with a certification letter indicating the amount of capitation paid during each calendar year for behavioral health care services pursuant to this section. The agency may reimburse for substance abuse treatment services on a fee-for-service basis until the agency finds that adequate funds are available for capitated, prepaid arrangements.

1. The agency shall modify the contracts with the entities providing comprehensive inpatient and outpatient mental health care services to Medicaid recipients in Hillsborough, Highlands, Hardee, Manatee, and Polk Counties, to include substance abuse treatment services.

2. Except as provided in subparagraph 5., the agency and the Department of Children and Families ~~Family Services~~ shall contract with managed care entities in each AHCA area except area 6 or arrange to provide comprehensive inpatient and outpatient mental health and substance abuse services through capitated prepaid arrangements to all Medicaid recipients who are eligible to participate in such plans under federal law and regulation. In AHCA areas where eligible individuals number less than 150,000, the agency shall contract with a single managed care plan to provide comprehensive behavioral health services to all recipients who are not enrolled in a Medicaid health maintenance organization, a provider service network authorized under paragraph (d), or a Medicaid capitated managed care plan authorized under s. 409.91211. The agency may contract with more than one comprehensive behavioral health provider to provide care to recipients who are not enrolled in a Medicaid capitated managed care plan authorized under s. 409.91211, a provider service network authorized under paragraph (d), or a Medicaid health maintenance organization in AHCA areas where the eligible population exceeds 150,000. In an AHCA area where the Medicaid managed care pilot program is authorized pursuant to s. 409.91211 in one or more counties, the agency may procure a contract with a single entity to serve the remaining counties as an AHCA area or the remaining counties may be included with an

adjacent AHCA area and shall be subject to this paragraph. Contracts for comprehensive behavioral health providers awarded pursuant to this section shall be competitively procured. Both for-profit and not-for-profit corporations are eligible to compete. Managed care plans contracting with the agency under subsection (3) or paragraph (d) shall provide and receive payment for the same comprehensive behavioral health benefits as provided in AHCA rules, including handbooks incorporated by reference. In AHCA area 11, the agency shall contract with at least two comprehensive behavioral health care providers to provide behavioral health care to recipients in that area who are enrolled in, or assigned to, the MediPass program. One of the behavioral health care contracts must be with the existing provider service network pilot project, as described in paragraph (d), for the purpose of demonstrating the cost-effectiveness of the provision of quality mental health services through a public hospital-operated managed care model. Payment shall be at an agreed-upon capitated rate to ensure cost savings. Of the recipients in area 11 who are assigned to MediPass under s. 409.9122(2)(k), a minimum of 50,000 of those MediPass-enrolled recipients shall be assigned to the existing provider service network in area 11 for their behavioral care.

3. Children residing in a statewide inpatient psychiatric program, or in a Department of Juvenile Justice or a Department of Children and Families ~~Family Services~~ residential program approved as a Medicaid behavioral health overlay services provider may not be included in a behavioral health care prepaid health plan or any other Medicaid managed care plan pursuant to this paragraph.

4. Traditional community mental health providers under contract with the Department of Children and Families ~~Family Services~~ pursuant to part IV of chapter 394, child welfare providers under contract with the Department of Children and Families ~~Family Services~~ in areas 1 and 6, and inpatient mental health providers licensed pursuant to chapter 395 must be offered an opportunity to accept or decline a contract to participate in any provider network for prepaid behavioral health services.

5. All Medicaid-eligible children, except children in area 1 and children in Highlands County, Hardee County, Polk County, or Manatee County of area 6, which ~~that~~ are open for child welfare services in the statewide automated child welfare information system, shall receive their behavioral health care services through a specialty prepaid plan operated by community-based lead agencies through a single agency or formal agreements among several agencies. The agency shall work with the specialty plan to develop clinically effective, evidence-based alternatives as a downward substitution for the statewide inpatient psychiatric program and similar residential care and institutional services. The specialty prepaid plan must result in savings to the state comparable to savings achieved in other Medicaid managed care and prepaid programs. Such plan must provide mechanisms to maximize state and local revenues. The specialty prepaid plan shall be developed by the agency and the Department of Children and Families ~~Family Services~~. The agency may seek federal waivers to implement this initiative. Medicaid-eligible children whose cases are open for child welfare services in the statewide automated child welfare information

system and who reside in AHCA area 10 shall be enrolled in a capitated provider service network or other capitated managed care plan, which, in coordination with available community-based care providers specified in s. 409.987 ~~s. 409.1671~~, shall provide sufficient medical, developmental, and behavioral health services to meet the needs of these children.

Effective July 1, 2012, in order to ensure continuity of care, the agency is authorized to extend or modify current contracts based on current service areas or on a regional basis, as determined appropriate by the agency, with comprehensive behavioral health care providers as described in this paragraph during the period prior to its expiration. This paragraph expires October 1, 2014.

Section 58. Paragraph (dd) of subsection (3) of section 409.91211, Florida Statutes, is amended to read:

409.91211 Medicaid managed care pilot program.—

(3) The agency shall have the following powers, duties, and responsibilities with respect to the pilot program:

(dd) To implement service delivery mechanisms within a specialty plan in area 10 to provide behavioral health care services to Medicaid-eligible children whose cases are open for child welfare services in the HomeSafeNet system. These services must be coordinated with community-based care providers as specified in s. 409.986 ~~s. 409.1671~~, where available, and be sufficient to meet the developmental, behavioral, and emotional needs of these children. Children in area 10 who have an open case in the HomeSafeNet system shall be enrolled into the specialty plan. These service delivery mechanisms must be

implemented no later than July 1, 2011, in AHCA area 10 in order for the children in AHCA area 10 to remain exempt from the statewide plan under s. 409.912(4)(b)5. An administrative fee may be paid to the specialty plan for the coordination of services based on the receipt of the state share of that fee being provided through intergovernmental transfers.

Section 59. Paragraph (d) of subsection (1) of section 420.628, Florida Statutes, is amended to read:

420.628 Affordable housing for children and young adults leaving foster care; legislative findings and intent.—

(1)

(d) The Legislature intends that the Florida Housing Finance Corporation, agencies within the State Housing Initiative Partnership Program, local housing finance agencies, public housing authorities, and their agents, and other providers of affordable housing coordinate with the Department of Children and Families ~~Family Services~~, their agents, and community-based care providers who provide services under s. 409.986 ~~s. 409.1671~~ to develop and implement strategies and procedures designed to make affordable housing available whenever and wherever possible to young adults who leave the child welfare system.

Section 60. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(68)(g) ~~s. 39.01(67)(g)~~.

Section 61. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to child welfare; amending s. 20.19, F.S.; requiring the Secretary of Children and Families to appoint an Assistant Secretary for Child Welfare; providing qualifications and responsibilities; amending s. 39.001, F.S.; revising the purposes of ch. 39, F.S.; requiring the department to provide for certain services for medically complex children; amending s. 39.01, F.S.; providing, revising, and deleting definitions; amending s. 39.013, F.S.; clarifying responsibilities of the department in dependency proceedings; amending s. 39.201, F.S.; requiring alleged incidents of juvenile sexual abuse involving specified children to be reported to the department’s central abuse hotline; requiring the department to provide specified information on an investigation of child sexual abuse to the court; creating s. 39.2015, F.S.; requiring the department to conduct specified investigations using critical incident rapid response teams; providing requirements for such investigations and for team membership; authorizing team access to specified information;

requiring the cooperation of specified agencies and organizations; providing for reimbursement of team members; requiring the team to provide an investigation report; requiring the secretary to develop guidelines for investigations and provide team member training; requiring the secretary to appoint an advisory committee; requiring the committee to submit a report to the secretary; requiring the secretary to submit such report to the Governor and the Legislature by a specified date; creating s. 39.2022, F.S.; providing legislative intent; requiring the department to publish specified information on its website regarding the death of a child reported to the central abuse hotline; amending s. 39.301, F.S.; authorizing the use of safety plans in child protection investigations in cases of present or impending danger; providing requirements for implementation of a safety plan; providing conditions for filing a petition for dependency; amending s. 39.303, F.S.; requiring physician involvement when a child protection team evaluates a report of medical neglect of a medically complex child; creating s. 39.3068, F.S.; providing requirements for investigating medical neglect; providing duties of the department; amending s. 39.307, F.S.; requiring the department to assist the family, child, and caregiver in receiving services upon a report alleging juvenile sexual abuse or inappropriate sexual behavior; requiring the department to maintain specified records; requiring

child sexual abuse to be taken into account in placement consideration; requiring the department to monitor the occurrence of child sexual abuse and related services; amending s. 39.402, F.S.; requiring the department to make a reasonable effort to keep siblings together when they are placed in out-of-home care under certain circumstances; providing for sibling visitation under certain conditions; amending s. 39.501, F.S.; requiring compliance with a safety plan to be considered when deciding a petition for dependency; amending s. 39.504, F.S.; authorizing the court to order a person to comply with a safety plan that is implemented in an injunction; amending s. 39.5085, F.S.; revising legislative intent; authorizing placement of a child with a nonrelative caregiver and financial assistance for such nonrelative caregiver through the Relative Caregiver Program under certain circumstances; amending s. 39.604, F.S.; requiring certain children to attend a licensed early education or child care program; requiring the inclusion of attendance at a licensed early education or child care program in a child's safety plan; amending s. 39.701, F.S.; requiring the court to consider contact among siblings in judicial reviews; authorizing the court to remove specified disabilities of nonage at judicial reviews; amending s. 39.802, F.S.; removing department authorization to sign a petition for termination of parental rights; amending s. 39.806, F.S.; providing additional grounds

for termination of parental rights; amending s. 63.212, F.S.; requiring a person who places an advertisement for adoption services to provide specified information; amending s. 383.402, F.S.; requiring review of all child deaths to be reported to the department's central abuse hotline; revising the membership of the State Child Abuse Death Review Committee; revising the due date for and contents of a report; requiring the State Child Abuse Death Review Committee to provide training to local child abuse death review committees; amending s. 402.40, F.S.; requiring a third-party credentialing entity to establish an advisory committee; authorizing the department to approve certification of specializations; creating s. 402.402, F.S.; defining terms; providing preferences for education and work experience for child protection and child welfare personnel; requiring a report; providing training requirements for department attorneys; creating s. 402.403, F.S.; establishing a tuition exemption program for child protection and child welfare personnel; providing eligibility requirements; creating s. 402.404, F.S.; establishing a student loan forgiveness program for child protection and child welfare personnel; providing eligibility requirements; authorizing community-based care lead agencies to provide student loan forgiveness to case managers employed by a community-based care lead agency or its subcontractor; amending s. 409.165, F.S.; enhancing

provision of care to medically complex children; amending s. 409.967, F.S.; revising standards for Medicaid managed care plan accountability with respect to services for dependent children and their parents; amending s. 409.972, F.S.; exempting certain Medicaid recipients from mandatory enrollment in managed care plans; providing a directive to the Division of Law Revision and Information; creating part V of ch. 409, F.S.; creating s. 409.986, F.S.; providing legislative findings and intent; providing child protection and child welfare outcome goals; defining terms; creating s. 409.987, F.S.; providing for department procurement of community-based care lead agencies; providing requirements for contracting as a lead agency; creating s. 409.988, F.S.; providing duties of a community-based care lead agency; providing licensure requirements for a lead agency; specifying services provided by a lead agency; providing conditions for an agency or provider to act as a child's guardian; creating s. 409.990, F.S.; providing general funding provisions for lead agencies; providing for a matching grant program and the maximum amount of funds that may be awarded; requiring the department to develop and implement a community-based care risk pool initiative; providing requirements for the risk pool; transferring, renumbering, and amending s. 409.16713, F.S.; transferring provisions relating to the allocation of funds for community-based lead care agencies; conforming a cross-reference; creating s.

409.992, F.S.; providing requirements for community-based care lead agency expenditures; creating s. 409.993, F.S.; providing legislative findings; providing for lead agency and subcontractor liability; providing limitations on damages; transferring, renumbering, and amending s. 409.1675, F.S.; transferring provisions relating to receivership from community-based providers to lead agencies; conforming cross-references and terminology; creating s. 409.996, F.S.; providing duties of the department relating to community-based care and lead agencies; creating s. 409.997, F.S.; providing outcome goals for the department and specified entities with respect to the delivery of child welfare services; requiring the department to maintain an accountability system; requiring a report to the Governor and the Legislature; requiring the department to establish a technical advisory panel; requiring the department to make the results of the accountability system public; requiring a report to the Governor and the Legislature by a specified date; creating s. 827.10, F.S.; providing definitions; establishing the criminal offense of unlawful desertion of a child; providing criminal penalties; providing exceptions; amending s. 985.04, F.S.; conforming terminology; creating s. 1004.615, F.S.; establishing the Florida Institute for Child Welfare; providing purpose, duties, and responsibilities of the institute; requiring the institute to contract and work with specified

entities; providing for the administration of the institute; requiring reports to the Governor and the Legislature by specified dates; amending s. 1009.25, F.S.; exempting specified child protective investigators and child protective investigation supervisors from certain tuition and fee requirements; repealing s. 402.401, F.S., relating to child welfare worker student loan forgiveness; repealing s. 409.1671, F.S., relating to outsourcing of foster care and related services; repealing s. 409.16715, F.S., relating to certain therapy for foster children; repealing s. 409.16745, F.S., relating to the community partnership matching grant program; repealing s. 1004.61, F.S., relating to a partnership between the Department of Children and Families and state universities; amending ss. 39.201, 39.302, 39.524, 316.613, 409.1676, 409.1677, 409.1678, 409.906, 409.912, 409.91211, 420.628, and 960.065, F.S.; conforming cross-references; providing effective dates.

502372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment to Amendment (465622) (with directory amendment)

Between lines 1795 and 1796
insert:
(n) The parent is convicted of an offense that requires the parent to register as a sexual predator under s. 775.21.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

502372

Delete line 1735

and insert:

of section 39.806, Florida Statutes, are amended, and paragraph (n) is added to that subsection, to read:

525374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment to Amendment (465622) (with title amendment)

Delete lines 1796 - 1831
and insert:
Section 20. Paragraph (g) of subsection (1) and subsection (8) of section 63.212, Florida Statutes, are amended to read:
63.212 Prohibited acts; penalties for violation.—
(1) It is unlawful for any person:
(g) Except an adoption entity, to place an advertisement

525374

~~advertise~~ or offer to the public, in any way, by any medium whatever that a minor is available for adoption or that a minor is sought for adoption; and, further, it is unlawful for any person purchasing advertising space or purchasing broadcast time to advertise adoption services to fail to include in any publication ~~publish~~ or fail to include in the broadcast for ~~any~~ such advertisement the ~~or assist an unlicensed person or entity in publishing or broadcasting any such advertisement without including a~~ Florida license number of the adoption entity ~~agency~~ or the Florida Bar number of the attorney placing the advertisement.

1. Only a person who is an attorney licensed to practice law in this state or an adoption entity licensed under the laws of this state may place a paid advertisement or paid listing of the person's telephone number, on the person's own behalf, in a telephone directory that:

a. A child is offered or wanted for adoption; or

b. The person is able to place, locate, or receive a child for adoption.

2. A person who publishes a telephone directory that is distributed in this state~~:~~

~~a.~~ shall include, at the beginning of any classified heading for adoption and adoption services, a statement that informs directory users that only attorneys licensed to practice law in this state and licensed adoption entities may legally provide adoption services under state law.

3.~~b.~~ A person who places ~~may publish~~ an advertisement described in subparagraph 1. in a ~~the~~ telephone directory must include ~~only if the advertisement contains~~ the following

525374

information:

a.~~(I)~~ For an attorney licensed to practice law in this state, the person's Florida Bar number.

b.~~(II)~~ For a child-placing ~~child placing~~ agency licensed under the laws of this state, the number on the person's adoption entity license.

(8) Unless otherwise indicated, a person who willfully and with criminal intent violates any provision of this section, excluding paragraph (1)(g), commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who willfully and with criminal intent violates paragraph (1)(g) commits a misdemeanor of the second degree, punishable as provided in s. 775.083; and each day of continuing violation shall be considered a separate offense. ~~In addition, any person who knowingly publishes or assists with the publication of any advertisement or other publication which violates the requirements of paragraph (1)(g) commits a misdemeanor of the second degree, punishable as provided in s. 775.083, and may be required to pay a fine of up to $150 per day for each day of continuing violation.~~

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 4072 - 4074

and insert:

63.212, F.S.; revising advertising requirements for adoption services; requiring a person who places an advertisement for adoption services to provide specified information; deleting a criminal penalty for

525374

knowingly publishing or assisting in the publication of an advertisement that violates specified provisions; amending s. 383.402, F.S.;

481256

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2014	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (465622) (with title amendment)

Delete lines 2665 - 2683
and insert:
Section 34. Section 409.16713, Florida Statutes, is transferred and renumbered as section 409.991, Florida Statutes, and amended to read:
409.991 ~~409.16713~~ Allocation of funds for community-based care lead agencies.—

481256

(1) As used in this section, the term:

~~(a) "Core services funding" means all funds allocated to community-based care lead agencies operating under contract with the department pursuant to s. 409.1671, with the following exceptions:~~

~~1. Funds appropriated for independent living;~~

~~2. Funds appropriated for maintenance adoption subsidies;~~

~~3. Funds allocated by the department for protective investigations training;~~

~~4. Nonrecurring funds;~~

~~5. Designated mental health wrap-around services funds; and~~

~~6. Funds for special projects for a designated community-based care lead agency.~~

(a) ~~(b)~~ "Funding ~~Equity~~ allocation model" means an allocation model that uses the following factors:

~~1. Proportion of children in poverty;~~

1. ~~2.~~ Proportion of child abuse hotline workload; and

2. ~~3.~~ Proportion of children in care~~; and~~

~~4. Proportion of contribution in the reduction of out-of-home care~~.

~~(c) "Proportion of children in poverty" means the average of the proportion of children in the geographic area served by the community-based care lead agency based on the following subcomponents:~~

~~1. Children up to 18 years of age who are below the poverty level as determined by the latest available Small Area Income and Poverty Estimates (SAIPE) from the United States Census Bureau;~~

~~2. Children eligible for free or reduced-price meals as~~

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~~determined by the latest available survey published by the Department of Education; and~~

~~3. The number of children in families receiving benefits from the federal Supplemental Nutrition Assistance Program (SNAP) in the most recent month as determined by the department.~~

(b) ~~(d)~~ "Proportion of child abuse hotline workload" means the weighted average of the following subcomponents:

1. The average number of initial and additional child abuse reports received during the ~~month for the~~ most recent calendar year ~~12 months~~ based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 20 percent of the factor.

2. The average count of children in investigations in the most recent calendar year ~~12 months~~ based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 40 percent of the factor.

3. The average count of children in investigations with a most serious finding of verified abuse in the most recent calendar year ~~12 months~~ based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 40 percent of the factor.

(c) ~~(e)~~ "Proportion of children in care" means the proportion of the aggregate ~~sum of the~~ number of children in care receiving out-of-home ~~in-home~~ services and the number of children receiving in-home case management services during ~~in out-of-home care at the end of~~ the most recent calendar year ~~month as reported in the child welfare services trend reports as determined by the department~~.

1. The subcomponent of out-of-home care shall be weighted

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as 60 percent of the factor.

2. The subcomponent of in-home case management services shall be weighted as 40 percent of the factor.

~~(f) "Proportion of contribution in the reduction of out-of-home care" means the proportion of the number of children in out-of-home care on December 31, 2006, minus the number of children in out-of-home care as of the end of the most recent month as reported in the child welfare services trend reports as determined by the department.~~

(2) The ~~equity~~ allocation of core services funds shall be calculated based on the following weights:

~~(a) Proportion of children in poverty shall be weighted as 30 percent of the total;~~

(a) ~~(b)~~ Proportion of child abuse hotline workload shall be weighted as 70 ~~30~~ percent of the total; and

(b) ~~(c)~~ Proportion of children in care shall be weighted as 30 percent of the total~~; and~~

~~(d) Proportion of contribution to the reduction in out-of-home care shall be weighted as 10 percent of the total~~.

~~(3) Beginning in the 2013-2014 state fiscal year, 90 percent of the recurring core services funding for each community-based care lead agency shall be based on the prior year recurring base of core services funds and 10 percent shall be based on the equity allocation model.~~

(3) ~~(4)~~ Unless otherwise specified in the General Appropriations Act, any new core services funds shall be allocated based on the funding ~~equity~~ allocation model. Such allocations must be proportional to the proportion of funding based on the funding allocation ~~equity~~ model and allocated only

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to the community-based care lead agency contracts if the current funding proportion is less than the proportion of funding based on the funding allocation ~~equity~~ model.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 4126 - 4128

and insert:

F.S.; transferring and revising provisions relating to the allocation of funds for community-based lead care agencies; revising terms; creating s.

862870

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2014	.	
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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment to Amendment (465622)

Delete line 3195

and insert:

presented appropriately to the court, giving consideration to the

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2014	.	
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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment to Amendment (465622) (with title amendment)

Between lines 3509 and 3510
insert:

Section 44. Paragraphs (c) through (g) of subsection (3) of section 1009.22, Florida Statutes, are amended to read:

1009.22 Workforce education postsecondary student fees.—

(3)

(c) Effective July 1, 2014 ~~2011~~, for programs leading to a

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career certificate or an applied technology diploma, the standard tuition shall be $2.33 ~~$2.22~~ per contact hour for residents and nonresidents and the out-of-state fee shall be $6.99 ~~$6.66~~ per contact hour. For adult general education programs, a block tuition of $45 per half year or $30 per term shall be assessed ~~for residents and nonresidents, and the out-of-state fee shall be $135 per half year or $90 per term~~. Each district school board and Florida College System institution board of trustees shall adopt policies and procedures for the collection of and accounting for the expenditure of the block tuition. All funds received from the block tuition shall be used only for adult general education programs. Students enrolled in adult general education programs may not be assessed the fees authorized in subsection (5), subsection (6), or subsection (7).

~~(d) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee per contact hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the~~

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~~tuition and out-of-state fee shall remain at the same level as the prior fiscal year.~~

(d) ~~(e)~~ Each district school board and each Florida College System institution board of trustees may adopt tuition and out-of-state fees that may vary no more than 5 percent below and 5 percent above the combined total of the standard tuition and out-of-state fees established in paragraph (c).

(e) ~~(f)~~ The maximum increase in resident tuition for any school district or Florida College System institution during the 2007-2008 fiscal year shall be 5 percent over the tuition charged during the 2006-2007 fiscal year.

(f) ~~(g)~~ The State Board of Education may adopt, by rule, the definitions and procedures that district school boards and Florida College System institution boards of trustees shall use in the calculation of cost borne by students.

Section 45. Subsection (3) of section 1009.23, Florida Statutes, is amended to read:

1009.23 Florida College System institution student fees.—

(3)(a) Effective July 1, 2014 ~~2011~~, for advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs, the standard tuition shall be $71.98 ~~$68.56~~ per credit hour for residents and nonresidents, and the out-of-state fee shall be $215.94 ~~$205.82~~ per credit hour.

(b) Effective July 1, 2014 ~~2011~~, for baccalaureate degree programs, the following tuition and fee rates shall apply:

1. The tuition shall be $91.79 ~~$87.42~~ per credit hour for students who are residents for tuition purposes.

2. The sum of the tuition and the out-of-state fee per

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credit hour for students who are nonresidents for tuition purposes shall be no more than 85 percent of the sum of the tuition and the out-of-state fee at the state university nearest the Florida College System institution.

~~(c) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and the out-of-state fee per credit hour shall remain at the same levels as the prior fiscal year.~~

Section 46. Paragraphs (a), (b), and (e) of subsection (4) and paragraph (b) of subsection (16) of section 1009.24, Florida Statutes, are amended, to read:

1009.24 State university student fees.—

(4)(a) Effective July 1, 2014 ~~2011~~, the resident undergraduate tuition for lower-level and upper-level coursework shall be $105.07 ~~$103.32~~ per credit hour.

~~(b) Beginning with the 2008-2009 fiscal year and each year~~

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~~thereafter, the resident undergraduate tuition per credit hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Board of Governors each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the resident undergraduate tuition shall remain at the same level as the prior fiscal year.~~

(d) ~~(c)~~ The sum of the activity and service, health, and athletic fees a student is required to pay to register for a course may ~~shall~~ not exceed 40 percent of the tuition established in law or in the General Appropriations Act. No university shall be required to lower any fee in effect on the effective date of this act in order to comply with this subsection. Within the 40 percent cap, universities may not increase the aggregate sum of activity and service, health, and athletic fees more than 5 percent per year~~, or the same percentage increase in tuition authorized under paragraph (b), whichever is greater,~~ unless specifically authorized in law or in the General Appropriations Act. A university may increase its athletic fee to defray the costs associated with changing National Collegiate Athletic Association divisions. Any such

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increase in the athletic fee may exceed both the 40 percent cap and the 5 percent cap imposed by this subsection. Any such increase must be approved by the athletic fee committee in the process outlined in subsection (12) and may not ~~cannot~~ exceed $2 per credit hour. Notwithstanding ~~the provisions of~~ ss. 1009.534, 1009.535, and 1009.536, that portion of any increase in an athletic fee pursuant to this subsection which ~~that~~ causes the sum of the activity and service, health, and athletic fees to exceed the 40 percent cap or the annual increase in such fees to exceed the 5 percent cap may ~~shall~~ not be included in calculating the amount a student receives for a Florida Academic Scholars award, a Florida Medallion Scholars award, or a Florida Gold Seal Vocational Scholars award. Notwithstanding this paragraph and subject to approval by the board of trustees, each state university may ~~is authorized to~~ exceed the 5 percent ~~5-percent~~ cap on the annual increase to the aggregate sum of activity and service, health, and athletic fees for the 2010-2011 fiscal year. Any such increase may ~~shall~~ not exceed 15 percent or the amount required to reach the 2009-2010 fiscal year statewide average for the aggregate sum of activity and service, health, and athletic fees at the main campuses, whichever is greater. The aggregate sum of the activity and service, health, and athletic fees may ~~shall~~ not exceed 40 percent of tuition. Any increase in the activity and service fee, health fee, or athletic fee must be approved by the appropriate fee committee pursuant to subsection (10), subsection (11), or subsection (12).

(16) Each university board of trustees may establish a tuition differential for undergraduate courses upon receipt of

approval from the Board of Governors. The tuition differential shall promote improvements in the quality of undergraduate education and shall provide financial aid to undergraduate students who exhibit financial need.

(b) Each tuition differential is subject to the following conditions:

1. The tuition differential may be assessed on one or more undergraduate courses or on all undergraduate courses at a state university.

2. The tuition differential may vary by course or courses, campus or center location, and by institution. Each university board of trustees shall strive to maintain and increase enrollment in degree programs related to math, science, high technology, and other state or regional high-need fields when establishing tuition differentials by course.

3. For each state university that is designated as a preeminent state research university by the Board of Governors, pursuant to s. 1001.7065 ~~that has total research and development expenditures for all fields of at least $100 million per year as reported annually to the National Science Foundation~~, the aggregate sum of tuition and the tuition differential may ~~not~~ be increased by no more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year if the university meets or exceeds each performance standard target for that university established annually by the Board of Governors for the following performance standards, each amounting to no more than a 2 percent increase in tuition differential:

a. Increase in the 6-year graduation rate for full-time,

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first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System;

b. Increase in the total annual research expenditures; and

c. Increase in the total patents awarded by the United States Patent and Trademark Office for the most recent years. ~~For each state university that has total research and development expenditures for all fields of less than $100 million per year as reported annually to the National Science Foundation, the aggregate sum of tuition and the tuition differential may not be increased by more than 15 percent of the total charged for the aggregate sum of these fees in the preceding fiscal year.~~

4. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.

5. The tuition differential shall not be included in any award under the Florida Bright Futures Scholarship Program established pursuant to ss. 1009.53-1009.538.

6. Beneficiaries having prepaid tuition contracts pursuant to s. 1009.98(2)(b) which were in effect on July 1, 2007, and which remain in effect, are exempt from the payment of the tuition differential.

7. The tuition differential may not be charged to any student who was in attendance at the university before July 1, 2007, and who maintains continuous enrollment.

8. The tuition differential may be waived by the university for students who meet the eligibility requirements for the Florida public student assistance grant established in s.

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1009.50.

9. Subject to approval by the Board of Governors, the tuition differential authorized pursuant to this subsection may take effect with the 2009 fall term.

Section 47. Subsection (8) of section 1009.26, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

1009.26 Fee waivers.—

(8) A state university, a ~~or~~ Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive undergraduate tuition for each recipient of a Purple Heart or another combat decoration superior in precedence who:

(a) Is enrolled as a full-time, part-time, or summer-school student in an undergraduate program that terminates in a degree or certificate;

(b) Is currently, and was at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, a resident of this state; and

(c) Submits to the state university or the Florida College System institution the DD-214 form issued at the time of separation from service as documentation that the student has received a Purple Heart or another combat decoration superior in precedence. If the DD-214 is not available, other documentation may be acceptable if recognized by the United States Department of Defense or the United States Department of Veterans Affairs as documenting the award.

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Such a waiver for a Purple Heart recipient or recipient of another combat decoration superior in precedence shall be applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled.

(12)(a) A state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center shall waive out-of-state fees for students, including but not limited to students who are undocumented for federal immigration purposes, who meet the following conditions:

1. Attended a secondary school in this state, which is not the Florida Virtual School Global, for 3 consecutive years immediately before graduating from a high school in this state;

2. Enrolled in a degree or certificate program at an institution of higher education within 24 months after high school graduation; and

3. Submitted an official Florida high school transcript as evidence of attendance and graduation.

(b) Tuition and fees charged to a student who qualifies for the out-of-state fee waiver under this subsection may not exceed the tuition and fees charged to a resident student. The waiver is applicable for 110 percent of the required credit hours of the degree or certificate program for which the student is enrolled. Each state university, Florida College System institution, career center operated by a school district under s. 1001.44, and charter technical career center shall report to the Board of Governors and the State Board of Education, as appropriate, the number and value of all fee waivers granted

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annually under this subsection. The Board of Governors for the state universities and the State Board of Education for Florida College System institutions, career centers operated by a school district under s. 1001.44, and charter technical career centers shall annually certify within their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as the 2013-2014 resident student enrollment systemwide.

(c) A student who is granted an out-of-state fee waiver under this subsection is not eligible for state financial aid under part III of chapter 1009.

Section 48. Subsection (10) of section 1009.98, Florida Statutes, is amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds ~~exceed~~ the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2)(d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2)(b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2)(b)3. The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at $37.03 per credit hour. The base

rate for the tuition differential in subsequent years is the amount assessed ~~paid by the board~~ for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.

(b) Effective with the 2009-2010 academic year and thereafter, and notwithstanding the provisions of s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose contract was purchased before July 1, 2024 ~~2009~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.

2. As to the tuition differential, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the base rate for the tuition differential fee in the

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preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the base rate for the tuition differential fee in the preceding fiscal year.

3. As to local fees, the board shall pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.

4. As to dormitory fees, the board shall pay the state universities 6 percent above the amount assessed for dormitory fees in the preceding fiscal year.

5. Qualified beneficiaries of advance payment contracts purchased before July 1, 2007, are exempt from paying any tuition differential fee.

(c) Notwithstanding the amount assessed for registration fees, the tuition differential fee, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for the aggregate sum of those fees.

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(d) Notwithstanding the amount assessed for dormitory fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for dormitory fees.

(e) ~~(c)~~ The board shall pay state universities the actual amount assessed in accordance with law for registration fees, the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2024 ~~2009~~.

(f) ~~(d)~~ The board shall annually evaluate or cause to be evaluated the actuarial soundness of the trust fund.

Section 49. Subsection (10) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(10) A high school student dually enrolled under s. 1007.271 in a workforce education program operated by a Florida College System institution or school district career center generates the amount calculated for workforce education funding, including any payment of performance funding, and the proportional share of full-time equivalent enrollment generated through the Florida Education Finance Program for the student's enrollment in a high school. If a high school student is dually enrolled in a Florida College System institution program, including a program conducted at a high school, the Florida College System institution earns the funds generated for workforce education funding, and the school district earns the proportional share of full-time equivalent funding from the

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Florida Education Finance Program. If a student is dually enrolled in a career center operated by the same district as the district in which the student attends high school, that district earns the funds generated for workforce education funding and also earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a workforce education program provided by a career center operated by a different school district, the funds must be divided between the two school districts proportionally from the two funding sources. A student may not be reported for funding in a dual enrollment workforce education program unless the student has completed the basic skills assessment pursuant to s. 1004.91. A student who is coenrolled in a K-12 education program and an adult education program may be reported for purposes of funding in an adult education program. If a student is coenrolled in core curricula courses for credit recovery or dropout prevention purposes and does not have a pattern of excessive absenteeism or habitual truancy or a history of disruptive behavior in school, the student may be reported for funding for up to two courses per year. Such a student is exempt from the payment of the block tuition for adult general education programs provided in s. 1009.22(3)(c) ~~s. 1009.22(3)(d)~~. The Department of Education shall develop a list of courses to be designated as core curricula courses for the purposes of coenrollment.

Section 50. A dependent child who is a citizen of the United States of America may not be denied residency classification for tuition purposes based solely on the parent's undocumented immigration status. All applicable laws apply.

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417
418 ================ T I T L E A M E N D M E N T ================
419 And the title is amended as follows:
420 Between lines 4163 and 4164
421 insert:
422 amending ss. 1009.22 and 1009.23, F.S.; revising the
423 standard tuition and out-of-state fees for workforce
424 education postsecondary programs leading to certain
425 certificates and diplomas and certain other programs
426 at Florida College System institutions; deleting a
427 provision relating to an increase in tuition and out-
428 of-state fees at a rate equal to inflation; deleting a
429 requirement that the Office of Economic and
430 Demographic Research annually report the rate of
431 inflation to the Governor, the Legislature, and the
432 State Board of Education; deleting the definition of
433 the term "rate of inflation"; amending s. 1009.24,
434 F.S.; revising the resident undergraduate tuition for
435 lower-level and upper-level coursework; deleting a
436 provision related to an increase of the resident
437 undergraduate tuition at state universities at a rate
438 equal to inflation; deleting the requirement of the
439 Office of Economic and Demographic Research to
440 annually report the rate of inflation to the Governor,
441 the Legislature, and the Board of Governors; deleting
442 the definition of the term "rate of inflation";
443 conforming provisions to changes made by the act;
444 authorizing a state university board of trustees to
445 increase the aggregate sum of tuition and tuition

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differential for up to 6 percent of the total charged for the aggregate sum of such fees in the preceding year if the state university meets the specified conditions; amending s. 1009.26, F.S.; requiring a state university, a Florida College System institution, a career center operated by a school district, or a charter technical career center to waive undergraduate tuition for a recipient of a Purple Heart or another combat decoration superior in precedence under certain conditions; requiring a state university, a Florida College System institution, a career center operated by a school district, and a charter technical career center to waive out-of-state fees for certain students who meet specified conditions; requiring a state university, a Florida College System institution, a career center operated by a school district, and a charter technical career center to report to the Board of Governors and the State Board of Education, as appropriate, the number and value of all fee waivers; requiring the Board of Governors for the state universities and the State Board of Education for the Florida College System institutions, career centers operated by a school district, and charter technical career centers to annually certify within their legislative budget requests that the percentage of resident students enrolled systemwide is at least the same as the resident student enrollment systemwide in a specified academic year; providing that a student who is granted

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the out-of-state fee waiver is not eligible for state financial aid; amending s. 1009.98, F.S.; redefining the term "tuition differential"; revising the purchase date of an advance payment contract as it relates to the amount paid by the Florida Prepaid College Board to a state university on behalf of a qualified beneficiary; prohibiting the amount of the aggregate sum of registration fees, the tuition differential fee, and local fees paid by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for the aggregate sum of those fees; prohibiting the amount of the dormitory fees paid for by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for those fees; conforming provisions to changes made by the act; amending s. 1011.80, F.S.; conforming a cross-reference; prohibiting certain dependent children from being denied residency classification for tuition purposes based solely on a parent's undocumented immigration status;

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Substitute for Amendment (798384) (with title amendment)

Between lines 3509 and 3510
insert:

Section 44. Paragraphs (c) through (g) of subsection (3) of section 1009.22, Florida Statutes, are amended to read:

1009.22 Workforce education postsecondary student fees.—

(3)

(c) Unless otherwise provided in the General Appropriations

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Act, effective July 1, 2014 ~~2011~~, for programs leading to a career certificate or an applied technology diploma, the standard tuition shall be $2.33 ~~$2.22~~ per contact hour for residents and nonresidents and the out-of-state fee shall be $6.99 ~~$6.66~~ per contact hour. For adult general education programs, a block tuition of $45 per half year or $30 per term shall be assessed for residents and nonresidents, and the out-of-state fee shall be $135 per half year or $90 per term. Each district school board and Florida College System institution board of trustees shall adopt policies and procedures for the collection of and accounting for the expenditure of the block tuition. All funds received from the block tuition shall be used only for adult general education programs. Students enrolled in adult general education programs may not be assessed the fees authorized in subsection (5), subsection (6), or subsection (7).

~~(d) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee per contact hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous~~

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~~year. In the event the percentage change is negative, the tuition and out-of-state fee shall remain at the same level as the prior fiscal year.~~

(d) ~~(c)~~ Each district school board and each Florida College System institution board of trustees may adopt tuition and out-of-state fees that may vary no more than 5 percent below and 5 percent above the combined total of the standard tuition and out-of-state fees established in paragraph (c).

(e) ~~(f)~~ The maximum increase in resident tuition for any school district or Florida College System institution during the 2007-2008 fiscal year shall be 5 percent over the tuition charged during the 2006-2007 fiscal year.

(f) ~~(g)~~ The State Board of Education may adopt, by rule, the definitions and procedures that district school boards and Florida College System institution boards of trustees shall use in the calculation of cost borne by students.

Section 45. Subsection (3) of section 1009.23, Florida Statutes, is amended to read:

1009.23 Florida College System institution student fees.—

(3)(a) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs, the standard tuition shall be $71.98 ~~$68.56~~ per credit hour for residents and nonresidents, and the out-of-state fee shall be $215.94 ~~$205.82~~ per credit hour.

(b) Unless otherwise provided in the General Appropriations Act, effective July 1, 2014 ~~2011~~, for baccalaureate degree programs, the following tuition and fee rates shall apply:

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1. The tuition shall be $91.79 ~~$87.42~~ per credit hour for students who are residents for tuition purposes.

2. The sum of the tuition and the out-of-state fee per credit hour for students who are nonresidents for tuition purposes shall be no more than 85 percent of the sum of the tuition and the out-of-state fee at the state university nearest the Florida College System institution.

~~(c) Beginning with the 2008-2009 fiscal year and each year thereafter, the tuition and the out-of-state fee shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the State Board of Education each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the tuition and the out-of-state fee per credit hour shall remain at the same levels as the prior fiscal year.~~

Section 46. Paragraphs (a), (b), and (e) of subsection (4) and paragraph (b) of subsection (16) of section 1009.24, Florida Statutes, are amended, to read:

1009.24 State university student fees.—

(4)(a) Unless otherwise provided in the General

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Appropriations Act, effective July 1, 2014 ~~2011~~, the resident undergraduate tuition for lower-level and upper-level coursework shall be $105.07 ~~$103.32~~ per credit hour.

~~(b) Beginning with the 2008-2009 fiscal year and each year thereafter, the resident undergraduate tuition per credit hour shall increase at the beginning of each fall semester at a rate equal to inflation, unless otherwise provided in the General Appropriations Act. The Office of Economic and Demographic Research shall report the rate of inflation to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Board of Governors each year prior to March 1. For purposes of this paragraph, the rate of inflation shall be defined as the rate of the 12-month percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor for December of the previous year. In the event the percentage change is negative, the resident undergraduate tuition shall remain at the same level as the prior fiscal year.~~

(d) ~~(c)~~ The sum of the activity and service, health, and athletic fees a student is required to pay to register for a course may ~~shall~~ not exceed 40 percent of the tuition established in law or in the General Appropriations Act. No university shall be required to lower any fee in effect on the effective date of this act in order to comply with this subsection. Within the 40 percent cap, universities may not increase the aggregate sum of activity and service, health, and athletic fees more than 5 percent per year, or the same percentage increase in tuition authorized under paragraph (a)

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~~(b)~~, whichever is greater, unless specifically authorized in law or in the General Appropriations Act. A university may increase its athletic fee to defray the costs associated with changing National Collegiate Athletic Association divisions. Any such increase in the athletic fee may exceed both the 40 percent cap and the 5 percent cap imposed by this subsection. Any such increase must be approved by the athletic fee committee in the process outlined in subsection (12) and may not ~~cannot~~ exceed $2 per credit hour. Notwithstanding ~~the provisions of~~ ss. 1009.534, 1009.535, and 1009.536, that portion of any increase in an athletic fee pursuant to this subsection which ~~that~~ causes the sum of the activity and service, health, and athletic fees to exceed the 40 percent cap or the annual increase in such fees to exceed the 5 percent cap may ~~shall~~ not be included in calculating the amount a student receives for a Florida Academic Scholars award, a Florida Medallion Scholars award, or a Florida Gold Seal Vocational Scholars award. Notwithstanding this paragraph and subject to approval by the board of trustees, each state university may ~~is authorized to~~ exceed the 5 percent ~~5-percent~~ cap on the annual increase to the aggregate sum of activity and service, health, and athletic fees for the 2010-2011 fiscal year. Any such increase may ~~shall~~ not exceed 15 percent or the amount required to reach the 2009-2010 fiscal year statewide average for the aggregate sum of activity and service, health, and athletic fees at the main campuses, whichever is greater. The aggregate sum of the activity and service, health, and athletic fees may ~~shall~~ not exceed 40 percent of tuition. Any increase in the activity and service fee, health fee, or athletic fee must be approved by the

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appropriate fee committee pursuant to subsection (10), subsection (11), or subsection (12).

(16) Each university board of trustees may establish a tuition differential for undergraduate courses upon receipt of approval from the Board of Governors. The tuition differential shall promote improvements in the quality of undergraduate education and shall provide financial aid to undergraduate students who exhibit financial need.

(b) Each tuition differential is subject to the following conditions:

1. The tuition differential may be assessed on one or more undergraduate courses or on all undergraduate courses at a state university.

2. The tuition differential may vary by course or courses, campus or center location, and by institution. Each university board of trustees shall strive to maintain and increase enrollment in degree programs related to math, science, high technology, and other state or regional high-need fields when establishing tuition differentials by course.

3. For each state university that has total research and development expenditures for all fields of at least $100 million per year as reported annually to the National Science Foundation, the aggregate sum of tuition and the tuition differential may ~~not~~ be increased by no more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year. For each state university that has total research and development expenditures for all fields of less than $100 million per year as reported annually to the National Science Foundation, the aggregate sum of tuition and the tuition

differential may not be increased by more than 6 ~~15~~ percent of the total charged for the aggregate sum of these fees in the preceding fiscal year.

4. The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions.

5. The tuition differential may ~~shall~~ not be included in any award under the Florida Bright Futures Scholarship Program established pursuant to ss. 1009.53-1009.538.

6. Beneficiaries having prepaid tuition contracts pursuant to s. 1009.98(2)(b) which were in effect on July 1, 2007, and which remain in effect, are exempt from the payment of the tuition differential.

7. The tuition differential may not be charged to any student who was in attendance at the university before July 1, 2007, and who maintains continuous enrollment.

8. The tuition differential may be waived by the university for students who meet the eligibility requirements for the Florida public student assistance grant established in s. 1009.50.

9. Subject to approval by the Board of Governors, the tuition differential authorized pursuant to this subsection may take effect with the 2009 fall term.

Section 47. Subsection (10) of section 1009.98, Florida Statutes, is amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds ~~exceed~~ the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2)(d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2)(b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2)(b)3. The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at $37.03 per credit hour. The base rate for the tuition differential in subsequent years is the amount assessed ~~paid by the board~~ for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.

(b) Effective with the 2009-2010 academic year and thereafter, and notwithstanding the provisions of s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose contract was purchased before July 1, 2024 ~~2009~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If

the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.

2. As to the tuition differential, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the base rate for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the base rate for the tuition differential fee in the preceding fiscal year.

3. As to local fees, the board shall pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.

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4. As to dormitory fees, the board shall pay the state universities 6 percent above the amount assessed for dormitory fees in the preceding fiscal year.

5. Qualified beneficiaries of advance payment contracts purchased before July 1, 2007, are exempt from paying any tuition differential fee.

(c) Notwithstanding the amount assessed for registration fees, the tuition differential fee, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for the aggregate sum of those fees.

(d) Notwithstanding the amount assessed for dormitory fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2024, may not exceed 100 percent of the amount charged by the state university for dormitory fees.

(e) ~~(c)~~ The board shall pay state universities the actual amount assessed in accordance with law for registration fees, the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2024 ~~2009~~.

(f) ~~(d)~~ The board shall annually evaluate or cause to be evaluated the actuarial soundness of the trust fund.

Section 48. Subsection (10) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(10) A high school student dually enrolled under s. 1007.271 in a workforce education program operated by a Florida College System institution or school district career center generates the amount calculated for workforce education funding, including any payment of performance funding, and the proportional share of full-time equivalent enrollment generated through the Florida Education Finance Program for the student's enrollment in a high school. If a high school student is dually enrolled in a Florida College System institution program, including a program conducted at a high school, the Florida College System institution earns the funds generated for workforce education funding, and the school district earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a career center operated by the same district as the district in which the student attends high school, that district earns the funds generated for workforce education funding and also earns the proportional share of full-time equivalent funding from the Florida Education Finance Program. If a student is dually enrolled in a workforce education program provided by a career center operated by a different school district, the funds must be divided between the two school districts proportionally from the two funding sources. A student may not be reported for funding in a dual enrollment workforce education program unless the student has completed the basic skills assessment pursuant to s. 1004.91. A student who is coenrolled in a K-12 education program and an adult education program may be reported for purposes of funding in an adult education program. If a student is coenrolled in core curricula courses

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for credit recovery or dropout prevention purposes and does not have a pattern of excessive absenteeism or habitual truancy or a history of disruptive behavior in school, the student may be reported for funding for up to two courses per year. Such a student is exempt from the payment of the block tuition for adult general education programs provided in s. 1009.22(3)(c) ~~s. 1009.22(3)(d)~~. The Department of Education shall develop a list of courses to be designated as core curricula courses for the purposes of coenrollment.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 4163 and 4164

insert:

amending ss. 1009.22 and 1009.23, F.S.; revising the standard tuition and out-of-state fees for workforce education postsecondary programs leading to certain certificates and diplomas and certain other programs at Florida College System institutions; deleting a provision relating to an increase in tuition and out-of-state fees at a rate equal to inflation; deleting a requirement that the Office of Economic and Demographic Research annually report the rate of inflation to the Governor, the Legislature, and the State Board of Education; deleting the definition of the term "rate of inflation"; amending s. 1009.24, F.S.; revising the resident undergraduate tuition for lower-level and upper-level coursework; deleting a provision related to an increase of the resident

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undergraduate tuition at state universities at a rate equal to inflation; deleting the requirement of the Office of Economic and Demographic Research to annually report the rate of inflation to the Governor, the Legislature, and the Board of Governors; deleting the definition of the term "rate of inflation"; conforming provisions to changes made by the act; authorizing a state university board of trustees to increase the aggregate sum of tuition and tuition differential for up to 6 percent of the total charged for the aggregate sum of such fees in the preceding year; amending s. 1009.98, F.S.; redefining the term "tuition differential"; revising the purchase date of an advance payment contract as it relates to the amount paid by the Florida Prepaid College Board to a state university on behalf of a qualified beneficiary; prohibiting the amount of the aggregate sum of registration fees, the tuition differential fee, or local fees paid by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for the aggregate sum of those fees; prohibiting the amount of the dormitory fees paid for by the board to a state university on behalf of a qualified beneficiary of an advance payment contract from exceeding a certain percentage of the amount charged by the state university for those fees; conforming provisions to changes made by the act; amending s. 1011.80, F.S.;

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388 conforming a cross-reference;

By the Committee on Children, Families, and Elder Affairs; and Senator Sobel

586-02450-14 20141666__

A bill to be entitled

An act relating to child abuse and child welfare services; amending s. 20.19, F.S.; requiring the secretary of the Department of Children and Families to appoint an Assistant Secretary for Child Welfare; providing requirements for such position; amending s. 402.40, F.S.; providing requirements for persons providing child welfare services; creating s. 402.402, F.S.; providing education requirements for child protective investigators and child protective investigation supervisors; providing for implementation of such requirements; providing for exemptions; requiring a report to the Governor and the Legislature by a specified date; creating s. 402.403, F.S.; establishing a tuition exemption program for child protective investigators and supervisors; providing eligibility requirements; creating s. 402.404, F.S.; establishing a student loan forgiveness program for child protective investigators and supervisors; providing eligibility requirements; providing requirements for the program; creating s. 827.10, F.S.; defining terms; establishing the criminal offense of unlawful abandonment of a child; providing criminal penalties; providing exceptions; creating s. 1004.615, F.S.; establishing the Florida Institute for Child Welfare; providing the purpose of the institute; requiring the department to contract with the institute for the performance of specified duties; requiring the institute to contract and work

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-02450-14 20141666__

with specified entities; providing duties and responsibilities of the institute; providing for the administration of the institute; requiring a report to the Governor and the Legislature by a specified date; amending s. 1009.25, F.S.; exempting tuition and fees for specified child protective investigators and child protective investigation supervisors; repealing s. 402.401, F.S., relating to the Florida Child Welfare Student Loan Forgiveness Program; repealing s. 1004.61, F.S., relating to partnerships to develop child protective investigation workers; amending s. 39.01, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (3) through (5) of section 20.19, Florida Statutes, are redesignated as subsections (4) through (6), respectively, a new subsection (3) is added to that section, and subsection (2) of that section is amended, to read:

20.19 Department of Children and Families.—There is created a Department of Children and Families.

(2) SECRETARY OF CHILDREN AND FAMILIES; DEPUTY SECRETARY.—

(a) The head of the department is the Secretary of Children and Families. The secretary is appointed by the Governor, subject to confirmation by the Senate. The secretary serves at the pleasure of the Governor.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

is directly responsible to the secretary, performs such duties as are assigned by the secretary, and serves at the pleasure of the secretary.

(3) ASSISTANT SECRETARIES.—

(a) *Child Welfare.*—

1. The secretary shall appoint an Assistant Secretary for Child Welfare to lead the department in carrying out its duties and responsibilities for child protection and child welfare. The individual appointed to this position shall serve at the pleasure of the secretary.

2. The assistant secretary must have a degree in social work or at least 7 years of experience working in organizations delivering child protective or child welfare services.

(b) *Substance Abuse and Mental Health.*—

~~(c)~~1. The secretary shall appoint an Assistant Secretary for Substance Abuse and Mental Health. The assistant secretary shall serve at the pleasure of the secretary and must have expertise in both areas of responsibility.

2. The secretary shall appoint a Director for Substance Abuse and Mental Health who has the requisite expertise and experience to head the state's Substance Abuse and Mental Health Program Office.

Section 2. Section 402.40, Florida Statutes, is amended to read:

402.40 Child welfare training and certification.—

(1) LEGISLATIVE INTENT.—In order to enable the state to provide a systematic approach to staff development and training for persons providing child welfare services which ~~that~~ will meet the needs of such staff in their discharge of duties, it is

the intent of the Legislature that the Department of Children and Families ~~Family Services~~ work in collaboration with the child welfare stakeholder community, including department-approved third-party credentialing entities, to ensure that staff have the knowledge, skills, and abilities necessary to competently provide child welfare services. It is the intent of the Legislature that each person providing child welfare services in this state earns and maintains a professional certification from a professional credentialing entity that is approved by the Department of Children and Families ~~Family Services~~. The Legislature further intends that certification and training programs will aid in the reduction of poor staff morale and of staff turnover, will positively impact on the quality of decisions made regarding children and families who require assistance from programs providing child welfare services, and will afford better quality care of children who must be removed from their families.

(2) REQUIREMENTS FOR PERSONS PROVIDING CHILD WELFARE SERVICES.-Each person providing child welfare services who is employed by the department, a sheriff's office, or a community-based care lead agency or subcontractor is required to earn and maintain a professional certification from a professional credentialing entity that is approved by the department.

(3)~~(2)~~ DEFINITIONS.—As used in this section, the term:

(a) "Child welfare certification" means a professional credential awarded by a department-approved third-party credentialing entity to individuals demonstrating core competency in any child welfare practice area.

(b) "Child welfare services" means any intake, protective

investigations, preprotective services, protective services, foster care, shelter and group care, and adoption and related services program, including supportive services and supervision provided to children who are alleged to have been abused, abandoned, or neglected or who are at risk of becoming, are alleged to be, or have been found dependent pursuant to chapter 39.

(c) "Core competency" means the minimum knowledge, skills, and abilities necessary to carry out work responsibilities.

(d) "Person providing child welfare services" means a person who has a responsibility for supervisory, direct care, or support-related work in the provision of child welfare services pursuant to chapter 39.

(e) "Preservice curriculum" means the minimum statewide training content based upon the core competencies which is made available to all persons providing child welfare services.

(f) "Third-party credentialing entity" means a department-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.

(4) ~~(3)~~ THIRD-PARTY CREDENTIALING ENTITIES.—The department shall approve one or more third-party credentialing entities for the purpose of developing and administering child welfare certification programs for persons who provide child welfare services. A third-party credentialing entity shall request such approval in writing from the department. In order to obtain approval, the third-party credentialing entity must:

(a) Establish professional requirements and standards that applicants must achieve in order to obtain a child welfare

certification and to maintain such certification.

(b) Develop and apply core competencies and examination instruments according to nationally recognized certification and psychometric standards.

(c) Maintain a professional code of ethics and a disciplinary process that apply to all persons holding child welfare certification.

(d) Maintain a database, accessible to the public, of all persons holding child welfare certification, including any history of ethical violations.

(e) Require annual continuing education for persons holding child welfare certification.

(f) Administer a continuing education provider program to ensure that only qualified providers offer continuing education opportunities for certificateholders.

(5) ~~(4)~~ CHILD WELFARE TRAINING TRUST FUND.—

(a) There is created within the State Treasury a Child Welfare Training Trust Fund to be used by the department ~~of Children and Family Services~~ for the purpose of funding the professional development of persons providing child welfare services.

(b) One dollar from every noncriminal traffic infraction collected pursuant to s. 318.14(10)(b) or s. 318.18 shall be deposited into the Child Welfare Training Trust Fund.

(c) In addition to the funds generated by paragraph (b), the trust fund shall receive funds generated from an additional fee on birth certificates and dissolution of marriage filings, as specified in ss. 382.0255 and 28.101, respectively, and may receive funds from any other public or private source.

(d) Funds that are not expended by the end of the budget cycle or through a supplemental budget approved by the department shall revert to the trust fund.

(6) ~~(5)~~ CORE COMPETENCIES.—

(a) The department ~~of Children and Family Services~~ shall approve the core competencies and related preservice curricula that ensures that each person delivering child welfare services obtains the knowledge, skills, and abilities to competently carry out his or her work responsibilities.

(b) The identification of these core competencies and development of preservice curricula shall be a collaborative effort that includes professionals who have expertise in child welfare services, department-approved third-party credentialing entities, and providers that will be affected by the curriculum, including, but not limited to, representatives from the community-based care lead agencies, sheriffs' offices conducting child protective ~~protection~~ investigations, and child welfare legal services providers.

(c) Community-based care agencies, sheriffs' offices, and the department may contract for the delivery of preservice and any additional training for persons delivering child welfare services if the curriculum satisfies the department-approved core competencies.

(d) Department-approved credentialing entities shall, for a period of at least 12 months after implementation of the third-party child welfare certification programs, grant reciprocity and award a child welfare certification to individuals who hold current department-issued child welfare certification in good standing, at no cost to the department or the certificateholder.

(7) ~~(6)~~ ADOPTION OF RULES.—The department ~~of Children and Family Services~~ shall adopt rules ~~necessary~~ to administer ~~carry out the provisions of~~ this section.

Section 3. Section 402.402, Florida Statutes, is created to read:

402.402 Child protective investigators; child protective investigation supervisors.-

(1) CHILD PROTECTIVE INVESTIGATION STAFF REQUIREMENTS.—

(a) On an annual and statewide basis, 80 percent of child protective investigators and child protective investigation supervisors hired on or after July 1, 2014, by the department or a sheriff's office must have a bachelor's degree or a master's degree in social work from a college or university social work program accredited by the Council on Social Work Education.

(b) Child protective investigators and child protective investigation supervisors employed by the department or a sheriff's office before July 1, 2014, are exempt from the requirements in paragraph (a).

(2) REPORT.—By October 1, 2014, and annually thereafter, the secretary of the department shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on compliance with the requirements of subsection (1). A sheriff who provides child protection services shall report to the secretary of the department information regarding the progress of his or her office in meeting the requirements of subsection (1).

Section 4. Section 402.403, Florida Statutes, is created to read:

402.403 Child Protective Investigator and Supervisor

Tuition Exemption Program.—

(1) There is established within the department the Child Protective Investigator and Supervisor Tuition Exemption Program for the purpose of recruiting and retaining high-performing individuals who are employed as child protective investigators or child protective investigation supervisors with the department or sheriff's office and who do not have a bachelor's degree or master's degree in social work. The department or sheriff's office may exempt tuition and fees to a state university for an employee who is:

(a) Employed as a child protective investigator or child protective investigation supervisor by the department or sheriff's office and who receives personnel evaluations indicating a high level of performance; and

(b) Accepted in an upper-division undergraduate or graduate level college or university social work program accredited by the Council on Social Work Education which leads to either a bachelor's degree or a master's degree in social work.

(2) To the greatest extent possible, the college or university social work program shall consider the training completed and experience of the child protective investigator or child protective investigation supervisor in granting credit towards the degree.

Section 5. Section 402.404, Florida Statutes, is created to read:

402.404 Child Protective Investigator and Supervisor Student Loan Forgiveness Program.—

(1) There is established within the department the Florida Child Protective Investigator and Supervisor Student Loan

Forgiveness Program. The purpose of the program is to increase employment and retention of high-performing individuals who have either a bachelor's degree or a master's degree in social work as child protective investigators or child protective investigation supervisors with the department or sheriff's office by making payments toward loans received by students from federal or state programs or commercial lending institutions for the support of prior postsecondary study in accredited social work programs.

(2) In order to be eligible for the program, a candidate must be employed as a child protective investigator or child protective investigation supervisor by the department or a sheriff's office, must receive a personnel evaluation indicating a high level of performance, and must have graduated from an accredited social work program with either a bachelor's degree or a master's degree in social work.

(3) Only loans to pay the costs of tuition, books, fees, and living expenses shall be covered.

(4) The department may make loan payments of up to $3,000 each year for up to 4 years on behalf of selected graduates of an accredited social work program from the funds appropriated for this purpose. All payments are contingent upon continued proof of employment as a child protective investigator or a child protective investigation supervisor with the department or sheriff's office and made directly to the holder of the loan.

(5) A student who receives a tuition exemption pursuant to s. 402.403 is not eligible to participate in the Child Protective Investigator Student Loan Forgiveness Program.

Section 6. Section 827.10, Florida Statutes, is created to

read:

827.10 Unlawful abandonment of a child.—

(1) As used in this section, the term:

(a) "Abandons" or "abandonment" means to leave a child in a place or with a person other than a relative with the intent not to return to the child and with the intent not to provide for the care of the child.

(b) "Care" means support and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child.

(c) "Caregiver" has the same meaning as provided in s. 39.01(10).

(d) "Child" means a child for whose care the caregiver is legally responsible.

(e) "Relative" has the same meaning as provided in s. 39.01(64).

(2) A caregiver who abandons a child under circumstances in which the caregiver knew or should have known that the abandonment exposes the child to unreasonable risk of harm commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not apply to a person who surrenders a newborn infant in compliance with s. 383.50.

(4) This section does not preclude prosecution for a criminal act under any other law, including, but not limited to, prosecution of child abuse or neglect of a child under s. 827.03.

Section 7. Section 1004.615, Florida Statutes, is created to read:

1004.615 Florida Institute for Child Welfare.-

(1) There is established the Florida Institute for Child Welfare. The purpose of the institute is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development. The institute shall consist of a consortium of public and private universities offering degrees in social work and shall be housed within the College of Social Work of the Florida State University.

(2) Using such resources as authorized in the General Appropriations Act, the Department of Children and Families shall contract with the institute for performance of the duties described in subsection (4).

(3) The institute shall work with the department, sheriffs, community-based care lead agencies, community-based care provider organizations, and other partners who contribute to and participate in providing child protection and child welfare services.

(4) The duties and responsibilities of the institute include the following:

(a) Maintain a program of research that contributes to scientific knowledge and informs both policy and practice related to child safety, permanency, and child and family well-being.

(b) Advise the department and other organizations participating in the child protection and child welfare process

regarding scientific evidence on policy and practice related to child safety, permanency, and child and family well-being.

(c) Assess the performance of child protection and child welfare services based on specific outcome measures.

(d) Evaluate the scope and effectiveness of preservice and inservice training for child protection and child welfare workers.

(e) Advise and assist the department in efforts to improve preservice and inservice training for child protection and child welfare workers.

(f) Assess the readiness of social work graduates to assume job responsibilities in the child protection and child welfare system and identify gaps in education that can be addressed through the modification of curricula or the establishment of industry certifications.

(g) Develop and maintain a program of professional support, including training to facilitate internships and transitions to the workforce and training courses and consulting services that assist both individuals and organizations in implementing adaptive and resilient responses to workplace stress.

(h) Participate in the department's critical incident response team and assist in the preparation of reports about such incidents.

(i) Identify effective policies and best practices, including innovations in management of human service organizations and communicate these findings to the department and other organizations participating in the child protection and child welfare process.

(5) The institute shall be administered by a director who

is appointed by the President of the Florida State University. The director's office shall be located at the Florida State University. Other universities participating in the consortium shall also provide facilities, staff, and other resources to the institute to establish statewide access to institute programs and services. The director must be a child welfare professional and must hold a faculty appointment in the College of Social Work. The director is responsible for overall management of the institute and for developing and executing the work plan consistent with the responsibilities in subsection (4).

(6) By October 1 of each year, the institute shall provide a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which outlines its activities in the preceding state fiscal year, reports significant research findings as well as results of other programs, and provides specific recommendations for improving child protection and child welfare services.

Section 8. Paragraph (h) is added to subsection (1) of section 1009.25, Florida Statutes, to read:

1009.25 Fee exemptions.—

(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs, Florida College System institution, or state university:

(h) A child protective investigator or a child protective investigation supervisor employed by the Department of Children and Families or a sheriff's office who is enrolled in an accredited bachelor's degree or master's degree in social work program pursuant to s. 402.403.

Section 9. Section 402.401, Florida Statutes, is repealed.

Section 10. Section 1004.61, Florida Statutes, is repealed.

Section 11. Subsection (27) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(27) "District administrator" means the chief operating officer of each service district of the department as defined in s. 20.19~~(5)~~ and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.

Section 12. This act shall take effect July 1, 2014.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Child Welfare

Bill Number 1466 ~~SB 826~~ *(if applicable)*

Name Brigitta Johnson

Amendment Barcode 502372 *(if applicable)*

Job Title FL Sheriffs

Address 2617 Mahan Dr.
Street

Phone

Tallahassee, FL
City *State* *Zip*

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Sheriffs

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Child welfare Reform

Bill Number 1666 *(if applicable)*

Name RYAN REITER

Amendment Barcode _____ *(if applicable)*

Job Title Govt Affairs Mgr

Address 6600 W Commercial
Street

Phone _____

_____
City *State* *Zip*

E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing Childrens Service's Council of BROWARD County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Termination of Parental Rights Amendment

Bill Number SB 1666 *(if applicable)*

Name Ron Book

Amendment Barcode 502372 *(if applicable)*

Job Title

Address 104 W. Jefferson

Phone 850-224-3427

Street TLH FLa 32301

City *State* *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Lauren's Kids

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic Child Welfare

Bill Number 1666

Name Cynthia Henderson ★ Richter

Amendment Barcode 525374 *(if applicable)*

Job Title

Address 108 E. Jefferson St HA
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850.210.5385

E-mail cyhendersonfl@me.com

Speaking: [X] For [ ] Against [X] Information on am. only

Representing LSA

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/21/2014
Meeting Date

Topic SB 1666 - child protection + child welfare

Bill Number strike-all 1666 *(if applicable)*

Name Esther Jacobo

Amendment Barcode 465622 *(if applicable)*

Job Title Secretary

Address 1317 Winewood Blvd.
Street

Phone

E-mail

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing Dept. of Children + Families

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic _____ Bill Number SB 1666 *(if applicable)*

Name Jim Ahw Amendment Barcode _____ *(if applicable)*

Job Title Executive Director

Address 1931 Dellwood Dr. Phone _____
Street

Tallahassee FL 32303 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing National Association of Social Workers- Florida

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic DCF

Bill Number 1666 *(if applicable)*

Name Greg Poonel

Amendment Barcode *(if applicable)*

Job Title

Address 9166 Sunrise Dr.
Street

Phone

Largo Fl. 33773
City *State* *Zip*

E-mail

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida Families

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/22/2014
Meeting Date

Topic _____ Bill Number 1666 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1674
INTRODUCER:	Environmental Preservation and Conservation Committee
SUBJECT:	Ratification of Rules of the Department of Environmental Protection
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Gudeman	Uchino		**EP SPB 7084 as introduced**
1.	Howard	Kynoch	AP	**Favorable**

I. Summary:

SB 1674 ratifies Rules 62-772.300 and 62-772.400, Florida Administrative Code, relating to competitive bidding and contractor qualifications for the Petroleum Restoration Program. The new rules provide the procedures for the procurement of contractual services for cleanup of petroleum contaminated sites and amends the procedures for establishing the priority scoring system for petroleum contaminated sites. The rules were adopted on December 27, 2013, as required by the 2013 Legislature.

The bill becomes effective upon becoming law and the rule ratification has no fiscal impact to the Department of Environmental Protection (DEP).

II. Present Situation:

Petroleum Restoration Program

The Department of Environmental Protection (DEP) Division of Waste Management regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.[1] Leaking storage tanks pose a significant threat to groundwater quality. Florida relies on groundwater for about 92 percent of its drinking water needs.[2]

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for cleanup of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund (IPTF), which is funded by a tax on petroleum products imported or produced in Florida. The SUPER Act established the Early Detection Incentive

[1] *See* ch. 83-310, Laws of Fla.
[2] DEP, *Storage Tank Compliance*, http://www.dep.state.fl.us/waste/categories/tanks/ (last visited Mar. 6, 2014).

Program (EDI), which provided site owners with the option of conducting the cleanup themselves, and then receive reimbursement from the IPTF, or have the state conduct the cleanup in priority order.[3]

The Legislature created the Petroleum Liability and Insurance Restoration Program (PLIRP) in 1988 to allow eligible petroleum facilities to purchase $1 million in pollution liability protection from a state contracted insurer. The PLIRP also provided $1 million worth of site restoration coverage through reimbursement or state-funded cleanup.[4]

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline is now waived indefinitely for owners who are unable to pay for the closure of abandoned tanks.[5]

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup sites to the reimbursement program,[6] which was funded by increasing the excise tax on petroleum and petroleum products.[7] The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the IPTF. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated $551.5 million in outstanding reimbursement claims.[8]

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.[9]

The Petroleum Preapproval Program (program) was implemented by the Legislature in 1996. The program required state-funded cleanup of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense. The Preapproved Advanced Cleanup (PAC) program was created to allow sites to bypass the priority ranking list and receive funding in order to facilitate a public works project or property transaction. The PAC program requires applicants to cost share in the cleanup and to prepare limited scope assessments at their expense.[10]

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[3] Chapter 86-159, Laws of Fla.
[4] Chapter 88-331, Laws of Fla.
[5] Chapter 90-98, Laws of Fla.
[6] The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.
[7] Chapter 92-30, Laws of Fla.
[8] Comm. on Environmental Preservation and Conservation, the Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).
[9] Chapter 95-2, Laws of Fla.
[10] Chapter 96-277, ss. 18-19, Laws of Fla.

In 1999, the Legislature amended the Petroleum Preapproval Program to allow the DEP to fund certain source removal activities. The bill addressed new petroleum discharges that occurred at a site with existing contamination and were reported after December 31, 1998. The bill allowed a responsible party to enter into a Site Rehabilitation Agreement with the DEP and share in the cost and coordination of the cleanup, provided that the responsible party submit an application and a Limited Contamination Assessment Report to the DEP.[11]

The Legislature substantially amended the Petroleum Preapproval Program in 2005 to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- The DEP to establish a process to uniformly encumber funds appropriated for the underground storage tank program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Department of Transportation projects;
- Funding for limited interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to ten sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding per facility and for activities that may be funded;
- Limited funding of $1 million per fiscal year for Department of Transportation projects, and $10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions as of June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extension of the Inland Protection Financing Corporation from 2011 to 2025, requiring the corporation to issue notes and bonds and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.[12]

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S.[13] Pursuant to s. 376.30711, F.S., the DEP is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects, but has not done so on a permanent basis.

The Legislature also required the DEP to adopt rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S., by December 31, 2013, otherwise funding for the program would be terminated.

[11] Chapter 99-376, Laws of Fla.
[12] Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.
[13] Chapter 2013-41, s. 29, Laws of Fla.

On May 30, 2013, the DEP published a Notice of Rule Development in the Florida Administrative Register to create Rule 62-772, F.A.C., and amend Rule 62-771, F.A.C. The new rules provide the procedures for the procurement of contractual services for cleanup of petroleum contaminated sites and amend the procedures for establishing the priority scoring system for petroleum contaminated sites. The rules were adopted on December 27, 2013.

Legislative Ratification of Agency Rules

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature to become effective. The thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within five years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within five years after implementation of the rule.[14]

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rules 62-772.300 and 62-772.400, F.A.C., and determined the rules triggered a statutory threshold requiring ratification. The SERC for Rule 62-772.300, F.A.C., estimates the cost for contractors to maintain business licensure, safety compliance, workers compensation insurance, comprehensive automobile insurance, and general and professional liability insurance is approximately $15.4 million per year. The cost estimate provided in the SERC is based on 225 contractors. As of March 2014, the number of agency term contractors is 70, decreasing the cost associated with Rule 62-772.300, F.A.C., to approximately $4.8 million per year.[15]

The SERC for Rule 62-772.400, F.A.C., estimates the cost incurred by contractors to assemble and submit bids, responses, replies, and quotes to the DEP as part of the competitive procurement procedures and a one percent transaction fee for MyFloridaMarketPlace, to be approximately $41 million per year.[16] The cost requirements outlined by the DEP are already incurred by contractors in order to conduct business according to ss. 376.3071, 376.30711, and 376.30713, F.S.; however, the existing requirements are being restated in rule, requiring ratification by the Legislature.

III. Effect of Proposed Changes:

Section 1 ratifies Rules 62-772.300 and 62-772.400, F.A.C., pursuant to s. 120.541(3), F.S. The bill specifies that upon becoming law, the enactment and the effective dates of the bill are to be

[14] Section 120.541(2)(a)1.-3., F.S.
[15] DEP, Statement of Estimated Regulatory Cost, Rule 62-772.300, F.A.C. (on file with the Senate Environmental Preservation and Conservation Committee).
[16] DEP, Statement of Estimated Regulatory Cost, Rule 62-772.400, F.A.C. (on file with the Senate Environmental Preservation and Conservation Committee).

noted in the Florida Administrative Code or the Florida Administrative Register, as appropriate. The bill specifies that it serves no other purpose other than to ratify Rules 62-772.300 and 62-772.400, F.A.C.

Section 2 provides the act takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DEP Statement of Estimated Regulatory (SERC), SB 1674 will cost an estimated $46 million per year. However, the only new cost associated with the ratification of the rules is the one percent MyFloridaMarketPlace transaction fee not currently paid by contractors to participate in the petroleum preapproval program. The remaining costs (approximately $45 million) are already incurred by contractors in order to conduct business and are not considered new costs.

C. Government Sector Impact:

The bill has no fiscal impact to the DEP related to the rule ratification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Environmental Preservation and Conservation

592-02546-14 20141674__

A bill to be entitled

An act relating to ratification of rules of the Department of Environmental Protection; ratifying specified rules relating to qualifications and performance reviews of contractors performing certain site rehabilitation activities for petroleum contaminated sites and procedures for procurement of such contractors for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes:

(a) Rule 62-772.300, Florida Administrative Code, entitled "Contractor Qualifications and Performance Reviews," as filed for adoption with the Department of State pursuant to the certification package dated December 27, 2013.

(b) Rule 62-772.400, Florida Administrative Code, entitled "Procedures for the Competitive Procurement of Contractors and Assignment of Work," as filed for adoption with the Department of State pursuant to the certification package dated December 27, 2013.

(2) This act serves no other purpose and may not be

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02546-14 20141674__

codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Section 2. This act shall take effect on becoming law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

April 8, 2014

The Honorable Joe Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron,

I respectfully request you place Senate Bill 1674, relating to Ratification of Rules of the Department of Environmental Protection, on your Appropriations Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Cindy Kynoch, Staff Director

SENATE APPROPRIATIONS
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STAFF DIR.
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☐ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic _____ Bill Number 1674 *(if applicable)*

Name Pierce Schuessler Amendment Barcode _____ *(if applicable)*

Job Title Legislative Affairs Director - DEP

Address 3900 Commonwealth Dr Phone 245-2140
Street

Tallahassee FL 32399 E-mail _____
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information
Waive In Support

Representing _____

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-22-14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Ratification of Rules for DEP Bill Number SB 1679 *(if applicable)*

Name Amy Datz Amendment Barcode *(if applicable)*

Job Title Retired State environmental Scientist

Address 1130 Crestview Ave Phone (850) 322-7599

Street

Tallahassee FL 32303 E-mail amalvedatz@mac.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing Environmental Caucus of FL.

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1702
INTRODUCER:	Appropriations Committee and Education Committee
SUBJECT:	Education
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Letarte	Klebacha		**ED SPB 7114 as Introduced**
2.	Elwell	Kynoch	AP	**Fav/CS**

I. Summary:

CS/SB 1702 increases the health and safety standards and personnel requirements for Voluntary Prekindergarten Programs Education (VPK) program providers and School Readiness program providers.

Specifically, the bill:

- Requires licensure or, if the provider is a licensed-exempt faith-based provider or nonpublic school, substantial compliance with specified child care licensing standards and submission to inspections by the Department of Children and Families (DCF);
- Requires DCF to adopt rules to define and enforce substantial compliance with minimum standards;
- Requires providers of child care and VPK instructional services to conspicuously post on the premises and on a provider's website, if one exists, Class I violation citations that result in disciplinary action;
- Denies initial eligibility for programs to certain providers that had a Class I violation 12 months before seeking eligibility;
- Requires the Office of Early Learning (OEL) to develop a review process before denying initial eligibility of a provider to deliver a program;
- Requires certain personnel to be at least 18 years of age and hold a high school diploma by January 1, 2016;
- Provides requirements for certain employees to be trained in first aid and cardiopulmonary resuscitation;
- Requires personnel to be trained in developmentally appropriate practices aligned to the age and needs of children served by the personnel;
- Requires the OEL to develop online training regarding School Readiness performance standards and provider personnel to complete the training;
- Provides failure to report child abuse as a disqualifying offense for child care employment;

- Prohibits an operator of a program, who has been disciplined for serious licensing violations, from transferring ownership of a program to relatives;
- Authorizes Early Learning Coalitions (ELCs) to allow private providers to accept applications and determine child eligibility for the VPK program; and
- Expands the DCF's authority to conduct abbreviated inspections to include family day care homes and large family child care homes.

The bill requires the Division of Law Revision and Information to change the term "family day care home" to "family child care home," and the term "family day care" to "family child care."

The bill includes an appropriation of $1.2 million in recurring funds and $11,319 in nonrecurring funds form the Federal Grants Trust Fund, as well as $70,800 in recurring funds from the Operations and Maintenance Trust Fund for the DCF to implement the regulatory provisions of this act.

The bill takes effect on July 1, 2014.

II. Present Situation:

The Office of Early Learning

The Office of Early Learning (OEL), which is within the Office of Independent Education and Parental Choice and accountable to the Commissioner of Education, administers the Voluntary Prekindergarten Education Program (VPK) and the School Readiness program at the state level.[1] The Florida Department of Children and Families (DCF) Office of Child Care Regulation regulates child care providers who have early learning programs because the DCF is the agency responsible for the state's child care provider licensing program.[2]

Voluntary Prekindergarten Education Program

The VPK program is available to each child residing in the state who is four years old on or before September 1 of the school year, and the program remains available to the child until the child is eligible for admission to public school kindergarten or is admitted to kindergarten, whichever occurs sooner.[3] Parents may choose either a school-year or summer program offered by a public school or private prekindergarten provider, or a specialized instructional services program for a child with disabilities who is eligible for such a program.[4] A parent enrolling a

[1] Section 1001.213, F.S.
[2] *See* ss. 402.301-402.319, F.S.; Parts V and VI, ch. 1002, F.S.
[3] Section 1002.53, F.S.
[4] Section 1002.53(3), F.S. To be eligible for a specialized instructional services program, a child must be evaluated and determined to be eligible, have a current individual educational plan developed by the local school board, and be eligible under s. 1002.66, F.S., for the program. Section 1002.53(3)(d), F.S.

child in the VPK program must complete and submit an application to the early learning coalition (ELC),[5] not the individual program provider, which oversees the program.[6] The VPK program may be offered by either a private prekindergarten provider or a public school. Local oversight of individual VPK program providers is split with ELCs providing administration over programs delivered by private prekindergarten providers and school districts administering public school VPK programs.[7] Each district school board determines which district schools will offer the school-year and summer VPK programs and such schools must register with the ELC.[8]

A private prekindergarten VPK provider must register with the ELC and be a:

- Licensed child care facility;
- Licensed family day care home (FDCH);
- Licensed large family child care home (LFCCH);
- Nonpublic school; or
- License-exempt faith-based child care provider.[9]

In addition, a private prekindergarten provider must:

- Be accredited by an accrediting association that is a member of either the National Council for Private School Accreditation, or the Florida Association of Academic Nonpublic Schools, or be accredited by the Southern Association of Colleges and Schools, the Western Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Middle States Association of Colleges and Schools, or the New England Association of Colleges and Schools; and have written accreditation standards that meet the state's licensing requirements and require at least one onsite visit before accreditation is granted;[10]
- Hold a current Gold Seal Quality Care designation;[11] or
- Be licensed and demonstrate that the ELC has verified that the provider meets the VPK program's statutory requirements.[12]

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[5] An "early learning coalition" or "coalition" is described in s. 1002.83, F.S. and s. 1002.51(4), F.S. Throughout the 67 counties, there are to be 31 or fewer early learning coalitions to provide access to enhancement services at the local level. Each coalition must consist of 15-30 members and have members who meet specific requirements described in statute. *See* 1002.83, F.S.

[6] Section 1002.53(4), F.S.

[7] *See* ss. 1002.53(6), 1002.55(1), 1002.61(1), and 1002.63(1), F.S.

[8] Sections 1002.61(3)(a) and (8); 1002.63(3) and (8), F.S. Each school district is able to limit the number of students enrolled in the school-year program at a public school, however, the school district must admit every eligible child, enrolled by a parent, within the district for the summer prekindergarten program. Section 1002.53(6)(b).

[9] Section 1002.55(3)(a) and (h), F.S.; *see also* s. 402.305, F.S. (regarding licensing standards for child care facilities); s. 402.3025, F.S. (regarding public and nonpublic schools); s. 402.313, F.S. (providing for family day care home licensing and requirements); s. 402.3131, F.S. (regarding licensure of large family child care homes); s. 402.316, F.S. (providing a licensure exemption for faith-based providers).

[10] Section 1002.55(3)(b)1., F.S.

[11] Section 1005(3)(b)2., F.S.; *see* 402.281, F.S.; rule 65C-22.009, F.A.C.; *see also* Florida Department of Children and Family Services, *Gold Seal Quality Care*, http://www.dcf.state.fl.us/childcare/goldseal.shtml (last visited Mar. 23, 2014). DCF issues the Gold Seal Quality Care designation to child care facilities, LFCCHs, and FDCHs that are accredited by a nationally recognized accrediting association with standards that meet or exceed DCF-adopted standards. DCF's standards are based upon those of the National Association for the Education of Young Children, National Association of Family Child Care, and National Early Childhood Program Accreditation Commission. Section 402.281(1)-(3), F.S.

[12] Section 1002.55(3)(b)3., F.S.

School Readiness Program

The School Readiness program provides subsidized child care services and early childhood education for children of low-income families, children in protective services who are at risk of abuse, neglect, or abandonment, and children with disabilities.[13] The School Readiness program is a state-federal partnership between the OEL and the Office of Child Care of the United States Department of Health and Human Services.[14] The School Readiness program receives funding from a mixture of state and federal sources, including the federal Child Care and Development Fund (CCDF) block grant, the federal Temporary Assistance for Needy Families (TANF) block grant, and general revenue and other state funds.[15] The program is administered by ELCs.[16]

To deliver the School Readiness program, a provider must be:
- A licensed child care facility;
- A licensed or registered family day care home (FDCH);
- A licensed large family child care home (LFCCH);
- A public school or nonpublic school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or
- An informal child care provider authorized in the state's CCDF plan.[17]

The present situation for the relevant provisions of the bill is discussed in the Effect of Proposed Changes Section of this bill analysis.

III. Effect of Proposed Changes:

The bill increases the health and safety standards and personnel requirements for Voluntary Prekindergarten Education Program (VPK) and School Readiness programs.

Requirements of the Office of Early Learning

Powers and Duties of the Office of Early Learning

Present Situation: The Office of Early Learning (OEL) is required to: independently exercise powers, duties, and functions prescribed by law; adopt rules for the establishment and operation of VPK and School Readiness programs; administer the VPK and School Readiness programs,

[13] Section 1002.87, F.S.; *see* 1002.81(1), F.S. (defining what it means to be an "at-risk child").
[14] 42 U.S.C ss. 618, 9858-9858q; 45 C.F.R. ss. 98, 99; Part VI, ch. 1002, F.S.; U.S. Department of Health and Human Services, *Office of Child Care Fact Sheet*, *available at* http://www.acf.hhs.gov/sites/default/files/assets/FS_OCC_0.pdf.
[15] Specific Appropriations 78A and 79, s. 2, ch. 2013-40, L.O.F.; *see also* U.S. Department of Health and Human Services, *Office of Child Care Fact Sheet*, *available at* http://www.acf.hhs.gov/sites/default/files/assets/FS_OCC_0.pdf.
[16] Sections 1002.83-1002.85, F.S. There are currently 31 ELCs, which is the maximum permitted by law. Section 1002.83(1), F.S.; *see* Florida's Office of Early Learning, *Early Learning Coalition Directory* (Mar. 19, 2014), *available at* http://www.floridaearlylearning.com/sites/www/Uploads/files/Parents/CoalitionDirectory.pdf.
[17] Section 1002.88(1)(a), F.S. Generally speaking, informal child care is care provided by a relative. *See* Florida's Office of Early Learning, *Child Care and Development Fund (CCDF) Plan for Florida FFY 2014-15*, at 71 (Oct. 1, 2013), *available at* http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015_CCDF_Plan_%20Optimized.pdf.

and the operational requirements of the child care resource and referral network, at the state level; and minimize administrative staff to those needed to administer the duties of the office.[18]

Effect of the Bill: The bill adds additional requirements to the duties of the Office of Early Learning. The additional duties are to: hire a general counsel who reports directly to the executive director of the office; hire an inspector general who reports directly to the executive director of the office and to the Chief Inspector General; and by July 1, 2016, develop and implement best practices for providing parental notification in parent's native language to a parent whose native language is not English.

The Standardized Voluntary Prekindergarten Contract

Present Situation: Through adopted rules, the OEL is required to have a standard, statewide provider contract for VPK programs that includes provisions for provider probation, termination for cause, and emergency termination for actions that pose an immediate and serious danger to children. The contract must also include due process procedures and provide that during the pendency of an appeal, a provider may not continue to offer services.[19]

Effect of the Bill: The bill, in addition to the requirements that currently exist, requires the standard statewide contract to include provisions that:

- Mandate each private VPK provider and each school readiness provider to conspicuously post on the premises, and on the Internet website, if available, each citation for a Class I violation in an area visible to parents. The posting must use simple language to describe each violation with specificity and include a copy of the citation, as well as contact information for the DCF or the local licensing agency. Such posting must occur within 24 hours of receipt of the Class I violation citation. Additionally, the provider must post each inspection report on the premises until the next report is available; and
- Specify that child care personnel employed by the provider who are responsible for supervising children in care must be trained in appropriate practices, through DCF courses, aligned to the age and needs of children the employee oversees within 30 days of being assigned to children for which the personnel has not previously completed the training.

Additionally, the bill creates a new requirement for the OEL to develop and implement an online training course on the performance standards for School Readiness program provider personnel and the bill requires personnel to complete the online training course.

Provider, Instructor, and Child Care Personnel Qualifications

Background Screening

Present Situation: Personnel at child care facilities must meet a minimum standard of having good moral character as determined by the requirement of level 2 employment screening under chapter 435, Florida Statutes.[20]

[18] Section 1001.213, F.S.
[19] Section 1002.75, F.S. (regarding VPK programs); section 1002.82(2)(m), F.S. (regarding School Readiness programs).
[20] Section 402.305(2), F.S.

Effect of the Bill: The bill adds that in addition to list of offenses in s. 435.04, F.S. pertaining to level 2 screening, child care personnel undergoing background screening must not have an arrest awaiting final disposition for, may not have been found guilty of, or entered a plea of nolo contendre or guilty to, and may not have been adjudicated delinquent and have a record that has been sealed or expunged for an offense specified in s. 39.205, F.S., which relate to penalties associated with the absence of reporting of child abuse, abandonment, or neglect.

The bill applies the background screening requirement and language of s. 402.305(2)(a), F.S., as amended by the bill and described above, to apply to each VPK instructor employed by a private VPK provider delivering the summer VPK program. As noted above, the bill amends the statute to add more prohibited offenses that are not included in current law and current law does not address those offenses because the statute specifically refers to s. 435.04, F.S., without referencing s. 39.205, F.S.[21]

Instructor Credentials

Present Situation: A private VPK instructor must minimally hold a child development associate credential issued by the National Credentialing Program of the Council for Professional Recognition or a credential deemed equivalent by the DCF.[22]

Currently, s. 1002.55, F.S., does not explicitly state requirements for VPK instructors relating to first aid and infant and child cardiopulmonary resuscitation, nor does the statute address a minimum age or high school diploma requirement for employment.

Effect of the Bill: The bill retains the current options that satisfy the minimum credential requirement for school-year VPK instructors, requires each summer VPK class to have at least one instructor with a baccalaureate degree or higher, and provides new credentials, which would also satisfy the requirement. The additional credentials added to the list include, among other options, associate and baccalaureate degrees in child-oriented focus areas and associate and baccalaureate degrees in unrelated areas with additional hours of experience in teaching or child care services. This provision expands the type of credential that is acceptable.

The bill requires at least 50 percent of a private VPK provider's instructors at each location and at least 50 percent of child care personnel at each School Readiness program location to be trained in first aid and child cardiopulmonary resuscitation through documentation of course completion, unless the instructor or personnel is not responsible for supervising children in care, by January 1, 2015. Additionally, instructors and personnel hired on or after January 1, 2015 must complete the training within 60 days of employment.

The bill also adds that, as of January 1, 2016, private VPK providers must employ child care personnel who have a high school diploma, or its equivalent, and are at least 18 years old, unless the personnel are not responsible for supervising children in care or are under direct supervision and are not included in the personnel-to-child ratio.
Transfer of Ownership

[21] *See* section 1002.61(5), F.S.
[22] Section 1002.55(3)(c), F.S.

Present Situation: One week before the transfer of ownership of a child care facility, the transferor must notify the parent or caretaker of each child of the transfer and the DCF must establish rules relating to the methods by which such notice will occur and the minimum standards for implementing the notification and transfer.[23]

Effect of the Bill: The bill prohibits the transfer of child care facility or a large family child care home to a relative of the operator if the license of the operator has been suspended or revoked by the DCF, the operator received notice from the DCF that reasonable cause existed to suspend or revoke the operator's license, or the operator has been placed on the United States Department of Agriculture National Disqualified List. The new provision provides a definition of "relative," which includes immediate family members, grandparents, uncles, aunts, nephews, nieces, fathers-in-law, mothers-in-law, step-parents, step-siblings, and half-siblings.

Course Requirements for Operators and Substitute Operators of Family Day Care Homes and Large Family Child Care Homes

Present Situation: Operators of family day care homes must complete an approved 30-clock-hour introductory course in child care and demonstrate successful completion through passage of a competency examination before caring for children.[24]

Operators of large family child care homes must complete an approved 40-clock-hour introductory course in group child care and demonstrate successful completion through passage of a competency examination.[25]

Effect of the Bill: The bill adds that substitute operators who work 40 hours or more per month, on average, must also meet the 30-clock-hour requirement that is currently in law for operators. Additionally, the bill states specific topics that must be included in the course, which are:

- State and local rules and regulations governing child care;
- Health, safety, and nutrition;
- Identifying and reporting child abuse and neglect;
- Child development;
- Observation of developmental behaviors; and
- Specialized areas including numeracy, early literacy and language development of children from birth to five years of age.

The bill adds requirements to the 40-clock-hour introductory course that an operator of a large family child care home must complete. In addition to the existing requirement that the course be about group child care, the course must include numeracy, early literacy, and language development of children from birth to five years of age.

The bill requires that substitute operators who work fewer than 40 hours per month, on average, must complete DCF's 6-clock-hour Family Child Care Home Rules and Regulations training. The bill provides that a substitute who has completed the 3-clock-hour Fundamentals of Child

[23] Section 402.305(18), F.S.
[24] Section 402.313(4), F.S.
[25] Section 402.3131(3), F.S.

Care training established by DCF rules or the 30-clock-hour training is not required to complete the 6-clock-hour Family Child Care Home Rules and Regulations training.

The bill requires operators and substitute operators to complete training in first aid and infant and child cardiopulmonary resuscitation and for operators to annually complete 1 continuing education unit of approved training regarding child care and administrative skills or 10 clock hours of equivalent training.

Health and Safety

Substantial Compliance with Licensing Standards

Present Situation: Licensing requirements, except for the requirements regarding screening of child care personnel, do not currently apply to a faith-based facility or educational programs accredited by an organization which publishes and requires compliance with its standards for health, safety, and sanitation.[26]

Effect of the Bill: The bill requires child care facilities that are exempt from licensure requirements pursuant to s. 402.316, F.S., or are nonpublic school providers to substantially comply with the adopted minimum standards for child care facilities pursuant to s.402.305, F.S., and such facilities must allow the DCF or the local licensing agency access to monitor and enforce compliance.

The bill revises the definition of "substantial compliance" to refer to portions of existing licensing standards in s. 402.305, F.S., and states that standards must address, and are limited to, supervision, transportation, access, health-related requirements, food and nutrition, personnel screening, records, and enforcement of these standards. The DCF is required to adopt rules to define and enforce substantial compliance and the rules must be submitted to OEL for approval or disapproval.

The bill adds that the DCF must establish a fee for inspection and compliance activities and the amount may not exceed the fee established for child care licensure under s. 402.315, F.S. The bill also provides penalties for the misrepresentation and misuse of certain information. The effect of this provision and the bill is that all programs will either be licensed or must be substantially compliant with existing licensing standards.

Inspections

Present Situation: A licensed child care facility must allow the DCF to inspect facilities and personnel at reasonable times during regular business hours to ensure statutory compliance. An application for a license or the advertisement to the public for the provision of child care allows the DCF to enter or inspect a facility.[27]

[26] Section 402.316(1), F.S.
[27] Section 402.311, F.S.

The DCF and local governmental agencies that license child care facilities must develop a plan to eliminate duplicative and unnecessary inspections of child care facilities and conduct abbreviated inspections for child care facilities that have no Class I or Class II deficiencies.

Effect of the Bill: The bill extends the DCF's ability to inspect the facilities and personnel of licensed child care facilities to include programs regulated by the department. Additionally, the bill amends the law to add that an application for authorization to operate a child care program that must substantially comply with child care standards under chapter 402 of the Florida Statutes, or renewal of such a license or authorization, also constitutes permission for the DCF to enter and inspect the premises.

The bill adds licensed family day care homes and licensed large family child care homes without a Class I or Class II violation to the facilities eligible for abbreviated inspections by the DCF and the local licensing agency. The bill also requires the DCF to adopt rules establishing criteria and procedures for abbreviated inspections and inspection schedules for announced and unannounced inspections.

Eligibility of a Private Provider to Deliver the Voluntary Prekindergarten Program

Present Situation: A private provider delivering the VPK program must meet one of the following: be accredited by a particular accrediting body,[28] hold a Gold Seal Quality Care designation, or be licensed under particular statutes.[29] School Readiness facilities are also required to provide basic health and safety of its premises.[30]

Effect of the Bill: The bill adds an additional option for a private VPK provider's required status and states that the private VPK provider may be a child development center located on a military installation that is certified by the United States Department of Defense.

The bill also adds that each private VPK provider must provide basic health and safety on its premises and in its facilities. The bill provides standards that satisfy the requirement for specific VPK and School Readiness programs as follows:

- For a public school, compliance with ss.1003.22 (school-entry health examinations and immunizations) and 1013.12 (casualty, safety, sanitation, firesafety standards and inspection of property), F.S., is sufficient;
- For a nonpublic school, compliance with s.402.3025(2)(d), F.S., (requiring substantial compliance with statutory licensing standards);
- For a child care facility, a licensed family day care home, or a large family child care home, compliance with ss. 402.305 (licensing standards), 402.313 (licensing of family day care

[28] Section 1002.55(3)(b)1., F.S. A private VPK provider must be accredited by: "an accrediting association that is a member of the National Council for Private School Accreditation, or the Florida Association of Academic Nonpublic Schools, or be accredited by the Southern Association of Colleges and Schools, or Western Association of Colleges and Schools, or North Central Association of Colleges and Schools, or Middle States Association of Colleges and Schools, or New England Association of Colleges and Schools; and have written accreditation standards that meet or exceed the state's licensing requirements under s. 402.305, s. 402.313, or s. 402.3131 and require at least one onsite visit to the provider or school before accreditation is granted." *Id.*

[29] Section 1002.55, F.S.

[30] Section 1002.88(1)(c), F.S.

homes requirements), or 402.3131 (licensing of large family child care homes requirements), F.S., satisfy this requirement.
- For a facility exempt from licensure, compliance with s.402.316(4), F.S., (which is created by this bill) satisfies this requirement. The language creating 402.316(4), F.S., requires substantial compliance with statutory licensing standards and requirements of ss. 402.305-402.3057, F.S.

In effect, this provision ensures that all providers are licensed or substantially compliant with existing statutory licensing standards.

Display of License or Registration by Family Day Care Homes

Present Situation: Each licensed or registered family day care home is not required to display its license or registration.[31]

Effect of the Bill: The bill specifically requires each licensed or registered family day care home to conspicuously display its license or registration in an area viewable by all parents during hours of operation.

The bill also creates specific requirements for the DCF to verify certain information upon receipt of registration from a family day care home. The DCF must verify that the home is in compliance with the background screening requirements, and that the operator and the designated substitute have completed 30-clock-hour training courses (demonstrated through passage of a competency examination and required continuing education units or clock hours).

Rulemaking Authority

Present Situation: The DCF does not have rulemaking authority with regard to defining and enforcing substantial compliance with minimum standards for child care facilities for programs operating under s. 1002.55, F.S. (private school-year VPK programs), s. 1002.61, F.S. (public school and private VPK summer programs), and s. 1002.88, F.S. (School Readiness programs).[32]

Effect of the Bill: The bill requires the DCF to adopt rules to define and enforce the substantial compliance with minimum standards for child care facilities operating programs under the aforementioned statutes.

Eligibility to Deliver the Voluntary Prekindergarten Program or School Readiness Program

Present Situation: Denial of initial eligibility based upon a Class I violation within 12 months of seeking eligibility to deliver a VPK or School Readiness program is not currently in law.[33]

Effect of the Bill: The bill denies initial eligibility to a private VPK provider or a School Readiness provider seeking eligibility to deliver the VPK or School Readiness program if the provider has been cited for a Class I violation in the 12 months before seeking such eligibility and the OEL determines that denial of initial eligibility is appropriate after reviewing the

[31] *See* section 402.313, F.S.
[32] *See* section 402.305, F.S.
[33] *See* sections 1002.55, F.S, and 1002.88, F.S.

violation and the provider's licensure history. In effect, the provision inhibits the growth of a provider's program if the provider has received a citation for the most severe grouping of violations within the past year.

The bill requires the OEL to develop a procedure to allow a provider to appeal a denial of initial eligibility.

Participant-Related Provisions

Voluntary Prekindergarten Eligibility and Enrollment

Present Situation: Each parent enrolling a child in the VPK program must complete and submit an application to the ELC.[34]

Effect of the Bill: The bill adds language to allow application submission to a private VPK provider if the provider is authorized by the ELC to determine student eligibility for enrollment in the VPK program, which is a new authorization of authority to private VPK programs. The bill also specifies the actions a provider must take upon receipt of an application, requires retention of the original application and certified birth certificate of the child for five years, and provides that the ELC may audit applications in its service area to determine whether children enrolled and reported for funding by the provider met the eligibility criteria. This provision provides a check on the newly authorized ability of some private VPK providers to accept applications, and determine eligibility and enrollment directly.

School Readiness Eligibility

Present Situation: For the purposes of establishing eligibility for the School Readiness program, the terms "at-risk child," "family income," and "working family" are defined in statute.[35]

Effect of the Bill: The bill amends the definition of an "at-risk child" to provide that a designated lead agency on the homeless assistance continuum of care established under ss. 420.622-420.624, F.S., must determine whether a child is in the custody of a parent who is considered homeless – as opposed to current law which requires the DCF to make the determination.

The bill adds to the list of types of income that are not included in the definition of "family income." The new language provides that the following is not considered family income:

- Income earned by a teen parent residing in the same residence as a separate family unit; and
- Selected items from the state's Child Care and Development Fund Plan, including documented child support and alimony payments paid out of the home.

The bill expands the definition of a "working family" to include a single-parent family in which the parent with whom the child resides is exempt from work requirements due to age or disability.

[34] Section 1002.53(4)(a), F.S.
[35] Section 1002.81, F.S.

Provider-Related Provisions

Reviser's Bill for the 2015 Regular Session

Present Situation: The terms "family day care home" and "family day care" are currently used in statute.

Effect of the Bill: The bill directs the Division of Law Revision and Information to prepare a reviser's bill for the 2015 regular session that will change the term "family day care home" to "family child care home" and the term "family day care" to "family child care" throughout the Florida Statutes.

Zoning, Utility Rates, and Residential Property Insurance Coverage

Present Situation: Under current law, only the operation of a residence as a family day care home licensed by the DCF is a valid residential use for local zoning regulation purposes.[36]

Effect of the Bill: The bill adds large family child care homes to the existing law so that the operation of a residence as a family day care home or as a large family child care home is a valid residential use for local zoning regulation purposes.

Additionally, the bill provides that, despite any other state or local law or ordinance, any licensed large family child care home may not be charged commercial utility rates and must be charged the rates accorded to a residential home.

Present Situation: Insurers may not cancel, deny, or refuse to renew residential property insurance solely because child care services are provided on the premises.[37]

Effect of the Bill: The bill adds large family child care homes to this provision, which currently only includes family day care homes, and prevents residential property insurance from being canceled, denied, or nonrenewed solely because child care services are provided on the premises.

Applicability of Requirements to Nonpublic Schools

Present Situation: Requirements under s. 402.3025, F.S., apply to nonpublic programs for children at least three years of age, but under five years of age, that are not licensed under ss. 402.301-402.319, F.S.[38]

Effect of the Bill: The bill removes the specific age range in current law of three to five years of age and states that the provision is applicable to nonpublic schools delivering school-year and summer VPK programs, and school readiness programs.

[36] Sections 125.0109, 166.0445, F.S.
[37] Section 627.70161, F.S.
[38] Section 402.3025(2)(c), F.S.

Voluntary Prekindergarten and School Readiness Funding and Attendance Reporting

Present Situation: Each parent enrolling a child in the VPK program must comply with the attendance policy of the private VPK provider or public school board. Each provider must supply a child's parent with a copy of the attendance policy.[39]

For a School Readiness program, if a child is absent for five consecutive days without notification from the parent of such an absence, the provider is required to report the absence to the ELC.[40]

Effect of the Bill: The bill, in addition to the requirements that a parent comply with the VPK provider's attendance policy and that the provider give the policy to each child's parent, adds that each private VPK provider, public school, and School Readiness program provider must supply each child's parent with information regarding child development, parent engagement expectations, a daily schedule, and, procedures for contacting a parent if a child has been absent for two consecutive days without a known reason.

The bill amends the requirements of the attendance reporting requirement for School Readiness program to add an additional responsibility of the provider to contact the parent of a child who has been absent for two consecutive days to determine the reason for the absence. This requirement is in addition to the provider being required to contact the ELC if a child is absent for five consecutive days.

School Readiness Program Eligibility Requirements

Present Situation: The eligibility of each child for the School Readiness program must be determined annually, and a child who is no longer eligible may not continue to receive services.[41]

Effect of the Bill: The bill adds additional language stating that if a child is no longer eligible for the program, the ELC must immediately notify the child's parent and the provider that funding will end two weeks after the date on which the child's ineligibility was determined or when the current School Readiness authorization expires, whichever is sooner.

School Readiness Investigations of Fraud or Overpayment

Present Situation: The ELC may not contract with a School Readiness or VPK program provider who is on the United States Department of Agriculture National Disqualified List.[42]

Effect of the Bill: The bill adds that an ELC also may not contract with an individual on the United States Department of Agriculture National Disqualified List.

The bill takes effect on July 1, 2014.

[39] Section 1002.71(6)(a), F.S.
[40] Section 1002.87(8), F.S.
[41] Section 1002.87(6), F.S.
[42] Section 1002.91(7), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Children and Families (DCF), there are more than 800 provider settings that are currently not licensed by the DCF and would have to pay the inspection fee associated with becoming substantially compliant or licensed, depending on the program, in addition to any fines assessed.[43] The DCF indicates that the inspection fee for substantial compliance would be minimal because it cannot exceed the fee for licensure, which is a maximum of $100.[44]

C. Government Sector Impact:

The DCF states that the bill would require monitoring of more than 800 additional provider settings for substantial compliance with health and safety standards.[45] The DCF indicates that the collection of inspection fees would not be enough to cover the cost of the additional workload.[46] Revenue from the inspection fees is estimated to be $54,340.[47]

The total funds required for Fiscal Year 2014-2015 for the Office of Child Care Regulation and Background Screening and the Office of the General Counsel would be $1,301,694 for 18 additional full-time equivalent positions; the recurring cost is $1,233,780.[48]

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[43] *See* Florida Department of Children and Families, *Agency Legislative Bill Analysis for HB 7069* (2014), (on file with the Senate Committee on Education).
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*

CS/SB 1702 includes an appropriation of $1.2 million in recurring funds and $11,319 in nonrecurring funds form the Federal Grants Trust Fund, as well as $70,800 in recurring funds from the Operations and Maintenance Trust Fund for the DCF to implement the regulatory provisions of this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.604, 125.0109, 166.0445, 402.302, 402.3025, 402.305, 402.311, 402.3115, 402.313, 402.3131, 402.316, 627.70161, 1001.213, 1002.53, 1002.55, 1002.59, 1002.61, 1002.63, 1002.71, 1002.75, 1002.77, 1002.81, 1002.82, 1002.84, 1002.87, 1002.88, 1002.89, 1002.91, and 1002.94.

The bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 22, 2014:
The committee substitute:

- Retains the use of the terms "school readiness" and "school readiness program" as in current law.
- Changes the term "family day care" to "family child care" through a 2015 regular session reviser's bill.
- Removes changes made to the Rilya Wilson Act.
- Revises the definition of "substantial compliance" to refer to portions of the existing licensing standards statute.
- Requires the Department of Children and Families (DCF) to adopt rules to define and enforce substantial compliance with minimum standards and requires the rules to be submitted to the Office of Early Learning (OEL) for approval or disapproval.
- Increases training requirements for operators and substitute operators of family day care homes.
- Requires OEL to review a Class I violation and a provider's licensure history before denying initial eligibility to deliver a program based upon the provider having a Class I violation within 12 months before seeking eligibility. Requires OEL to establish a procedure to review a provider's appeal regarding denial of initial eligibility to deliver a program due to having a Class I violation in the 12 months before seeking initial eligibility.

- Requires voluntary prekindergarten (VPK) and School Readiness providers to post Class I violations on a provider's website, if the provider has a website.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. The Division of Law Revision and Information is directed to prepare a reviser's bill for the 2015 Regular Session of the Legislature to change the term "family day care home" to "family child care home" and the term "family day care" to "family child care" wherever they appear in the Florida Statutes.

Section 2. Section 125.0109, Florida Statutes, is amended to read:

125.0109 Family day care homes and large family child care homes; local zoning regulation.—The operation of a residence as a family day care home or large family child care home, as defined in s. 402.302, licensed or registered pursuant to s. 402.313 or s. 402.3131, as applicable, constitutes~~, as defined by law, registered or licensed with the Department of Children and Family Services shall constitute~~ a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such family day care home or large family child care home to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of $50, to operate in an area zoned for residential use.

Section 3. Section 166.0445, Florida Statutes, is amended to read:

166.0445 Family day care homes and large family child care homes; local zoning regulation.—The operation of a residence as a family day care home or large family child care home, as defined in s. 402.302, licensed or registered pursuant to s. 402.313 or s. 402.3131, as applicable, constitutes~~, as defined by law, registered or licensed with the Department of Children and Family Services shall constitute~~ a valid residential use for purposes of any local zoning regulations, and ~~no~~ such regulation may not ~~shall~~ require the owner or operator of such family day care home or large family child care home to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of $50, to operate in an area zoned for residential use.

Section 4. Subsection (17) of section 402.302, Florida

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Statutes, is amended to read:

402.302 Definitions.—As used in this chapter, the term:

(17) "Substantial compliance" means, for purposes of programs operating under s. 1002.55, s. 1002.61, or s. 1002.88, ~~that level of~~ adherence to adopted standards which is sufficient to safeguard the health, safety, and well-being of all children under care. The standards must address requirements found in s. 402.305 and are limited to supervision, transportation, access, health-related requirements, food and nutrition, personnel screening, records, and enforcement of these standards. The standards must not limit or exclude the curriculum provided by a faith-based provider or nonpublic school. The department must adopt rules to define and enforce substantial compliance with minimum standards for child care facilities for programs operating under s. 1002.55, s. 1002.61, or s. 1002.88 that are regulated, but not licensed, by the department. Such rules shall be submitted to the Office of Early Learning for approval or disapproval. ~~Substantial compliance is greater than minimal adherence but not to the level of absolute adherence. Where a violation or variation is identified as the type which impacts, or can be reasonably expected within 90 days to impact, the health, safety, or well-being of a child, there is no substantial compliance.~~

Section 5. Paragraphs (d) and (e) of subsection (2) of section 402.3025, Florida Statutes, are amended to read:

402.3025 Public and nonpublic schools.—For the purposes of ss. 402.301-402.319, the following shall apply:

(2) NONPUBLIC SCHOOLS.—

(d)1. Nonpublic schools delivering programs under s.

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1002.55, s. 1002.61, or s. 1002.88 ~~Programs for children who are at least 3 years of age, but under 5 years of age,~~ which are not licensed under ss. 402.301-402.319 shall substantially comply with the minimum child care standards adopted ~~promulgated~~ pursuant to ss. 402.305-402.3057.

2. The department or local licensing agency shall enforce compliance with such standards, where possible, to eliminate or minimize duplicative inspections or visits by staff enforcing the minimum child care standards and staff enforcing other standards under the jurisdiction of the department.

3. The department or local licensing agency may inspect programs operating under this paragraph and pursue administrative or judicial action under ss. 402.310-402.312 against nonpublic schools operating under this paragraph ~~commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:~~

~~a.~~ to protect the health, sanitation, safety, and well-being of all children under care.

~~b. To enforce its rules and regulations.~~

~~c. To use corrective action plans, whenever possible, to attain compliance prior to the use of more restrictive enforcement measures.~~

~~d. To make application for injunction to the proper circuit court, and the judge of that court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of ss. 402.301-402.319. Any violation of this section or of the standards applied under ss. 402.305-402.3057 which threatens harm to any~~

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~~child in the school's programs for children who are at least 3 years of age, but are under 5 years of age, or repeated violations of this section or the standards under ss. 402.305-402.3057, shall be grounds to seek an injunction to close a program in a school.~~

~~c. To impose an administrative fine, not to exceed $100, for each violation of the minimum child care standards promulgated pursuant to ss. 402.305-402.3057.~~

4. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

a. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any required written documentation for exclusion from licensure pursuant to this section a material fact used in making a determination as to such exclusion; or

b. Use information from the criminal records obtained under s. 402.305 or s. 402.3055 for any purpose other than screening that person for employment as specified in those sections or release such information to any other person for any purpose other than screening for employment as specified in those sections.

5. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of any person obtained under s. 402.305 or s. 402.3055 for any purpose other than screening for employment as specified in those sections or to release information from such records to any other person for any

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purpose other than screening for employment as specified in those sections.

6. The inclusion of nonpublic schools within options available under ss. 1002.55, 1002.61, and 1002.88 does not expand the regulatory authority of the state, its officers, any local licensing agency, or any early learning coalition to impose any additional regulation of nonpublic schools beyond those reasonably necessary to enforce requirements expressly set forth in this paragraph.

~~(c) The department and the nonpublic school accrediting agencies are encouraged to develop agreements to facilitate the enforcement of the minimum child care standards as they relate to the schools which the agencies accredit.~~

Section 6. Paragraphs (a) and (d) of subsection (2), paragraph (b) of subsection (9), and subsections (10) and (18) of section 402.305, Florida Statutes, are amended to read:

402.305 Licensing standards; child care facilities.—

(2) PERSONNEL.—Minimum standards for child care personnel shall include minimum requirements as to:

(a) Good moral character based upon screening, according to the level 2 screening requirements of~~. This screening shall be conducted as provided in~~ chapter 435~~, using the level 2 standards for screening set forth in that chapter~~. In addition to the offenses listed in s. 435.04, all child care personnel required to undergo background screening pursuant to this section may not have an arrest awaiting final disposition for, may not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and may not have been adjudicated delinquent and have a record that has been

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sealed or expunged for an offense specified in s. 39.205.

(d) Minimum training requirements for child care personnel.

1. Such minimum standards for training shall ensure that all child care personnel take an approved 40-clock-hour introductory course in child care, which course covers at least the following topic areas:

a. State and local rules and regulations which govern child care.

b. Health, safety, and nutrition.

c. Identifying and reporting child abuse and neglect.

d. Child development, including typical and atypical language, cognitive, motor, social, and self-help skills development.

e. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine the child's developmental age level.

f. Specialized areas, including computer technology for professional and classroom use and numeracy, early literacy, and language development of children from birth to 5 years of age, as determined by the department, for owner-operators and child care personnel of a child care facility.

g. Developmental disabilities, including autism spectrum disorder and Down syndrome, and early identification, use of available state and local resources, classroom integration, and positive behavioral supports for children with developmental disabilities.

Within 90 days after employment, child care personnel shall begin training to meet the training requirements pursuant to

this paragraph. Child care personnel shall successfully complete such training within 1 year after the date on which the training began, as evidenced by passage of a competency examination. Successful completion of the 40-clock-hour introductory course shall articulate into community college credit in early childhood education, pursuant to ss. 1007.24 and 1007.25. Exemption from all or a portion of the required training shall be granted to child care personnel based upon educational credentials or passage of competency examinations. Child care personnel possessing a 2-year degree or higher that includes 6 college credit hours in early childhood development or child growth and development, or a child development associate credential or an equivalent state-approved child development associate credential, or a child development associate waiver certificate shall be automatically exempted from the training requirements in sub-subparagraphs b., d., and e.

2. The introductory course in child care shall stress, to the extent possible, an interdisciplinary approach to the study of children.

3. The introductory course shall cover recognition and prevention of shaken baby syndrome; prevention of sudden infant death syndrome; recognition and care of infants and toddlers with developmental disabilities, including autism spectrum disorder and Down syndrome; and early childhood brain development within the topic areas identified in this paragraph.

4. On an annual basis in order to further their child care skills and, if appropriate, administrative skills, child care personnel who have fulfilled the requirements for the child care training shall be required to take an additional 1 continuing

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education unit of approved inservice training, or 10 clock hours of equivalent training, as determined by the department.

5. Child care personnel shall be required to complete 0.5 continuing education unit of approved training or 5 clock hours of equivalent training, as determined by the department, in numeracy, early literacy, and language development of children from birth to 5 years of age one time. The year that this training is completed, it shall fulfill the 0.5 continuing education unit or 5 clock hours of the annual training required in subparagraph 4.

6. Procedures for ensuring the training of qualified child care professionals to provide training of child care personnel, including onsite training, shall be included in the minimum standards. It is recommended that the state community child care coordination agencies (central agencies) be contracted by the department to coordinate such training when possible. Other district educational resources, such as community colleges and career programs, can be designated in such areas where central agencies may not exist or are determined not to have the capability to meet the coordination requirements set forth by the department.

7. Training requirements do ~~shall~~ not apply to certain occasional or part-time support staff, including, but not limited to, swimming instructors, piano teachers, dance instructors, and gymnastics instructors.

8. The department shall evaluate or contract for an evaluation for the general purpose of determining the status of and means to improve staff training requirements and testing procedures. The evaluation shall be conducted every 2 years. The

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evaluation must ~~shall~~ include, but not be limited to, determining the availability, quality, scope, and sources of current staff training; determining the need for specialty training; and determining ways to increase inservice training and ways to increase the accessibility, quality, and cost-effectiveness of current and proposed staff training. The evaluation methodology must ~~shall~~ include a reliable and valid survey of child care personnel.

9. The child care operator shall be required to take basic training in serving children with disabilities within 5 years after employment, either as a part of the introductory training or the annual 8 hours of inservice training.

(9) ADMISSIONS AND RECORDKEEPING.—

(b) ~~During the months of August and September of each year,~~ Each child care facility shall provide parents of children enrolling ~~enrolled~~ in the facility detailed information regarding the causes, symptoms, and transmission of the influenza virus in an effort to educate those parents regarding the importance of immunizing their children against influenza as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(10) TRANSPORTATION SAFETY.—Minimum standards must ~~shall~~ include requirements for child restraints or seat belts in vehicles used by child care facilities, ~~and~~ large family child care homes, and family day care homes to transport children, requirements for annual inspections of the vehicles, limitations on the number of children in the vehicles, and accountability for children being transported.

(18) TRANSFER OF OWNERSHIP.—

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(a) One week before ~~prior to~~ the transfer of ownership of a child care facility, ~~or~~ family day care home, or large family child care home, the transferor shall notify the parent or caretaker of each child of the impending transfer.

(b) The owner of a child care facility, family day care home, or large family child care home may not transfer ownership to a relative of the operator if the operator has had his or her license suspended or revoked by the department pursuant to s. 402.310, has received notice from the department that reasonable cause exists to suspend or revoke the license, or has been placed on the United States Department of Agriculture National Disqualified List. For purposes of this paragraph, "relative" means father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

(c) ~~(b)~~ The department shall, by rule, establish methods by which notice will be achieved and minimum standards by which to implement this subsection.

Section 7. Section 402.311, Florida Statutes, is amended to read:

402.311 Inspection.—A licensed child care facility or program regulated by the department shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities and personnel and to those records required in s. 402.305, at reasonable times during regular business hours, to

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ensure compliance with ~~the provisions of~~ ss. 402.301-402.319. The right of entry and inspection shall also extend to any premises which the department or local licensing agency has reason to believe are being operated or maintained as a child care facility or program ~~without a license~~, but no such entry or inspection of any premises shall be made without the permission of the person in charge thereof unless a warrant is first obtained from the circuit court authorizing same. Any application for a license, application for authorization to operate a child care program which must maintain substantial compliance with child care standards adopted under this chapter, or renewal of such license or authorization ~~made pursuant to this act~~ or the advertisement to the public for the provision of child care as defined in s. 402.302 constitutes ~~shall constitute~~ permission for any entry to or inspection of the subject premises ~~for which the license is sought in order~~ to facilitate verification of the information submitted on or in connection with the application. In the event a ~~licensed~~ facility or program refuses permission for entry or inspection to the department or local licensing agency, a warrant shall be obtained from the circuit court authorizing same before ~~prior to~~ such entry or inspection. The department or local licensing agency may institute disciplinary proceedings pursuant to s. 402.310~~,~~ for such refusal.

Section 8. Section 402.3115, Florida Statutes, is amended to read:

402.3115 ~~Elimination of duplicative and unnecessary inspections;~~ Abbreviated inspections. ~~The Department of Children and Family Services and local governmental agencies that license~~

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~~child care facilities shall develop and implement a plan to eliminate duplicative and unnecessary inspections of child care facilities. In addition,~~ The department and the local licensing ~~governmental~~ agencies shall conduct ~~develop and implement an~~ abbreviated inspections of ~~inspection plan for~~ child care facilities licensed under s. 402.305, family day care homes licensed under s. 402.313, and large family child care homes licensed under s. 402.3131 that have had no Class I ~~1~~ or Class II violations ~~2 deficiencies~~, as defined by rule, for at least 2 consecutive years. The abbreviated inspection must include those elements identified by the department and the local licensing ~~governmental~~ agencies as being key indicators of whether the child care facility continues to provide quality care and programming. The department shall adopt rules establishing criteria and procedures for abbreviated inspections and inspection schedules that provide for both announced and unannounced inspections.

Section 9. Section 402.313, Florida Statutes, is amended to read:

402.313 Family day care homes.—

(1) A family day care home must ~~homes shall~~ be licensed under this section ~~act~~ if it is ~~they are~~ presently being licensed under an existing county licensing ordinance, ~~or if~~ the board of county commissioners passes a resolution that requires licensure of family day care homes, or the family day care home is operating a program under s. 1002.55, s. 1002.61, or s. 1002.88 ~~be licensed~~. Each licensed or registered family day care home must conspicuously display its license or registration in an area viewable by all parents during hours of operation.

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(a) If not subject to license, a family day care home must comply with this section and ~~homes shall~~ register annually with the department, providing the following information:

1. The name and address of the home.

2. The name of the operator.

3. The number of children served.

4. Proof of a written plan to identify a ~~provide at least one other~~ competent adult who has met the screening and training requirements of the department to serve as a designated ~~to be available to~~ substitute for the operator ~~in an emergency~~. This plan must ~~shall~~ include the name, address, and telephone number of the designated substitute who will serve in the absence of the operator.

~~5. Proof of screening and background checks.~~

~~6. Proof of successful completion of the 30-hour training course, as evidenced by passage of a competency examination, which shall include:~~

~~a. State and local rules and regulations that govern child care.~~

~~b. Health, safety, and nutrition.~~

~~c. Identifying and reporting child abuse and neglect.~~

~~d. Child development, including typical and atypical language development; and cognitive, motor, social, and self-help skills development.~~

~~e. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine a child's developmental level.~~

~~f. Specialized areas, including early literacy and language development of children from birth to 5 years of age, as~~

~~determined by the department, for owner-operators of family day care homes.~~

5.~~7.~~ Proof that immunization records are kept current.

~~8. Proof of completion of the required continuing education units or clock hours.~~

Upon receipt of registration information submitted by a family day care home pursuant to this paragraph, the department shall verify that the home is in compliance with the background screening requirements in subsection (3) and that the operator and the designated substitute are in compliance with applicable training requirements of subsection (4).

(b) A family day care home may volunteer to be licensed ~~under this act~~.

(c) The department may provide technical assistance to counties and operators of family day care homes ~~home providers~~ to enable counties and operators ~~family day care providers~~ to achieve compliance with family day care home ~~homes~~ standards.

(2) This information shall be included in a directory to be published annually by the department to inform the public of available child care facilities.

(3) Child care personnel in family day care homes are ~~shall be~~ subject to the applicable screening provisions contained in ss. 402.305(2) and 402.3055. For purposes of screening in family day care homes, the term "child care personnel" includes the operator, the designated substitute, any member over the age of 12 years of a family day care home operator's family, or persons over the age of 12 years residing with the operator in the family day care home. Members of the operator's family, or

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persons residing with the operator, who are between the ages of 12 years and 18 years may ~~shall~~ not be required to be fingerprinted~~,~~ but shall be screened for delinquency records.

(4)(a) Before licensure and before caring for children, operators of family day care homes and an individual serving as a substitute for the operator who works 40 hours or more per month on average must:

1. Successfully complete an approved 30-clock-hour introductory course in child care, as evidenced by passage of a competency examination~~, before caring for children~~. The course must include:

a. State and local rules and regulations that govern child care.

b. Health, safety, and nutrition.

c. Identifying and reporting child abuse and neglect.

d. Child development, including typical and atypical language development, and cognitive, motor, social, and executive functioning skills development.

e. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine a child's developmental level.

f. Specialized areas, including numeracy, early literacy, and language development of children from birth to 5 years of age, as determined by the department, for operators of family child care homes.

~~(5) In order to further develop their child care skills and, if appropriate, their administrative skills, operators of family day care homes shall be required to complete an additional 1 continuing education unit of approved training or~~

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~~10 clock hours of equivalent training, as determined by the department, annually.~~

2.~~(6) Operators of family day care homes shall be required to~~ Complete a 0.5 continuing education unit of approved training in numeracy, early literacy, and language development of children from birth to 5 years of age one time. For an operator, the year that this training is completed, it shall fulfill the 0.5 continuing education unit or 5 clock hours of the annual training required in paragraph (c) ~~subsection (5)~~.

3. Complete training in first aid and infant and child cardiopulmonary resuscitation as evidenced by current documentation of course completion.

(b) Before licensure and before caring for children, family day care home substitutes who work fewer than 40 hours per month on average must complete the department's 6-clock-hour Family Child Care Home Rules and Regulations training, as evidenced by successful completion of a competency examination and first aid and infant and child cardiopulmonary resuscitation training under subparagraph (a)3. A substitute who has successfully completed the 3-clock-hour Fundamentals of Child Care training established by rules of the department or the 30-clock-hour training under subparagraph (a)1. is not required to complete the 6-clock-hour Family Child Care Home Rules and Regulations training.

(c) Operators of family day care homes must annually complete an additional 1 continuing education unit of approved training regarding child care and administrative skills or 10 clock hours of equivalent training, as determined by the department.

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(5)~~(7)~~ Operators of family day care homes must ~~shall be required~~ annually ~~to~~ complete a health and safety home inspection self-evaluation checklist developed by the department in conjunction with the statewide resource and referral program. The completed checklist shall be signed by the operator of the family day care home and provided to parents as certification that basic health and safety standards are being met.

(6)~~(8)~~ Operators of family day care homes ~~home operators~~ may avail themselves of supportive services offered by the department.

(7)~~(9)~~ The department shall prepare a brochure on family day care for distribution by the department and by local licensing agencies, if appropriate, to family day care homes for distribution to parents using ~~utilizing~~ such child care, and to all interested persons, including physicians and other health professionals; mental health professionals; school teachers or other school personnel; social workers or other professional child care, foster care, residential, or institutional workers; and law enforcement officers. The brochure shall, at a minimum, contain the following information:

(a) A brief description of the requirements for family day care registration, training, and background ~~fingerprinting and~~ screening.

(b) A listing of those counties that require licensure of family day care homes. Such counties shall provide an addendum to the brochure that provides a brief description of the licensure requirements or may provide a brochure in lieu of the one described in this subsection, provided it contains all the required information on licensure and the required information

in the subsequent paragraphs.

(c) A statement indicating that information about the family day care home's compliance with applicable state or local requirements can be obtained from ~~by telephoning~~ the department ~~office~~ or ~~the office of~~ the local licensing agency, including the~~, if appropriate, at a~~ telephone number or numbers and website address for the department or local licensing agency, as applicable ~~which shall be affixed to the brochure~~.

(d) The statewide toll-free telephone number of the central abuse hotline, together with a notice that reports of suspected and actual child physical abuse, sexual abuse, and neglect are received and referred for investigation by the hotline.

(e) Any other information relating to competent child care that the department or local licensing agency, if preparing a separate brochure, considers ~~deems would be~~ helpful to parents and other caretakers in their selection of a family day care home.

(8)~~(10)~~ On an annual basis, the department shall evaluate the registration and licensure system for family day care homes. Such evaluation shall, at a minimum, address the following:

(a) The number of family day care homes registered and licensed and the dates of such registration and licensure.

(b) The number of children being served in both registered and licensed family day care homes and any available slots in such homes.

(c) The number of complaints received concerning family day care, the nature of the complaints, and the resolution of such complaints.

(d) The training activities used ~~utilized~~ by child care

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personnel in family day care homes for meeting the state or local training requirements.

The evaluation, pursuant to this paragraph, shall be used ~~utilized~~ by the department in any administrative modifications or adjustments to be made in the registration of family day care homes or in any legislative requests for modifications to the system of registration or to other requirements for family day care homes.

~~(11) In order to inform the public of the state requirement for registration of family day care homes as well as the other requirements for such homes to legally operate in the state, the department shall institute a media campaign to accomplish this end. Such a campaign shall include, at a minimum, flyers, newspaper advertisements, radio advertisements, and television advertisements.~~

(9) ~~(12)~~ Notwithstanding any other state or local law or ordinance, any family day care home licensed pursuant to this chapter or pursuant to a county ordinance shall be charged the utility rates accorded to a residential home. A licensed family day care home may not be charged commercial utility rates.

(10) ~~(13)~~ The department shall, by rule, establish minimum standards for family day care homes that are required to be licensed by county licensing ordinance or county licensing resolution or that voluntarily choose to be licensed. The standards should include requirements for staffing, training, maintenance of immunization records, minimum health and safety standards, reduced standards for the regulation of child care during evening hours by municipalities and counties, and

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enforcement of standards. Additionally, the department shall, by rule, adopt procedures for verifying a registered family day care home's compliance with background screening and training requirements.

(11) ~~(14) During the months of August and September of each year,~~ Each family day care home shall provide parents of children enrolling ~~enrolled~~ in the home detailed information regarding the causes, symptoms, and transmission of the influenza virus in an effort to educate those parents regarding the importance of immunizing their children against influenza as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Section 10. Subsections (3), (5), and (9) of section 402.3131, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

402.3131 Large family child care homes.—

(3) Operators of large family child care homes must successfully complete an approved 40-clock-hour introductory course in group child care, including numeracy, early literacy, and language development of children from birth to 5 years of age, as evidenced by passage of a competency examination. Successful completion of the 40-clock-hour introductory course shall articulate into community college credit in early childhood education, pursuant to ss. 1007.24 and 1007.25.

(5) Operators of large family child care homes shall be required to complete 0.5 continuing education unit of approved training or 5 clock hours of equivalent training, as determined by the department, in numeracy, early literacy, and language development of children from birth to 5 years of age one time.

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The year that this training is completed, it shall fulfill the 0.5 continuing education unit or 5 clock hours of the annual training required in subsection (4).

(9) ~~During the months of August and September of each year,~~ Each large family child care home shall provide parents of children enrolling ~~enrolled~~ in the home detailed information regarding the causes, symptoms, and transmission of the influenza virus in an effort to educate those parents regarding the importance of immunizing their children against influenza as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(10) Notwithstanding any other state or local law or ordinance, any large family child care home licensed pursuant to this chapter or pursuant to a county ordinance shall be charged the utility rates accorded to a residential home. Such a home may not be charged commercial utility rates.

Section 11. Subsections (4), (5), and (6) are added to section 402.316, Florida Statutes, to read:

402.316 Exemptions.—

(4) A child care facility operating under subsection (1) which is applying to operate or is operating as a provider of a program described in s. 1002.55, s. 1002.61, or s. 1002.88 must substantially comply with the minimum standards for child care facilities adopted pursuant to ss. 402.305-402.3057 and must allow the department or local licensing agency access to monitor and enforce compliance with such standards.

(a) The department or local licensing agency may pursue administrative or judicial action under ss. 402.310-402.312 and the rules adopted under those sections against any child care

facility operating under this subsection to enforce substantial compliance with child care facility minimum standards or to protect the health, safety, and well-being of any children in the facility's care. A child care facility operating under this subsection is subject to ss. 402.310-402.312 and the rules adopted under those sections to the same extent as a child care facility licensed under ss. 402.301-402.319.

(b) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for a person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any required written documentation for exclusion from licensure pursuant to this section a material fact used in making a determination as to such exclusion; or

2. Use information from the criminal records obtained under s. 402.305 or s. 402.3055 for a purpose other than screening that person for employment as specified in those sections or to release such information to any other person for a purpose other than screening for employment as specified in those sections.

(c) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for a person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under s. 402.305 or s. 402.3055 for a purpose other than screening for employment as specified in those sections or to release information from such records to any other person for a purpose other than screening for employment as specified in those sections.

(5) The department shall establish a fee for inspection and

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compliance activities performed pursuant to this section in an amount sufficient to cover costs. However, the amount of such fee for the inspection of a program may not exceed the fee imposed for child care licensure pursuant to s. 402.315.

(6) The inclusion of a child care facility operating under subsection (1) as a provider of a program described in s. 1002.55, s. 1002.61, or s. 1002.88 does not expand the regulatory authority of the state, its officers, any local licensing agency, or any early learning coalition to impose any additional regulation of child care facilities beyond those reasonably necessary to enforce requirements expressly set forth in this section.

Section 12. Section 627.70161, Florida Statutes, is amended to read:

627.70161 Residential property insurance coverage; family day care homes and large family child care homes ~~insurance~~.—

(1) PURPOSE AND INTENT.—The Legislature recognizes that family day care homes and large family child care homes fulfill a vital role in providing child care in Florida. It is the intent of the Legislature that residential property insurance coverage should not be canceled, denied, or nonrenewed solely because child ~~on the basis of the family day~~ care services are provided at the residence. The Legislature also recognizes that the potential liability of residential property insurers is substantially increased by the rendition of child care services on the premises. The Legislature therefore finds that there is a public need to specify that contractual liabilities associated ~~that arise in connection~~ with the operation of a ~~the~~ family day care home or large family child care home are excluded from

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residential property insurance policies unless they are specifically included in such coverage.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Child care" means the care, protection, and supervision of a child, for a period up to ~~of less than~~ 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.

(b) "Family day care home" has the same meaning as provided in s. 402.302(8) ~~means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for a profit~~.

(c) "Large family child care home" has the same meaning as provided in s. 402.302(11).

(3) CHILD ~~FAMILY DAY~~ CARE; COVERAGE.—A residential property insurance policy may ~~shall~~ not provide coverage for liability for claims arising out of, or in connection with, the operation of a family day care home or large family child care home, and the insurer shall be under no obligation to defend against lawsuits covering such claims, unless:

(a) Specifically covered in a policy; or

(b) Covered by a rider or endorsement for business coverage attached to a policy.

(4) DENIAL, CANCELLATION, REFUSAL TO RENEW PROHIBITED.—An insurer may not deny, cancel, or refuse to renew a policy for residential property insurance solely on the basis that the

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policyholder or applicant operates a family day care home or large family child care home. In addition to other lawful reasons for refusing to insure, an insurer may deny, cancel, or refuse to renew a policy of a family day care home or large family child care home provider if one or more of the following conditions occur:

(a) The policyholder or applicant provides care for more children than authorized for family day care homes or large family child care homes by s. 402.302;

(b) The policyholder or applicant fails to maintain a separate commercial liability policy or an endorsement providing liability coverage for ~~the~~ family day care home or large family child care home operations;

(c) The policyholder or applicant fails to comply with the family day care home licensure and registration requirements specified in s. 402.313 or the large family child care home licensure requirements specified in s. 402.3131; or

(d) Discovery of willful or grossly negligent acts or omissions or any violations of state laws or regulations establishing safety standards for family day care homes and large family child care homes by the named insured or his or her representative which materially increase any of the risks insured.

Section 13. Subsections (7), (8), and (9) are added to section 1001.213, Florida Statutes, to read:

1001.213 Office of Early Learning.—There is created within the Office of Independent Education and Parental Choice the Office of Early Learning, as required under s. 20.15, which shall be administered by an executive director. The office shall

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be fully accountable to the Commissioner of Education but shall:

(7) Hire a general counsel who reports directly to the executive director of the office.

(8) Hire an inspector general who reports directly to the executive director of the office and to the Chief Inspector General pursuant to s. 14.32.

(9) By July 1, 2016, develop and implement, in consultation with early learning coalitions and providers of the Voluntary Prekindergarten Education Program and the school readiness program, best practices for providing parental notifications in the parent's native language to a parent whose native language is a language other than English.

Section 14. Subsection (4) of section 1002.53, Florida Statutes, is amended to read:

1002.53 Voluntary Prekindergarten Education Program; eligibility and enrollment.—

(4)(a) Each parent enrolling a child in the Voluntary Prekindergarten Education Program must complete and submit an application to the early learning coalition through the single point of entry established under s. 1002.82 or to a private prekindergarten provider if the provider is authorized by the early learning coalition to determine student eligibility for enrollment in the program.

(b) The application must be submitted on forms prescribed by the Office of Early Learning and must be accompanied by a certified copy of the child's birth certificate. The forms must include a certification, in substantially the form provided in s. 1002.71(6)(b)2., that the parent chooses the private prekindergarten provider or public school in accordance with

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this section and directs that payments for the program be made to the provider or school. The Office of Early Learning may authorize alternative methods for submitting proof of the child's age in lieu of a certified copy of the child's birth certificate.

(c) If a private prekindergarten provider has been authorized to determine child eligibility and enrollment, upon receipt of an application, the provider must:

1. Determine the child's eligibility for the program and be responsible for any errors in such determination.

2. Retain the original application and certified copy of the child's birth certificate or authorized alternative proof of age on file for at least 5 years.

Pursuant to this paragraph, the early learning coalition may audit applications held by a private prekindergarten provider in the coalition's service area to determine whether children enrolled and reported for funding by the provider have met the eligibility criteria in subsection (2).

(d) ~~(c)~~ Each early learning coalition shall coordinate with each of the school districts within the coalition's county or multicounty region in the development of procedures for enrolling children in prekindergarten programs delivered by public schools, including procedures for making child eligibility determinations and auditing enrollment records to confirm that enrolled children have met eligibility requirements.

Section 15. Section 1002.55, Florida Statutes, is amended to read:

1002.55 School-year prekindergarten program delivered by private prekindergarten providers.—

(1) Each early learning coalition shall administer the Voluntary Prekindergarten Education Program at the county or regional level for students enrolled under s. 1002.53(3)(a) in a school-year prekindergarten program delivered by a private prekindergarten provider. Each early learning coalition shall cooperate with the Office of Early Learning and the Child Care Services Program Office of the Department of Children and Families to reduce paperwork and to avoid duplicating interagency activities, health and safety monitoring, and acquiring and composing data pertaining to child care training and credentialing.

(2) Each school-year prekindergarten program delivered by a private prekindergarten provider must comprise at least 540 instructional hours.

(3) To be eligible to deliver the prekindergarten program, a private prekindergarten provider must meet each of the following requirements:

~~(a) The private prekindergarten provider must be a child care facility licensed under s. 402.305, family day care home licensed under s. 402.313, large family child care home licensed under s. 402.3131, nonpublic school exempt from licensure under s. 402.3025(2), or faith-based child care provider exempt from licensure under s. 402.316.~~

(a) ~~(b)~~ The private prekindergarten provider must:

1. Be accredited by an accrediting association that is a member of the National Council for Private School Accreditation, or the Florida Association of Academic Nonpublic Schools, or be

accredited by the Southern Association of Colleges and Schools, or Western Association of Colleges and Schools, or North Central Association of Colleges and Schools, or Middle States Association of Colleges and Schools, or New England Association of Colleges and Schools; and have written accreditation standards that meet or exceed the state's licensing requirements under s. 402.305, s. 402.313, or s. 402.3131 and require at least one onsite visit to the provider or school before accreditation is granted;

2. Hold a current Gold Seal Quality Care designation under s. 402.281; ~~or~~

3. Be licensed under s. 402.305, s. 402.313, or s. 402.3131; or

4. Be a child development center located on a military installation that is certified by the United States Department of Defense.

(b) The private prekindergarten provider must provide basic health and safety on its premises and in its facilities. For a public school, compliance with ss. 1003.22 and 1013.12 satisfies this requirement. For a nonpublic school, compliance with s. 402.3025(2)(d) satisfies this requirement. For a child care facility, a licensed family day care home, or a large family child care home, compliance with s. 402.305, s. 402.313, or s. 402.3131, respectively, satisfies this requirement. For a facility exempt from licensure, compliance with s. 402.316(4) satisfies this requirement ~~and demonstrate, before delivering the Voluntary Prekindergarten Education Program, as verified by the early learning coalition, that the provider meets each of the requirements of the program under this part, including, but~~

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~~not limited to, the requirements for credentials and background screenings of prekindergarten instructors under paragraphs (c) and (d), minimum and maximum class sizes under paragraph (f), prekindergarten director credentials under paragraph (g), and a developmentally appropriate curriculum under s. 1002.67(2)(b)~~.

(c) The private prekindergarten provider must have, for each prekindergarten class of 11 children or fewer, at least one prekindergarten instructor who meets each of the following requirements:

1. The prekindergarten instructor must hold, at a minimum, one of the following credentials:

a. A child development associate credential issued by the National Credentialing Program of the Council for Professional Recognition; ~~or~~

b. A credential approved by the Department of Children and Families, pursuant to s. 402.305(3)(c), as being equivalent to or greater than the credential described in sub-subparagraph a.;

c. An associate or higher degree in child development;

d. An associate or higher degree in an unrelated field, at least 6 credit hours in early childhood education or child development, and at least 480 hours of experience in teaching or providing child care services for children any age from birth through 8 years of age;

e. A baccalaureate or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science;

f. A baccalaureate or higher degree in family and child science and at least 480 hours of experience in teaching or providing child care services for children any age from birth

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through 8 years of age;

g. A baccalaureate or higher degree in elementary education if the prekindergarten instructor has been certified to teach children of any age from birth through grade 6, regardless of whether the instructor's educator certificate is current, and if the instructor is not ineligible to teach in a public school because his or her educator certificate is suspended or revoked; or

h. A credential approved by the department as being equivalent to or greater than a credential described in sub-subparagraphs a.-f. The department may adopt criteria and procedures for approving such equivalent credentials.

~~The Department of Children and Families may adopt rules under ss. 120.536(1) and 120.54 which provide criteria and procedures for approving equivalent credentials under sub-subparagraph b.~~

2. The prekindergarten instructor must successfully complete an emergent literacy training course and a student performance standards training course approved by the office as meeting or exceeding the minimum standards adopted under s. 1002.59. The requirement for completion of the standards training course shall take effect July 1, 2015 ~~2014~~, and the course shall be available online.

(d) Each prekindergarten instructor employed by the private prekindergarten provider must be of good moral character, must undergo background screening pursuant to s. 402.305(2)(a) ~~be screened using the level 2 screening standards in s. 435.04~~ before employment, must be ~~and~~ rescreened at least once every 5 years, must be denied employment or terminated if required under

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s. 435.06, and must not be ineligible to teach in a public school because his or her educator certificate is suspended or revoked.

(e) A private prekindergarten provider may assign a substitute instructor to temporarily replace a credentialed instructor if the credentialed instructor assigned to a prekindergarten class is absent, as long as the substitute instructor meets the requirements of paragraph (d) ~~is of good moral character and has been screened before employment in accordance with level 2 background screening requirements in chapter 435~~. The Office of Early Learning shall adopt rules to implement this paragraph which shall include required qualifications of substitute instructors and the circumstances and time limits for which a private prekindergarten provider may assign a substitute instructor.

(f) Each of the private prekindergarten provider's prekindergarten classes must be composed of at least 4 students but may not exceed 20 students. In order to protect the health and safety of students, each private prekindergarten provider must also provide appropriate adult supervision for students at all times and, for each prekindergarten class composed of 12 or more students, must have, in addition to a prekindergarten instructor who meets the requirements of paragraph (c), at least one adult prekindergarten instructor who is not required to meet those requirements but who must meet each requirement of s. 402.305(2) ~~paragraph (d)~~. This paragraph does not supersede any requirement imposed on a provider under ss. 402.301-402.319.

(g) The private prekindergarten provider must have a prekindergarten director who has a prekindergarten director

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credential that is approved by the office as meeting or exceeding the minimum standards adopted under s. 1002.57. Successful completion of a child care facility director credential under s. 402.305(2)(f) before the establishment of the prekindergarten director credential under s. 1002.57 or July 1, 2006, whichever occurs later, satisfies the requirement for a prekindergarten director credential under this paragraph.

(h) The private prekindergarten provider must register with the early learning coalition on forms prescribed by the Office of Early Learning.

(i) The private prekindergarten provider must execute the statewide provider contract prescribed under s. 1002.75, except that an individual who owns or operates multiple private prekindergarten providers within a coalition's service area may execute a single agreement with the coalition on behalf of each provider.

(j) The private prekindergarten provider must maintain general liability insurance and provide the coalition with written evidence of general liability insurance coverage, including coverage for transportation of children if prekindergarten students are transported by the provider. A provider must obtain and retain an insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. A provider must add the coalition as a named certificateholder ~~and as an additional insured~~. A provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability

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insurance required by this paragraph must remain in full force and effect for the entire period of the provider contract with the coalition.

(k) The private prekindergarten provider must obtain and maintain any required workers' compensation insurance under chapter 440 and any required reemployment assistance or unemployment compensation coverage under chapter 443, unless exempt under state or federal law.

(l) Notwithstanding paragraph (j), for a private prekindergarten provider that is a state agency or a subdivision thereof, as defined in s. 768.28(2), the provider must agree to notify the coalition of any additional liability coverage maintained by the provider in addition to that otherwise established under s. 768.28. The provider shall indemnify the coalition to the extent permitted by s. 768.28.

(m) The private prekindergarten provider shall be denied initial eligibility to offer the program if the provider has been cited for a Class I violation in the 12 months before seeking eligibility and the Office of Early Learning determines that denial of initial eligibility is appropriate after a review of the violation and the provider's licensure history. The Office of Early Learning shall establish a procedure of due process which ensures each provider the opportunity to appeal such a denial of initial eligibility to offer the program. The decision of the Office of Early Learning is not subject to the provisions of the Administrative Procedure Act, chapter 120.

(n) ~~(m)~~ The private prekindergarten provider must deliver the Voluntary Prekindergarten Education Program in accordance with this part and have child disciplinary policies that

prohibit children from being subjected to discipline that is severe, humiliating, frightening, or associated with food, rest, toileting, spanking, or any other form of physical punishment as provided in s. 402.305(12).

(o) Beginning January 1, 2015, at least 50 percent of the instructors employed by a prekindergarten provider at each location, who are responsible for supervising children in care, must be trained in first aid and infant and child cardiopulmonary resuscitation, as evidenced by current documentation of course completion. As a condition of employment, instructors hired on or after January 1, 2015, must complete this training within 60 days after employment.

(p) Beginning January 1, 2016, the private prekindergarten provider must employ child care personnel who hold a high school diploma or its equivalent and are at least 18 years of age, unless the personnel are not responsible for supervising children in care or are under direct supervision and are not counted for the purposes of computing the personnel-to-child ratio.

~~(4) A prekindergarten instructor, in lieu of the minimum credentials and courses required under paragraph (3)(c), may hold one of the following educational credentials:~~

~~(a) A bachelor's or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science;~~

~~(b) A bachelor's or higher degree in elementary education, if the prekindergarten instructor has been certified to teach children any age from birth through 6th grade, regardless of whether the instructor's educator certificate is current, and if~~

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~~the instructor is not ineligible to teach in a public school because his or her educator certificate is suspended or revoked;~~

~~(c) An associate's or higher degree in child development;~~

~~(d) An associate's or higher degree in an unrelated field, at least 6 credit hours in early childhood education or child development, and at least 480 hours of experience in teaching or providing child care services for children any age from birth through 8 years of age; or~~

~~(e) An educational credential approved by the department as being equivalent to or greater than an educational credential described in this subsection. The department may adopt criteria and procedures for approving equivalent educational credentials under this paragraph.~~

~~(5) Notwithstanding paragraph (3)(b), a private prekindergarten provider may not participate in the Voluntary Prekindergarten Education Program if the provider has child disciplinary policies that do not prohibit children from being subjected to discipline that is severe, humiliating, frightening, or associated with food, rest, toileting, spanking, or any other form of physical punishment as provided in s. 402.305(12).~~

Section 16. Subsection (1) of section 1002.59, Florida Statutes, is amended to read:

1002.59 Emergent literacy and performance standards training courses.—

(1) The office shall adopt minimum standards for one or more training courses in emergent literacy for prekindergarten instructors. Each course must comprise 5 clock hours and provide instruction in strategies and techniques to address the age-

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appropriate progress of prekindergarten students in developing emergent literacy skills, including oral communication, knowledge of print and letters, phonemic and phonological awareness, and vocabulary and comprehension development. Each course must also provide resources containing strategies that allow students with disabilities and other special needs to derive maximum benefit from the Voluntary Prekindergarten Education Program. Successful completion of an emergent literacy training course approved under this section satisfies requirements for approved training in early literacy and language development under ss. 402.305(2)(d)5., 402.313(4)(c) ~~402.313(6)~~, and 402.3131(5).

Section 17. Subsections (4) through (7) of section 1002.61, Florida Statutes, are amended to read:

1002.61 Summer prekindergarten program delivered by public schools and private prekindergarten providers.—

(4) ~~Notwithstanding ss. 1002.55(3)(c)1. and 1002.63(4),~~ Each public school and private prekindergarten provider that delivers the summer prekindergarten program must have, for each prekindergarten class, at least one prekindergarten instructor who is a certified teacher or holds one of the educational credentials specified in s. 1002.55(3)(c)1.e.-h. ~~1002.55(4)(a) or (b).~~ As used in this subsection, the term "certified teacher" means a teacher holding a valid Florida educator certificate under s. 1012.56 who has the qualifications required by the district school board to instruct students in the summer prekindergarten program. In selecting instructional staff for the summer prekindergarten program, each school district shall give priority to teachers who have experience or coursework in

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early childhood education.

(5) Each prekindergarten instructor employed by a ~~public school or~~ private prekindergarten provider delivering the summer prekindergarten program must be of good moral character, must undergo background screening pursuant to s. 402.305(2)(a) ~~be screened using the level 2 screening standards in s. 435.04~~ before employment, must be ~~and~~ rescreened at least once every 5 years, and must be denied employment or terminated if required under s. 435.06. Each prekindergarten instructor employed by a public school delivering the summer prekindergarten program~~, and~~ must satisfy the ~~not be ineligible to teach in a public school because his or her educator certificate is suspended or revoked. This subsection does not supersede~~ employment requirements for instructional personnel in public schools as provided in s. 1012.32 ~~which are more stringent than the requirements of this subsection~~.

(6) A public school or private prekindergarten provider may assign a substitute instructor to temporarily replace a credentialed instructor if the credentialed instructor assigned to a prekindergarten class is absent, as long as the substitute instructor meets the requirements of subsection (5) ~~is of good moral character and has been screened before employment in accordance with level 2 background screening requirements in chapter 435. This subsection does not supersede employment requirements for instructional personnel in public schools which are more stringent than the requirements of this subsection.~~ The Office of Early Learning shall adopt rules to implement this subsection which must ~~shall~~ include required qualifications of substitute instructors and the circumstances and time limits for

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which a public school or private prekindergarten provider may assign a substitute instructor.

(7) Notwithstanding ss. 1002.55(3)(e) ~~1002.55(3)(f)~~ and 1002.63(7), each prekindergarten class in the summer prekindergarten program, regardless of whether the class is a public school's or private prekindergarten provider's class, must be composed of at least 4 students but may not exceed 12 students ~~beginning with the 2009 summer session~~. In order to protect the health and safety of students, each public school or private prekindergarten provider must also provide appropriate adult supervision for students at all times. This subsection does not supersede any requirement imposed on a provider under ss. 402.301-402.319.

Section 18. Subsections (5) and (6) of section 1002.63, Florida Statutes, are amended to read:

1002.63 School-year prekindergarten program delivered by public schools.—

(5) Each prekindergarten instructor employed by a public school delivering the school-year prekindergarten program must satisfy the ~~be of good moral character, must be screened using the level 2 screening standards in s. 435.04 before employment and rescreened at least once every 5 years, must be denied employment or terminated if required under s. 435.06, and must not be ineligible to teach in a public school because his or her educator certificate is suspended or revoked. This subsection does not supersede~~ employment requirements for instructional personnel in public schools as provided in s. 1012.32 ~~which are more stringent than the requirements of this subsection~~.

(6) A public school prekindergarten provider may assign a

substitute instructor to temporarily replace a credentialed instructor if the credentialed instructor assigned to a prekindergarten class is absent, as long as the substitute instructor meets the requirements of subsection (5) ~~is of good moral character and has been screened before employment in accordance with level 2 background screening requirements in chapter 435. This subsection does not supersede employment requirements for instructional personnel in public schools which are more stringent than the requirements of this subsection~~. The Office of Early Learning shall adopt rules to implement this subsection which must ~~shall~~ include required qualifications of substitute instructors and the circumstances and time limits for which a public school prekindergarten provider may assign a substitute instructor.

Section 19. Paragraph (a) of subsection (6) of section 1002.71, Florida Statutes, is amended to read:

1002.71 Funding; financial and attendance reporting.—

(6)(a) Each parent enrolling his or her child in the Voluntary Prekindergarten Education Program must agree to comply with the attendance policy of the private prekindergarten provider or district school board, as applicable. Upon enrollment of the child, the private prekindergarten provider or public school, as applicable, must provide the child's parent with program information, including, but not limited to, child development, expectations for parent engagement, the daily schedule, and the ~~a copy of the provider's or school district's~~ attendance policy, which must include procedures for contacting a parent on the second consecutive day a child is absent for which the reason is unknown ~~as applicable~~.

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Section 20. Subsection (1) of section 1002.75, Florida Statutes, is amended to read:

1002.75 Office of Early Learning; powers and duties.—

(1) The Office of Early Learning shall adopt by rule a standard statewide provider contract to be used with each Voluntary Prekindergarten Education Program provider, with standardized attachments by provider type. The office shall publish a copy of the standard statewide provider contract on its website. The standard statewide contract must ~~shall~~ include, at a minimum, provisions that:

(a) Govern ~~for~~ provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of children. The standard statewide contract shall also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services.

(b) Require each private prekindergarten provider to conspicuously post, in an area visible to parents, on the premises, pursuant to s. 402.3125(1)(b), and the provider's Internet website, if available, each citation for a Class I violation, as defined by rule of the Department of Children and Families, which results in disciplinary action. Such posting must use simple language to describe each violation with specificity and include a copy of the citation and the contact information of the Department of Children and Families or the local licensing agency from which the parent may obtain additional information regarding the citation. Posting of a Class I violation by the provider must occur within 24 hours

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after receipt of the citation. Additionally, such provider shall post each inspection report on the premises in an area visible to parents, which report must remain posted until the next inspection report is available.

(c) Specify that child care personnel employed by the provider who are responsible for supervising children in care must be trained in developmentally appropriate practices aligned to the age and needs of children over which the personnel are assigned supervision duties. This requirement is met by the completion of developmentally appropriate practice courses administered by the Department of Children and Families under s. 402.305(2)(d)1. within 30 days after being assigned such children if the child care personnel has not previously completed the training.

Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable.

Section 21. Subsections (1), (3), and (5) of section 1002.77, Florida Statutes, are amended to read:

1002.77 Florida Early Learning Advisory Council.—

(1) There is created the Florida Early Learning Advisory Council within the Office of Early Learning. The purpose of the advisory council is to provide written input ~~submit recommendations~~ to the executive director ~~office~~ on early learning best practices, including ~~recommendations relating to the most~~ effective program administration; ~~of the Voluntary Prekindergarten Education Program under this part and the school readiness program under part VI of this chapter. The advisory council shall periodically analyze and provide recommendations~~

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~~to the office on the~~ effective and efficient use of local, state, and federal funds; ~~the content of~~ professional development training programs; and ~~best practices for the development and implementation of~~ coalition plans pursuant to s. 1002.85.

(3) The advisory council shall meet at least quarterly upon the call of the executive director ~~but may meet as often as necessary to carry out its duties and responsibilities~~. The executive director is encouraged to ~~advisory council may~~ use communications media technology ~~any method of telecommunications~~ to conduct meetings in accordance with s. 120.54(5)(b)~~,~~ ~~including establishing a quorum through telecommunications, only if the public is given proper notice of a telecommunications meeting and reasonable access to observe and, when appropriate,~~ ~~participate~~.

(5) The Office of Early Learning shall provide staff and administrative support for the advisory council as determined by the executive director.

Section 22. Paragraph (f) of subsection (1) and subsections (8) and (16) of section 1002.81, Florida Statutes, are amended to read:

1002.81 Definitions.—Consistent with the requirements of 45 C.F.R. parts 98 and 99 and as used in this part, the term:

(1) "At-risk child" means:

(f) A child in the custody of a parent who is considered homeless as verified by a designated lead agency on the homeless assistance continuum of care established under ss. 420.622-420.624 ~~Department of Children and Families certified homeless shelter~~.

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(8) "Family income" means the combined gross income, whether earned or unearned, that is derived from any source by all family or household members who are 18 years of age or older who are currently residing together in the same dwelling unit. The term does not include:

(a) Income earned by a currently enrolled high school student who, since attaining the age of 18 years, or a student with a disability who, since attaining the age of 22 years, has not terminated school enrollment or received a high school diploma, high school equivalency diploma, special diploma, or certificate of high school completion.

(b) Income earned by a teen parent residing in the same residence as a separate family unit.

(c) Selected items from the state's Child Care and Development Fund Plan, such as ~~The term also does not include~~ food stamp benefits, documented child support and alimony payments paid out of the home, or federal housing assistance payments issued directly to a landlord or the associated utilities expenses.

(16) "Working family" means:

(a) A single-parent family in which the parent with whom the child resides is employed or engaged in eligible work or education activities for at least 20 hours per week or is exempt from work requirements due to age or disability, as determined and documented by a physician licensed under chapter 458 or chapter 459;

(b) A two-parent family in which both parents with whom the child resides are employed or engaged in eligible work or education activities for a combined total of at least 40 hours

per week; ~~or~~

(c) A two-parent family in which one of the parents with whom the child resides is exempt from work requirements due to age or disability, as determined and documented by a physician licensed under chapter 458 or chapter 459, and one parent is employed or engaged in eligible work or education activities at least 20 hours per week; or

(d) A two-parent family in which both of the parents with whom the child resides are exempt from work requirements due to age or disability, as determined and documented by a physician licensed under chapter 458 or chapter 459.

Section 23. Paragraphs (b), (j), (m), and (p) of subsection (2) of section 1002.82, Florida Statutes, are amended to read:

1002.82 Office of Early Learning; powers and duties.—

(2) The office shall:

(b) Preserve parental choice by permitting parents to choose from a variety of child care categories authorized in s. 1002.88(1)(a)~~, including center-based care, family child care, and informal child care~~ to the extent authorized in the state's Child Care and Development Fund Plan as approved by the United States Department of Health and Human Services pursuant to 45 C.F.R. s. 98.18. Care and curriculum by a faith-based provider may not be limited or excluded in any of these categories.

(j) Develop and adopt standards and benchmarks that address the age-appropriate progress of children in the development of school readiness skills. The standards for children from birth to 5 years of age in the school readiness program must be aligned with the performance standards adopted for children in the Voluntary Prekindergarten Education Program and must address

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the following domains:

1. Approaches to learning.

2. Cognitive development and general knowledge.

3. Numeracy, language, and communication.

4. Physical development.

5. Self-regulation.

By July 1, 2015, the Office of Early Learning shall develop and implement an online training course on the performance standards for school readiness program provider personnel pursuant to this paragraph.

(m) Adopt by rule a standard statewide provider contract to be used with each school readiness program provider, with standardized attachments by provider type. The office shall publish a copy of the standard statewide provider contract on its website. The standard statewide contract must ~~shall~~ include, at a minimum, provisions that:

1. Govern ~~for~~ provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of the children. The standard statewide provider contract shall also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services.

2. Require each provider that is eligible to provide the program pursuant to s. 1002.88(1)(a) to conspicuously post, in an area visible to parents, on the premises, pursuant to s. 402.3125(1)(b), and the provider's Internet website, if

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available, each citation for a Class I violation, as defined by rule of the Department of Children and Families, which results in disciplinary action. Such posting must use simple language to describe each violation with specificity and include a copy of the citation and the contact information of the Department of Children and Families or the local licensing agency from which the parent may obtain additional information regarding the citation. Posting of a Class I violation by the provider must occur within 24 hours after receipt of the citation. Additionally, such provider shall post each inspection report on the premises in an area visible to parents, which report must remain posted until the next inspection report is available.

3. Specify that child care personnel employed by the provider who are responsible for supervising children in care must be trained in developmentally appropriate practices aligned to the age and needs of children over which the personnel are assigned supervision duties. This requirement is met by completion of developmentally appropriate practice courses administered by the Department of Children and Families under s. 402.305(2)(d)1. within 30 days after being assigned such children if the child care personnel has not previously completed the training.

4. Require child care personnel who are employed by the provider to complete an online training course on the performance standards adopted pursuant to paragraph (j).

Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable.

(p) Monitor and evaluate the performance of each early

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learning coalition in administering the school readiness program and the Voluntary Prekindergarten Education Program, ensuring proper payments for school readiness program and Voluntary Prekindergarten Education Program services, and implementing the coalition's school readiness program plan~~, and administering the Voluntary Prekindergarten Education Program~~. These monitoring and performance evaluations must include, at a minimum, onsite monitoring of each coalition's finances, management, operations, and programs.

Section 24. Subsections (8) and (20) of section 1002.84, Florida Statutes, are amended to read:

1002.84 Early learning coalitions; school readiness powers and duties.—Each early learning coalition shall:

(8) Establish a parent sliding fee scale that requires a parent copayment to participate in the school readiness program. Providers are required to collect the parent's copayment. A coalition may, on a case-by-case basis, waive the copayment for an at-risk child or temporarily waive the copayment for a child whose family's income is at or below the federal poverty level and ~~family~~ experiences a natural disaster or an event that limits the parent's ability to pay, such as incarceration, placement in residential treatment, ~~or becoming homeless,~~ or an emergency situation such as a household fire or burglary, or while the parent is participating in parenting classes. A parent may not transfer school readiness program services to another school readiness program provider until the parent has submitted documentation from the current school readiness program provider to the early learning coalition stating that the parent has satisfactorily fulfilled the copayment obligation.

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(20) To increase transparency and accountability, comply with ~~the requirements of~~ this section before contracting with a member of the coalition, an employee of the coalition, or a relative, as defined in s. 112.3143(1)(c) ~~s. 112.3143(1)(b)~~, of a coalition member or of an employee of the coalition. Such contracts may not be executed without the approval of the office. Such contracts, as well as documentation demonstrating adherence to this section by the coalition, must be approved by a two-thirds vote of the coalition, a quorum having been established; all conflicts of interest must be disclosed before the vote; and any member who may benefit from the contract, or whose relative may benefit from the contract, must abstain from the vote. A contract under $25,000 between an early learning coalition and a member of that coalition or between a relative, as defined in s. 112.3143(1)(b), of a coalition member or of an employee of the coalition is not required to have the prior approval of the office but must be approved by a two-thirds vote of the coalition, a quorum having been established, and must be reported to the office within 30 days after approval. If a contract cannot be approved by the office, a review of the decision to disapprove the contract may be requested by the early learning coalition or other parties to the disapproved contract.

Section 25. Paragraphs (c) and (h) of subsection (1) and subsections (6) through (8) of section 1002.87, Florida Statutes, are amended to read:

1002.87 School readiness program; eligibility and enrollment.—

(1) Effective August 1, 2013, or upon reevaluation of

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eligibility for children currently served, whichever is later, each early learning coalition shall give priority for participation in the school readiness program as follows:

(c) Priority shall be given next to a child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. who is from a working family that is economically disadvantaged, and may include such child's eligible siblings, beginning with the school year in which the sibling is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. until the beginning of the school year in which the sibling enters ~~is eligible to begin~~ 6th grade, provided that the first priority for funding an eligible sibling is local revenues available to the coalition for funding direct services. However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.

(h) Priority shall be given next to a child who ~~has special needs,~~ has been determined eligible as an infant or toddler from birth to 3 years of age with an individualized family support plan receiving early intervention services or ~~as~~ a student with a disability with~~, has~~ a current individual education plan with a Florida school district~~, and is not younger than 3 years of age~~. A ~~special needs~~ child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(6) Eligibility for each child must be reevaluated annually. Upon reevaluation, a child may not continue to receive

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school readiness program services if he or she has ceased to be eligible under this section. If a child no longer meets eligibility or program requirements, the coalition must immediately notify the child's parent and the provider that funding will end 2 weeks after the date on which the child was determined to be ineligible or when the current child care authorization expires, whichever occurs first.

(7) If a coalition disenrolls children from the school readiness program due to lack of funding or a change in eligibility priorities, the coalition must disenroll the children in reverse order of the eligibility priorities listed in subsection (1) beginning with children from families with the highest family incomes. A notice of disenrollment must be sent to the parent and school readiness program provider at least 2 weeks before disenrollment or the expiration of the current child care authorization, whichever occurs first, to provide adequate time for the parent to arrange alternative care for the child. However, an at-risk child receiving services from the Child Welfare Program Office of the Department of Children and Families may not be disenrolled from the program without the written approval of the Child Welfare Program Office ~~of the Department of Children and Families~~ or the community-based lead agency.

(8) If a child is absent from the program for 2 consecutive days without parental notification to the program of such absence, the school readiness program provider shall contact the parent and determine the cause for absence and expected date of return. If a child is absent from the program for 5 consecutive days without parental notification to the program of such

absence, the school readiness program provider shall report the absence to the early learning coalition for a determination of the need for continued care.

Section 26. Paragraphs (a) through (c) and (l) through (q) of subsection (1) and subsections (2) and (3) of section 1002.88, Florida Statutes, are amended, and subsections (4) and (5) are added to that section to read:

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness program provider must:

(a)1. Be a nonpublic school in substantial compliance with s. 402.3025(2)(d), a child care facility licensed under s. 402.305, a family day care home licensed ~~or registered~~ under s. 402.313, a large family child care home licensed under s. 402.3131, or a child care facility exempt from licensure operating under s. 402.316(4); or

2. Be an entity that is part of Florida's education system under s. 1000.04(1); ~~a public school or nonpublic school exempt from licensure under s. 402.3025, a faith-based child care provider exempt from licensure under s. 402.316, a before-school or after-school program described in s. 402.305(1)(c),~~ or

3. Be an informal child care provider to the extent authorized in the state's Child Care and Development Fund Plan as approved by the United States Department of Health and Human Services pursuant to 45 C.F.R. s. 98.18.

(b) Provide instruction and activities to enhance the age-appropriate progress of each child in attaining the child development standards adopted by the office pursuant to s.

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1002.82(2)(j). A provider should include activities to foster brain development in infants and toddlers; provide an environment that is rich in language and music and filled with objects of various colors, shapes, textures, and sizes to stimulate visual, tactile, auditory, and linguistic senses; and include 30 minutes of reading to children each day. A provider must provide parents information on child development, expectations for parent engagement, the daily schedule, and the attendance policy.

(c) Provide basic health and safety of its premises and facilities in accordance with applicable licensing and inspection requirements ~~and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program~~. For a child care facility, a large family child care home, or a licensed family day care home, compliance with s. 402.305, s. 402.3131, or s. 402.313 satisfies this requirement. For a public ~~or nonpublic~~ school, compliance with ss. ~~s. 402.3025 or s.~~ 1003.22 and 1013.12 satisfies this requirement. For a nonpublic school, compliance with s. 402.3025(2)(d) satisfies this requirement. For a facility exempt from licensure, compliance with s. 402.316(4) satisfies this requirement. For an informal provider, substantial compliance as defined in s. 402.302(17) satisfies this requirement. A provider shall be denied initial eligibility to offer the program if the provider has been cited for a Class I violation in the 12 months before seeking eligibility and the Office of Early Learning determines that denial of initial eligibility is appropriate after a review of the violation and the provider's licensure history. The Office of Early Learning shall establish a

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procedure of due process which ensures each provider the opportunity to appeal such a denial of initial eligibility to offer the program. The decision of the Office of Early Learning is not subject to the provisions of the Administrative Procedure Act, chapter 120. ~~A faith-based child care provider, an informal child care provider, or a nonpublic school, exempt from licensure under s. 402.316 or s. 402.3025, shall annually complete the health and safety checklist adopted by the office, post the checklist prominently on its premises in plain sight for visitors and parents, and submit it annually to its local early learning coalition.~~

(l) ~~For a provider that is not an informal provider,~~ Maintain general liability insurance and provide the coalition with written evidence of general liability insurance coverage, including coverage for transportation of children if school readiness program children are transported by the provider. A private provider must obtain and retain an insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. A provider must add the coalition as a named certificateholder ~~and as an additional insured~~. A private provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the entire period of the provider contract with the coalition.

~~(m) For a provider that is an informal provider, comply with the provisions of paragraph (l) or maintain homeowner's~~

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~~liability insurance and, if applicable, a business rider. If an informal provider chooses to maintain a homeowner's policy, the provider must obtain and retain a homeowner's insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. An informal provider must add the coalition as a named certificateholder and as an additional insured. An informal provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the entire period of the provider's contract with the coalition.~~

(m) ~~(n)~~ Obtain and maintain any required workers' compensation insurance under chapter 440 and any required reemployment assistance or unemployment compensation coverage under chapter 443, unless exempt under state or federal law.

(n) ~~(o)~~ Notwithstanding paragraph (l), for a provider that is a state agency or a subdivision thereof, as defined in s. 768.28(2), agree to notify the coalition of any additional liability coverage maintained by the provider in addition to that otherwise established under s. 768.28. The provider shall indemnify the coalition to the extent permitted by s. 768.28.

(o) ~~(p)~~ Execute the standard statewide provider contract adopted by the office.

(p) ~~(q)~~ Operate on a full-time and part-time basis and provide extended-day and extended-year services to the maximum extent possible without compromising the quality of the program to meet the needs of parents who work.

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(2) Beginning January 1, 2016, child care personnel employed by a school readiness program provider must hold a high school diploma or its equivalent and be at least 18 years of age, unless the personnel are not responsible for supervising children in care or are under direct supervision and are not counted for the purposes of computing the personnel-to-child ratio.

(3) Beginning January 1, 2015, at least 50 percent of the child care personnel employed by a school readiness provider at each location, who are responsible for supervising children in care, must be trained in first aid and infant and child cardiopulmonary resuscitation, as evidenced by current documentation of course completion. As a condition of employment, personnel hired on or after January 1, 2015, must complete this training within 60 days after employment.

(4) ~~(2)~~ If a school readiness program provider fails or refuses to comply with this part or any contractual obligation of the statewide provider contract under s. 1002.82(2)(m), the coalition may revoke the provider's eligibility to deliver the school readiness program or receive state or federal funds under this chapter for ~~a period of~~ 5 years.

(5) ~~(3)~~ The office and the coalitions may not:

(a) Impose any requirement on a child care provider or early childhood education provider that does not deliver services under the school readiness program or receive state or federal funds under this part;

(b) Impose any requirement on a school readiness program provider that exceeds the authority provided under this part or part V of this chapter or rules adopted pursuant to this part or

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part V of this chapter; or

(c) Require a provider to administer a preassessment or postassessment.

Section 27. Paragraph (b) of subsection (6) and subsection (7) of Section 1002.89, Florida Statutes, are amended to read:

1002.89 School readiness program; funding.—

(6) Costs shall be kept to the minimum necessary for the efficient and effective administration of the school readiness program with the highest priority of expenditure being direct services for eligible children. However, no more than 5 percent of the funds described in subsection (5) may be used for administrative costs and no more than 22 percent of the funds described in subsection (5) may be used in any fiscal year for any combination of administrative costs, quality activities, and nondirect services as follows:

(b) Activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which must ~~shall~~ be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public to promote informed child care choices specified in 45 C.F.R. s. 98.33 ~~regarding participation in the school readiness program and parental choice~~.

2. Awarding grants and providing financial support to school readiness program providers and their staff to assist them in meeting applicable state requirements for child care performance standards, implementing developmentally appropriate curricula and related classroom resources that support

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curricula, providing literacy supports, obtaining a license or accreditation, and providing professional development, including scholarships and other incentives. Any grants awarded pursuant to this subparagraph shall comply with ~~the requirements of~~ ss. 215.971 and 287.058.

3. Providing training, ~~and~~ technical assistance, and financial support for school readiness program providers, staff, and parents on standards, child screenings, child assessments, developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, cardiopulmonary resuscitation, the recognition of communicable diseases, and child abuse detection and prevention.

4. Providing from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding for infants and toddlers as necessary to meet federal requirements related to expenditures for quality activities for infant and toddler care.

5. Improving the monitoring of compliance with, and enforcement of, applicable state and local requirements as described in and limited by 45 C.F.R. s. 98.40.

6. Responding to Warm-Line requests by providers and parents ~~related to school readiness program children~~, including providing developmental and health screenings to school readiness program children.

(7) Funds appropriated for the school readiness program may not be expended for the purchase or improvement of land; for the purchase, construction, or permanent improvement of any building or facility; or for the purchase of buses. However,

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funds may be expended for minor remodeling necessary for the administration of the program and upgrading of child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

Section 28. Subsection (7) of section 1002.91, Florida Statutes, is amended to read:

1002.91 Investigations of fraud or overpayment; penalties.—

(7) The early learning coalition may not contract with a school readiness program provider, ~~or~~ a Voluntary Prekindergarten Education Program provider, or an individual who is on the United States Department of Agriculture National Disqualified List. In addition, the coalition may not contract with any provider that shares an officer or director with a provider that is on the United States Department of Agriculture National Disqualified List.

Section 29. Paragraph (d) of subsection (3) of section 1002.94, Florida Statutes, is amended to read:

1002.94 Child Care Executive Partnership Program.—

(3)

(d) Each early learning coalition shall establish a community child care task force ~~for each child care purchasing pool~~. The task force must be composed of employers, parents, private child care providers, and one representative from the local children's services council, if one exists in the area ~~of the purchasing pool~~. The early learning coalition is expected to recruit the task force members from existing child care councils, commissions, or task forces already operating in the area ~~of a purchasing pool~~. A majority of the task force shall

consist of employers.

Section 30. This act shall take effect July 1, 2014.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to education; providing a directive to the Division of Law Revision and Information; changing the term "family day care home" to "family child care home" and the term "family day care" to "family child care"; amending ss. 125.0109 and 166.0445, F.S.; including large family child care homes in local zoning regulation requirements; amending s. 402.302, F.S.; revising the definition of the term "substantial compliance"; requiring the Department of Children and Families to adopt rules for compliance by certain programs not licensed by the department; amending s. 402.3025, F.S.; providing requirements for nonpublic schools delivering certain voluntary prekindergarten education programs and school readiness programs; amending s. 402.305, F.S.; revising certain minimum standards for child care facilities; amending s. 402.311, F.S.; providing for the inspection of programs regulated by the department; amending s. 402.3115, F.S.; providing for abbreviated inspections of specified child care homes; requiring rulemaking; amending s. 402.313, F.S.; revising provisions for

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licensure, registration, and operation of family day care homes; amending s. 402.3131, F.S.; revising requirements for large family child care homes; amending s. 402.316, F.S., relating to exemptions from child care facility licensing standards; requiring a child care facility operating as a provider of certain voluntary prekindergarten education programs or child care programs to comply with minimum standards; providing penalties for failure to disclose or for use of certain information; requiring the department to establish a fee for inspection and compliance activities; amending s. 627.70161, F.S.; revising restrictions on residential property insurance coverage to include coverage for large family child care homes; amending s. 1001.213, F.S.; providing additional duties of the Office of Early Learning; amending s. 1002.53, F.S.; revising requirements for application and determination of eligibility to enroll in the Voluntary Prekindergarten (VPK) Education Program; amending s. 1002.55, F.S.; revising requirements for a school-year prekindergarten program delivered by a private prekindergarten provider, including requirements for providers, instructors, and child care personnel; providing requirements in the case of provider violations; amending s. 1002.59, F.S.; correcting a cross-reference; amending ss. 1002.61 and 1002.63, F.S.; revising employment requirements and educational credentials of certain instructional personnel; amending s. 1002.71, F.S.;

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revising information that must be reported to parents; amending s. 1002.75, F.S.; revising provisions included in the standard statewide VPK program provider contract; amending s. 1002.77, F.S.; revising the purpose and meetings of the Florida Early Learning Advisory Council; amending s. 1002.81, F.S.; revising certain program definitions; amending s. 1002.82, F.S.; revising the powers and duties of the Office of Early Learning; revising provisions included in the standard statewide school readiness provider contract; amending s. 1002.84, F.S.; revising the powers and duties of early learning coalitions; conforming provisions to changes made by the act; amending s. 1002.87, F.S.; revising student eligibility and enrollment requirements for the school readiness program; amending s. 1002.88, F.S.; revising eligibility requirements for program providers that want to deliver the school readiness program; providing conditions for denial of initial eligibility; providing child care personnel requirements; amending s. 1002.89, F.S.; revising the use of funds for the school readiness program; amending s. 1002.91, F.S.; prohibiting an early learning coalition from contracting with specified persons; amending s. 1002.94, F.S.; revising establishment of a community child care task force by an early learning coalition; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment to Amendment (576812) (with title amendment)

Between lines 1722 and 1723
insert:

Section 30. For the 2014-2015 fiscal year, the sums of $1,219,575 in recurring funds and $11,319 in nonrecurring funds from the Federal Grants Trust Fund and $70,800 in recurring funds from the Operations and Maintenance Trust Fund are appropriated to the Department of Children and Families, and 18

729886

full-time equivalent positions with associated salary rate of 608,446 are authorized, for the purpose of implementing the regulatory provisions of this act.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 1806

and insert:

an early learning coalition; providing an appropriation; providing an effective

By the Committee on Education

581-03214A-14 20141702__

A bill to be entitled

An act relating to education; providing a directive to the Division of Law Revision and Information; changing the term "school readiness program" to "child care and development program," the term "school readiness" to "child care and development," and the term "family day care home" to "family child care home"; amending s. 39.604, F.S.; revising provisions relating to the Rilya Wilson Act; amending ss. 125.0109 and 166.0445, F.S.; including large family child care homes in local zoning regulation requirements; amending s. 402.302, F.S.; conforming provisions to changes made by the act; amending s. 402.3025, F.S.; providing requirements for nonpublic schools delivering certain voluntary prekindergarten education programs and child care and development programs; amending s. 402.305, F.S.; revising certain minimum standards for child care facilities; authorizing the Department of Children and Families to adopt rules for compliance by certain programs not licensed by the department; amending s. 402.311, F.S.; providing for the inspection of programs regulated by the department; amending s. 402.3115, F.S.; providing for abbreviated inspections of specified child care homes; requiring rulemaking; amending s. 402.313, F.S.; revising provisions for licensure, registration, and operation of family day care homes; amending s. 402.3131, F.S.; revising requirements for large family child care homes; amending s. 402.316, F.S., relating to

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581-03214A-14 20141702__

exemptions from child care facility licensing standards; requiring a child care facility operating as a provider of certain voluntary prekindergarten education programs or child care programs to comply with minimum standards; providing penalties for failure to disclose or for use of certain information; requiring the department to establish a fee for inspection and compliance activities; amending s. 627.70161, F.S.; revising restrictions on residential property insurance coverage to include coverage for large family child care homes; amending s. 1001.213, F.S.; providing additional duties of the Office of Early Learning; amending s. 1002.53, F.S.; revising requirements for application and determination of eligibility to enroll in the Voluntary Prekindergarten (VPK) Education Program; amending s. 1002.55, F.S.; revising requirements for a school-year prekindergarten program delivered by a private prekindergarten provider, including requirements for providers, instructors, and child care personnel; providing requirements in the case of provider violations; amending s. 1002.59, F.S.; correcting a cross-reference; amending ss. 1002.61 and 1002.63, F.S.; revising employment requirements and educational credentials of certain instructional personnel; amending s. 1002.71, F.S.; revising information that must be reported to parents; amending s. 1002.75, F.S.; revising provisions included in the standard statewide VPK program provider contract; amending s.

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1002.77, F.S.; revising the purpose and meetings of the Florida Early Learning Advisory Council; amending s. 1002.81, F.S.; revising certain program definitions; amending s. 1002.82, F.S.; revising the powers and duties of the Office of Early Learning; revising provisions included in the standard statewide child care and development program provider contract; amending s. 1002.84, F.S.; revising the powers and duties of early learning coalitions; conforming provisions to changes made by the act; amending s. 1002.87, F.S.; revising student eligibility and enrollment requirements for the child care and development program; conforming provisions to changes made by the act; amending s. 1002.88, F.S.; revising eligibility requirements for program providers that want to deliver the child care and development program; providing conditions for denial of initial eligibility; providing child care personnel requirements; amending s. 1002.89, F.S.; revising the use of funds for the child care and development program; conforming provisions to changes made by the act; amending s. 1002.91, F.S.; prohibiting an early learning coalition from contracting with specified persons; amending s. 1002.94, F.S.; revising establishment of a community child care task force by an early learning coalition; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Division of Law Revision and Information is directed to prepare a reviser's bill for the 2015 Regular Session of the Legislature to change the term "school readiness program" to "child care and development program," the term "school readiness" to "child care and development," and the term "family day care home" to "family child care home" wherever they appear in the Florida Statutes.

Section 2. Subsection (3) of section 39.604, Florida Statutes, is amended to read:

39.604 Rilya Wilson Act; short title; legislative intent; requirements; attendance and reporting responsibilities.—

(3) REQUIREMENTS.—A child who is age birth ~~3 years~~ to age of school entry, under court-ordered ~~court ordered~~ protective supervision or in the custody of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or a community-based lead agency, and enrolled in a licensed early education or child care program must attend ~~be enrolled to participate in~~ the program 5 days a week. Notwithstanding ~~the requirements of~~ s. 39.202, the Department of Children and Families ~~Family Services~~ must notify operators of the licensed early education or child care program, subject to the reporting requirements of this act, of the enrollment of any child age birth ~~3 years~~ to age of school entry, under court-ordered ~~court ordered~~ protective supervision or in the custody of the Family Safety Program Office of the Department of Children and Families ~~Family Services~~ or a community-based lead agency. When a child is enrolled in an early education or child care program regulated by the department, the child's attendance

in the program must be a required action in the case plan developed for the ~~a~~ child pursuant to this chapter ~~who is enrolled in a licensed early education or child care program must contain the participation in this program as a required action~~. An exemption to participating in the licensed early education or child care program 5 days a week may be granted by the court.

Section 3. Section 125.0109, Florida Statutes, is amended to read:

125.0109 Family child ~~day~~ care homes and large family child care homes; local zoning regulation.—The operation of a residence as a family child ~~day~~ care home or large family child care home, as defined in s. 402.302, licensed or registered pursuant to s. 402.313 or s. 402.3131, as applicable, constitutes~~, as defined by law, registered or licensed with the Department of Children and Family Services shall constitute~~ a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such family child ~~day~~ care home or large family child care home to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of $50, to operate in an area zoned for residential use.

Section 4. Section 166.0445, Florida Statutes, is amended to read:

166.0445 Family child ~~day~~ care homes and large family child care homes; local zoning regulation.—The operation of a residence as a family child ~~day~~ care home or large family child care home, as defined in s. 402.302, licensed or registered pursuant to s. 402.313 or s. 402.3131, as applicable,

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constitutes~~, as defined by law, registered or licensed with the Department of Children and Family Services shall constitute~~ a valid residential use for purposes of any local zoning regulations, and ~~no~~ such regulation may not ~~shall~~ require the owner or operator of such family child ~~day~~ care home or large family child care home to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of $50, to operate in an area zoned for residential use.

Section 5. Subsection (8) of section 402.302, Florida Statutes, is amended to read:

402.302 Definitions.—As used in this chapter, the term:

(8) "Family child ~~day~~ care home" means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. Household children under 13 years of age, when on the premises of the family child ~~day~~ care home or on a field trip with children enrolled in child care, shall be included in the overall capacity of the licensed home. A family child ~~day~~ care home shall be allowed to provide care for one of the following groups of children, which shall include household children under 13 years of age:

(a) A maximum of four children from birth to 12 months of age.

(b) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.

(c) A maximum of six preschool children if all are older than 12 months of age.

(d) A maximum of 10 children if no more than 5 are

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preschool age and, of those 5, no more than 2 are under 12 months of age.

Section 6. Paragraphs (d) and (e) of subsection (2) of section 402.3025, Florida Statutes, are amended to read:

402.3025 Public and nonpublic schools.—For the purposes of ss. 402.301-402.319, the following shall apply:

(2) NONPUBLIC SCHOOLS.—

(d)1. Nonpublic schools delivering programs under s. 1002.55, s. 1002.61, or s. 1002.88 ~~Programs for children who are at least 3 years of age, but under 5 years of age,~~ which are not licensed under ss. 402.301-402.319 shall substantially comply with the minimum child care standards adopted ~~promulgated~~ pursuant to ss. 402.305-402.3057.

2. The department or local licensing agency shall enforce compliance with such standards, where possible, to eliminate or minimize duplicative inspections or visits by staff enforcing the minimum child care standards and staff enforcing other standards under the jurisdiction of the department.

3. The department or local licensing agency may inspect programs operating under this paragraph and pursue administrative or judicial action under ss. 402.310-402.312 against nonpublic schools operating under this paragraph ~~commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:~~

~~a.~~ to protect the health, sanitation, safety, and well-being of all children under care.

~~b. To enforce its rules and regulations.~~

~~c. To use corrective action plans, whenever possible, to attain compliance prior to the use of more restrictive~~

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~~enforcement measures.~~

~~d. To make application for injunction to the proper circuit court, and the judge of that court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of ss. 402.301-402.319. Any violation of this section or of the standards applied under ss. 402.305-402.3057 which threatens harm to any child in the school's programs for children who are at least 3 years of age, but are under 5 years of age, or repeated violations of this section or the standards under ss. 402.305-402.3057, shall be grounds to seek an injunction to close a program in a school.~~

~~e. To impose an administrative fine, not to exceed $100, for each violation of the minimum child care standards promulgated pursuant to ss. 402.305-402.3057.~~

4. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

a. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any required written documentation for exclusion from licensure pursuant to this section a material fact used in making a determination as to such exclusion; or

b. Use information from the criminal records obtained under s. 402.305 or s. 402.3055 for any purpose other than screening that person for employment as specified in those sections or release such information to any other person for any purpose other than screening for employment as specified in those

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sections.

5. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of any person obtained under s. 402.305 or s. 402.3055 for any purpose other than screening for employment as specified in those sections or to release information from such records to any other person for any purpose other than screening for employment as specified in those sections.

6. The inclusion of nonpublic schools within options available under ss. 1002.55, 1002.61, and 1002.88 does not expand the regulatory authority of the state, its officers, or any early learning coalition to impose any additional regulation of nonpublic schools beyond those reasonably necessary to enforce requirements expressly set forth in this paragraph.

~~(c) The department and the nonpublic school accrediting agencies are encouraged to develop agreements to facilitate the enforcement of the minimum child care standards as they relate to the schools which the agencies accredit.~~

Section 7. Paragraphs (a) and (d) of subsection (2), paragraph (b) of subsection (9), and subsections (10) and (18) of section 402.305, Florida Statutes, are amended, and subsection (19) is added to that section, to read:

402.305 Licensing standards; child care facilities.—

(2) PERSONNEL.—Minimum standards for child care personnel shall include minimum requirements as to:

(a) Good moral character based upon screening, according to the level 2 screening requirements of~~. This screening shall be~~

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~~conducted as provided in~~ chapter 435~~, using the level 2 standards for screening set forth in that chapter~~. In addition to the offenses listed in s. 435.04, all child care personnel required to undergo background screening pursuant to this section may not have an arrest awaiting final disposition for, may not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and may not have been adjudicated delinquent and have a record that has been sealed or expunged for an offense specified in s. 39.205.

(d) Minimum training requirements for child care personnel.

1. Such minimum standards for training shall ensure that all child care personnel take an approved 40-clock-hour introductory course in child care, which course covers at least the following topic areas:

a. State and local rules and regulations which govern child care.

b. Health, safety, and nutrition.

c. Identifying and reporting child abuse and neglect.

d. Child development, including typical and atypical language, cognitive, motor, social, and self-help skills development.

e. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine the child's developmental age level.

f. Specialized areas, including computer technology for professional and classroom use and numeracy, early literacy, and language development of children from birth to 5 years of age, as determined by the department, for owner-operators and child care personnel of a child care facility.

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g. Developmental disabilities, including autism spectrum disorder and Down syndrome, and early identification, use of available state and local resources, classroom integration, and positive behavioral supports for children with developmental disabilities.

Within 90 days after employment, child care personnel shall begin training to meet the training requirements. Child care personnel shall successfully complete such training within 1 year after the date on which the training began, as evidenced by passage of a competency examination. Successful completion of the 40-clock-hour introductory course shall articulate into community college credit in early childhood education, pursuant to ss. 1007.24 and 1007.25. Exemption from all or a portion of the required training shall be granted to child care personnel based upon educational credentials or passage of competency examinations. Child care personnel possessing a 2-year degree or higher that includes 6 college credit hours in early childhood development or child growth and development, or a child development associate credential or an equivalent state-approved child development associate credential, or a child development associate waiver certificate shall be automatically exempted from the training requirements in sub-subparagraphs b., d., and e.

2. The introductory course in child care shall stress, to the extent possible, an interdisciplinary approach to the study of children.

3. The introductory course shall cover recognition and prevention of shaken baby syndrome; prevention of sudden infant

death syndrome; recognition and care of infants and toddlers with developmental disabilities, including autism spectrum disorder and Down syndrome; and early childhood brain development within the topic areas identified in this paragraph.

4. On an annual basis in order to further their child care skills and, if appropriate, administrative skills, child care personnel who have fulfilled the requirements for the child care training shall be required to take an additional 1 continuing education unit of approved inservice training, or 10 clock hours of equivalent training, as determined by the department.

5. Child care personnel shall be required to complete 0.5 continuing education unit of approved training or 5 clock hours of equivalent training, as determined by the department, in numeracy, early literacy, and language development of children from birth to 5 years of age one time. The year that this training is completed, it shall fulfill the 0.5 continuing education unit or 5 clock hours of the annual training required in subparagraph 4.

6. Procedures for ensuring the training of qualified child care professionals to provide training of child care personnel, including onsite training, shall be included in the minimum standards. It is recommended that the state community child care coordination agencies (central agencies) be contracted by the department to coordinate such training when possible. Other district educational resources, such as community colleges and career programs, can be designated in such areas where central agencies may not exist or are determined not to have the capability to meet the coordination requirements set forth by the department.

7. Training requirements do ~~shall~~ not apply to certain occasional or part-time support staff, including, but not limited to, swimming instructors, piano teachers, dance instructors, and gymnastics instructors.

8. The department shall evaluate or contract for an evaluation for the general purpose of determining the status of and means to improve staff training requirements and testing procedures. The evaluation shall be conducted every 2 years. The evaluation must ~~shall~~ include, but not be limited to, determining the availability, quality, scope, and sources of current staff training; determining the need for specialty training; and determining ways to increase inservice training and ways to increase the accessibility, quality, and cost-effectiveness of current and proposed staff training. The evaluation methodology must ~~shall~~ include a reliable and valid survey of child care personnel.

9. The child care operator shall be required to take basic training in serving children with disabilities within 5 years after employment, either as a part of the introductory training or the annual 8 hours of inservice training.

(9) ADMISSIONS AND RECORDKEEPING.—

(b) ~~During the months of August and September of each year,~~ Each child care facility shall provide parents of children enrolling ~~enrolled~~ in the facility detailed information regarding the causes, symptoms, and transmission of the influenza virus in an effort to educate those parents regarding the importance of immunizing their children against influenza as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(10) TRANSPORTATION SAFETY.—Minimum standards must ~~shall~~ include requirements for child restraints or seat belts in vehicles used by child care facilities, ~~and~~ large family child care homes, and family child care homes to transport children, requirements for annual inspections of the vehicles, limitations on the number of children in the vehicles, and accountability for children being transported.

(18) TRANSFER OF OWNERSHIP.—

(a) One week before ~~prior to~~ the transfer of ownership of a child care facility, ~~or~~ family child ~~day~~ care home, or large family child care home, the transferor shall notify the parent or caretaker of each child of the impending transfer.

(b) The owner of a child care facility, family child care home, or large family child care home may not transfer ownership to a relative of the operator if the operator has had his or her license suspended or revoked by the department pursuant to s. 402.310, has received notice from the department that reasonable cause exists to suspend or revoke the license, or has been placed on the United States Department of Agriculture National Disqualified List. For purposes of this paragraph, "relative" means father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

(c) ~~(b)~~ The department shall, by rule, establish methods by which notice will be achieved and minimum standards by which to implement this subsection.

(19) RULES.—The department may adopt rules to define and enforce substantial compliance with minimum standards for child care facilities for programs operating under s. 1002.55, s. 1002.61, or s. 1002.88 that are regulated, but not licensed, by the department.

Section 8. Section 402.311, Florida Statutes, is amended to read:

402.311 Inspection.—A licensed child care facility or program regulated by the department shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities and personnel and to those records required in s. 402.305, at reasonable times during regular business hours, to ensure compliance with ~~the provisions of~~ ss. 402.301-402.319. The right of entry and inspection shall also extend to any premises which the department or local licensing agency has reason to believe are being operated or maintained as a child care facility or program ~~without a license~~, but no such entry or inspection of any premises shall be made without the permission of the person in charge thereof unless a warrant is first obtained from the circuit court authorizing same. Any application for a license, application for authorization to operate a child care program which must maintain substantial compliance with child care standards adopted under this chapter, or renewal of such license or authorization ~~made pursuant to this act~~ or the advertisement to the public for the provision of child care as defined in s. 402.302 constitutes ~~shall constitute~~ permission for any entry to or inspection of the subject premises ~~for which the license is sought in order~~ to facilitate

verification of the information submitted on or in connection with the application. In the event a ~~licensed~~ facility or program refuses permission for entry or inspection to the department or local licensing agency, a warrant shall be obtained from the circuit court authorizing same before ~~prior to~~ such entry or inspection. The department or local licensing agency may institute disciplinary proceedings pursuant to s. 402.310~~,~~ for such refusal.

Section 9. Section 402.3115, Florida Statutes, is amended to read:

402.3115 ~~Elimination of duplicative and unnecessary inspections;~~ Abbreviated inspections. ~~The Department of Children and Family Services and local governmental agencies that license child care facilities shall develop and implement a plan to eliminate duplicative and unnecessary inspections of child care facilities. In addition,~~ The department and the local licensing ~~governmental~~ agencies shall conduct ~~develop and implement an~~ abbreviated inspections of ~~inspection plan for~~ child care facilities licensed under s. 402.305, family child care homes licensed under s. 402.313, and large family child care homes licensed under s. 402.3131 that have had no Class I ~~1~~ or Class II violations ~~2 deficiencies~~, as defined by rule, for at least 2 consecutive years. The abbreviated inspection must include those elements identified by the department and the local licensing ~~governmental~~ agencies as being key indicators of whether the child care facility continues to provide quality care and programming. The department shall adopt rules establishing criteria and procedures for abbreviated inspections and inspection schedules that provide for both announced and

unannounced inspections.

Section 10. Section 402.313, Florida Statutes, is amended to read:

402.313 Family child ~~day~~ care homes.—

(1) A family child ~~day~~ care home must ~~homes shall~~ be licensed under this section ~~act~~ if it is ~~they are~~ presently being licensed under an existing county licensing ordinance, ~~or if~~ the board of county commissioners passes a resolution that requires licensure of family child ~~day~~ care homes, or the family child care home is operating a program under s. 1002.55, s. 1002.61, or s. 1002.88 ~~be licensed~~. Each licensed or registered family child care home must conspicuously display its license or registration in an area viewable by all parents during hours of operation.

(a) If not subject to license, a family child ~~day~~ care home must comply with this section and ~~homes shall~~ register annually with the department, providing the following information:

1. The name and address of the home.

2. The name of the operator.

3. The number of children served.

4. Proof of a written plan to identify a ~~provide at least one other~~ competent adult who has met the screening and training requirements of the department to serve as a designated ~~to be available to~~ substitute for the operator ~~in an emergency~~. This plan must ~~shall~~ include the name, address, and telephone number of the designated substitute who will serve in the absence of the operator.

~~5. Proof of screening and background checks.~~

~~6. Proof of successful completion of the 30-hour training~~

~~course, as evidenced by passage of a competency examination, which shall include:~~

~~a. State and local rules and regulations that govern child care.~~

~~b. Health, safety, and nutrition.~~

~~c. Identifying and reporting child abuse and neglect.~~

~~d. Child development, including typical and atypical language development; and cognitive, motor, social, and self-help skills development.~~

~~e. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine a child's developmental level.~~

~~f. Specialized areas, including early literacy and language development of children from birth to 5 years of age, as determined by the department, for owner-operators of family day care homes.~~

5.~~7.~~ Proof that immunization records are kept current.

~~8. Proof of completion of the required continuing education units or clock hours.~~

Upon receipt of registration information submitted by a family child care home, the department shall verify that the home is in compliance with the background screening requirements in subsection (3) and that the operator and the designated substitute have successfully completed the 30-clock-hour training course, as evidenced by passage of a competency examination, and required continuing education units or clock hours.

(b) A family child ~~day~~ care home may volunteer to be

licensed ~~under this act~~.

(c) The department may provide technical assistance to counties and operators of family child ~~day~~ care homes ~~home providers~~ to enable counties and operators ~~family day care providers~~ to achieve compliance with family child ~~day~~ care home ~~homes~~ standards.

(2) This information shall be included in a directory to be published annually by the department to inform the public of available child care facilities.

(3) Child care personnel in family child ~~day~~ care homes are ~~shall be~~ subject to the applicable screening provisions contained in ss. 402.305(2) and 402.3055. For purposes of screening in family child ~~day~~ care homes, the term "child care personnel" includes the operator, the designated substitute, any member over the age of 12 years of a family child ~~day~~ care home operator's family, or persons over the age of 12 years residing with the operator in the family child ~~day~~ care home. Members of the operator's family, or persons residing with the operator, who are between the ages of 12 years and 18 years may ~~shall~~ not be required to be fingerprinted~~,~~ but shall be screened for delinquency records.

(4) Operators of family child ~~day~~ care homes and an individual serving as a substitute for the operator must:

(a) Successfully complete an approved 30-clock-hour introductory course in child care, as evidenced by passage of a competency examination, before caring for children. The course must include:

1. State and local rules and regulations that govern child care.

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2. Health, safety, and nutrition.

3. Identifying and reporting child abuse and neglect.

4. Child development, including typical and atypical language development, and cognitive, motor, social, and executive functioning skills development.

5. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine a child's developmental level.

6. Specialized areas, including numeracy, early literacy, and language development of children from birth to 5 years of age, as determined by the department, for operators of family child care homes.

(b) ~~(5)~~ Annually ~~In order to further develop their child care skills and, if appropriate, their administrative skills, operators of family day care homes shall be required to~~ complete an additional 1 continuing education unit of ~~approved~~ training regarding child care and administrative skills or 10 clock hours of equivalent training, as determined by the department~~,~~ ~~annually~~.

(c) ~~(6) Operators of family day care homes shall be required to~~ Complete a 0.5 continuing education unit of approved training in numeracy, early literacy, and language development of children from birth to 5 years of age one time. The year that this training is completed, it shall fulfill the 0.5 continuing education unit or 5 clock hours of the annual training required in paragraph (b) ~~subsection (5)~~.

(5) ~~(7)~~ Operators of family child ~~day~~ care homes must ~~shall be required~~ annually ~~to~~ complete a health and safety home inspection self-evaluation checklist developed by the department

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in conjunction with the statewide resource and referral program. The completed checklist shall be signed by the operator of the family child ~~day~~ care home and provided to parents as certification that basic health and safety standards are being met.

(6)~~(8)~~ Operators of family child ~~day~~ care homes ~~home operators~~ may avail themselves of supportive services offered by the department.

(7)~~(9)~~ The department shall prepare a brochure on family child ~~day~~ care for distribution by the department and by local licensing agencies, if appropriate, to family child ~~day~~ care homes for distribution to parents using ~~utilizing~~ such child care, and to all interested persons, including physicians and other health professionals; mental health professionals; school teachers or other school personnel; social workers or other professional child care, foster care, residential, or institutional workers; and law enforcement officers. The brochure shall, at a minimum, contain the following information:

(a) A brief description of the requirements for family child ~~day~~ care registration, training, and background ~~fingerprinting and~~ screening.

(b) A listing of those counties that require licensure of family child ~~day~~ care homes. Such counties shall provide an addendum to the brochure that provides a brief description of the licensure requirements or may provide a brochure in lieu of the one described in this subsection, provided it contains all the required information on licensure and the required information in the subsequent paragraphs.

(c) A statement indicating that information about the

family child ~~day~~ care home's compliance with applicable state or local requirements can be obtained from ~~by telephoning~~ the department ~~office~~ or ~~the office of~~ the local licensing agency, including the~~, if appropriate, at a~~ telephone number or numbers and website address for the department or local licensing agency, as applicable ~~which shall be affixed to the brochure~~.

(d) The statewide toll-free telephone number of the central abuse hotline, together with a notice that reports of suspected and actual child physical abuse, sexual abuse, and neglect are received and referred for investigation by the hotline.

(e) Any other information relating to competent child care that the department or local licensing agency, if preparing a separate brochure, considers ~~deems would be~~ helpful to parents and other caretakers in their selection of a family child ~~day~~ care home.

(8)~~(10)~~ On an annual basis, the department shall evaluate the registration and licensure system for family child ~~day~~ care homes. Such evaluation shall, at a minimum, address the following:

(a) The number of family child ~~day~~ care homes registered and licensed and the dates of such registration and licensure.

(b) The number of children being served in both registered and licensed family child ~~day~~ care homes and any available slots in such homes.

(c) The number of complaints received concerning family child ~~day~~ care, the nature of the complaints, and the resolution of such complaints.

(d) The training activities used ~~utilized~~ by child care personnel in family child ~~day~~ care homes for meeting the state

or local training requirements.

The evaluation shall be used ~~utilized~~ by the department in any administrative modifications or adjustments to be made in the registration of family child ~~day~~ care homes or in any legislative requests for modifications to the system of registration or to other requirements for family child ~~day~~ care homes.

~~(11) In order to inform the public of the state requirement for registration of family day care homes as well as the other requirements for such homes to legally operate in the state, the department shall institute a media campaign to accomplish this end. Such a campaign shall include, at a minimum, flyers, newspaper advertisements, radio advertisements, and television advertisements.~~

(9)~~(12)~~ Notwithstanding any other state or local law or ordinance, any family child ~~day~~ care home licensed pursuant to this chapter or pursuant to a county ordinance shall be charged the utility rates accorded to a residential home. A licensed family child ~~day~~ care home may not be charged commercial utility rates.

(10)~~(13)~~ The department shall, by rule, establish minimum standards for family child ~~day~~ care homes that are required to be licensed by county licensing ordinance or county licensing resolution or that voluntarily choose to be licensed. The standards should include requirements for staffing, training, maintenance of immunization records, minimum health and safety standards, reduced standards for the regulation of child care during evening hours by municipalities and counties, and

enforcement of standards.

(11)~~(14)~~ ~~During the months of August and September of each year,~~ Each family child ~~day~~ care home shall provide parents of children enrolling ~~enrolled~~ in the home detailed information regarding the causes, symptoms, and transmission of the influenza virus in an effort to educate those parents regarding the importance of immunizing their children against influenza as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Section 11. Subsections (3), (5), and (9) of section 402.3131, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

402.3131 Large family child care homes.—

(3) Operators of large family child care homes must successfully complete an approved 40-clock-hour introductory course in group child care, including numeracy, early literacy, and language development of children from birth to 5 years of age, as evidenced by passage of a competency examination. Successful completion of the 40-clock-hour introductory course shall articulate into community college credit in early childhood education, pursuant to ss. 1007.24 and 1007.25.

(5) Operators of large family child care homes shall be required to complete 0.5 continuing education unit of approved training or 5 clock hours of equivalent training, as determined by the department, in numeracy, early literacy, and language development of children from birth to 5 years of age one time. The year that this training is completed, it shall fulfill the 0.5 continuing education unit or 5 clock hours of the annual training required in subsection (4).

(9) ~~During the months of August and September of each year,~~ Each large family child care home shall provide parents of children enrolling ~~enrolled~~ in the home detailed information regarding the causes, symptoms, and transmission of the influenza virus in an effort to educate those parents regarding the importance of immunizing their children against influenza as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(10) Notwithstanding any other state or local law or ordinance, any large family child care home licensed pursuant to this chapter or pursuant to a county ordinance may not be charged commercial utility rates, but shall be charged the rates accorded to a residential home.

Section 12. Subsections (4), (5), and (6) are added to section 402.316, Florida Statutes, to read:

402.316 Exemptions.—

(4) A child care facility operating under subsection (1) which is applying to operate or is operating as a provider of a program described in s. 1002.55, s. 1002.61, or s. 1002.88 must substantially comply with the minimum standards for child care facilities adopted pursuant to ss. 402.305-402.3057 and must allow the department or local licensing agency access to monitor and enforce compliance with such standards.

(a) The department or local licensing agency may pursue administrative or judicial action under ss. 402.310-402.312 and the rules adopted under those sections against any child care facility operating under this subsection to enforce substantial compliance with child care facility minimum standards or to protect the health, safety, and well-being of any children in

the facility's care. A child care facility operating under this subsection is subject to ss. 402.310-402.312 and the rules adopted under those sections to the same extent as a child care facility licensed under ss. 402.301-402.319.

(b) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for a person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any required written documentation for exclusion from licensure pursuant to this section a material fact used in making a determination as to such exclusion; or

2. Use information from the criminal records obtained under s. 402.305 or s. 402.3055 for a purpose other than screening that person for employment as specified in those sections or to release such information to any other person for a purpose other than screening for employment as specified in those sections.

(c) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for a person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under s. 402.305 or s. 402.3055 for a purpose other than screening for employment as specified in those sections or to release information from such records to any other person for a purpose other than screening for employment as specified in those sections.

(5) The department shall establish a fee for inspection and compliance activities performed pursuant to this section in an amount sufficient to cover costs. However, the amount of such fee for the inspection of a program may not exceed the fee

imposed for child care licensure pursuant to s. 402.315.

(6) The inclusion of a child care facility operating under subsection (1) as a provider of a program described in s. 1002.55, s. 1002.61, or s. 1002.88 does not expand the regulatory authority of the state, its officers, or any early learning coalition to impose any additional regulation of child care facilities beyond those reasonably necessary to enforce requirements expressly set forth in this section.

Section 13. Section 627.70161, Florida Statutes, is amended to read:

627.70161 Residential property insurance coverage; family child ~~day~~ care homes and large family child care homes ~~insurance~~.—

(1) PURPOSE AND INTENT.—The Legislature recognizes that family child ~~day~~ care homes and large family child care homes fulfill a vital role in providing child care in Florida. It is the intent of the Legislature that residential property insurance coverage should not be canceled, denied, or nonrenewed solely because child ~~on the basis of the family day~~ care services are provided at the residence. The Legislature also recognizes that the potential liability of residential property insurers is substantially increased by the rendition of child care services on the premises. The Legislature therefore finds that there is a public need to specify that contractual liabilities associated ~~that arise in connection~~ with the operation of a ~~the~~ family child ~~day~~ care home or large family child care home are excluded from residential property insurance policies unless they are specifically included in such coverage.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Child care" means the care, protection, and supervision of a child, for a period up to ~~of less than~~ 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.

(b) "Family child ~~day~~ care home" has the same meaning as provided in s. 402.302(8) ~~means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for a profit~~.

(c) "Large family child care home" has the same meaning as provided in s. 402.302(11).

(3) CHILD ~~FAMILY DAY~~ CARE; COVERAGE.—A residential property insurance policy may ~~shall~~ not provide coverage for liability for claims arising out of, or in connection with, the operation of a family child ~~day~~ care home or large family child care home, and the insurer shall be under no obligation to defend against lawsuits covering such claims, unless:

(a) Specifically covered in a policy; or

(b) Covered by a rider or endorsement for business coverage attached to a policy.

(4) DENIAL, CANCELLATION, REFUSAL TO RENEW PROHIBITED.—An insurer may not deny, cancel, or refuse to renew a policy for residential property insurance solely on the basis that the policyholder or applicant operates a family child ~~day~~ care home or large family child care home. In addition to other lawful reasons for refusing to insure, an insurer may deny, cancel, or

refuse to renew a policy of a family child ~~day~~ care home or large family child care home provider if one or more of the following conditions occur:

(a) The policyholder or applicant provides care for more children than authorized for family child ~~day~~ care homes or large family child care homes by s. 402.302;

(b) The policyholder or applicant fails to maintain a separate commercial liability policy or an endorsement providing liability coverage for ~~the~~ family child ~~day~~ care home or large family child care home operations;

(c) The policyholder or applicant fails to comply with the family child ~~day~~ care home licensure and registration requirements specified in s. 402.313 or the large family child care home licensure requirements specified in s. 402.3131; or

(d) Discovery of willful or grossly negligent acts or omissions or any violations of state laws or regulations establishing safety standards for family child ~~day~~ care homes and large family child care homes by the named insured or his or her representative which materially increase any of the risks insured.

Section 14. Subsections (7), (8), and (9) are added to section 1001.213, Florida Statutes, to read:

1001.213 Office of Early Learning.—There is created within the Office of Independent Education and Parental Choice the Office of Early Learning, as required under s. 20.15, which shall be administered by an executive director. The office shall be fully accountable to the Commissioner of Education but shall:

(7) Hire a general counsel who reports directly to the executive director of the office.

(8) Hire an inspector general who reports directly to the executive director of the office and to the Chief Inspector General pursuant to s. 14.32.

(9) By July 1, 2016, develop and implement, in consultation with early learning coalitions and providers of the Voluntary Prekindergarten Education Program and the child care and development program, best practices for providing parental notifications in the parent's native language to a parent whose native language is a language other than English.

Section 15. Subsection (4) of section 1002.53, Florida Statutes, is amended to read:

1002.53 Voluntary Prekindergarten Education Program; eligibility and enrollment.—

(4)(a) Each parent enrolling a child in the Voluntary Prekindergarten Education Program must complete and submit an application to the early learning coalition through the single point of entry established under s. 1002.82 or to a private prekindergarten provider if the provider is authorized by the early learning coalition to determine student eligibility for enrollment in the program.

(b) The application must be submitted on forms prescribed by the Office of Early Learning and must be accompanied by a certified copy of the child's birth certificate. The forms must include a certification, in substantially the form provided in s. 1002.71(6)(b)2., that the parent chooses the private prekindergarten provider or public school in accordance with this section and directs that payments for the program be made to the provider or school. The Office of Early Learning may authorize alternative methods for submitting proof of the

child's age in lieu of a certified copy of the child's birth certificate.

(c) If a private prekindergarten provider has been authorized to determine child eligibility and enrollment, upon receipt of an application, the provider must:

1. Determine the child's eligibility for the program and be responsible for any errors in such determination.

2. Retain the original application and certified copy of the child's birth certificate or authorized alternative proof of age on file for at least 5 years.

The early learning coalition may audit applications held by a private prekindergarten provider in the coalition's service area to determine whether children enrolled and reported for funding by the provider have met the eligibility criteria in subsection (2).

(d) ~~(c)~~ Each early learning coalition shall coordinate with each of the school districts within the coalition's county or multicounty region in the development of procedures for enrolling children in prekindergarten programs delivered by public schools, including procedures for making child eligibility determinations and auditing enrollment records to confirm that enrolled children have met eligibility requirements.

Section 16. Section 1002.55, Florida Statutes, is amended to read:

1002.55 School-year prekindergarten program delivered by private prekindergarten providers.—

(1) Each early learning coalition shall administer the

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Voluntary Prekindergarten Education Program at the county or regional level for students enrolled under s. 1002.53(3)(a) in a school-year prekindergarten program delivered by a private prekindergarten provider. Each early learning coalition shall cooperate with the Office of Early Learning and the Child Care Services Program Office of the Department of Children and Families to reduce paperwork and to avoid duplicating interagency activities, health and safety monitoring, and acquiring and composing data pertaining to child care training and credentialing.

(2) Each school-year prekindergarten program delivered by a private prekindergarten provider must comprise at least 540 instructional hours.

(3) To be eligible to deliver the prekindergarten program, a private prekindergarten provider must meet each of the following requirements:

~~(a) The private prekindergarten provider must be a child care facility licensed under s. 402.305, family day care home licensed under s. 402.313, large family child care home licensed under s. 402.3131, nonpublic school exempt from licensure under s. 402.3025(2), or faith-based child care provider exempt from licensure under s. 402.316.~~

(a) ~~(b)~~ The private prekindergarten provider must:

1. Be accredited by an accrediting association that is a member of the National Council for Private School Accreditation, or the Florida Association of Academic Nonpublic Schools, or be accredited by the Southern Association of Colleges and Schools, or Western Association of Colleges and Schools, or North Central Association of Colleges and Schools, or Middle States

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Association of Colleges and Schools, or New England Association of Colleges and Schools; and have written accreditation standards that meet or exceed the state's licensing requirements under s. 402.305, s. 402.313, or s. 402.3131 and require at least one onsite visit to the provider or school before accreditation is granted;

2. Hold a current Gold Seal Quality Care designation under s. 402.281; ~~or~~

3. Be licensed under s. 402.305, s. 402.313, or s. 402.3131; or

4. Be a child development center located on a military installation that is certified by the United States Department of Defense.

(b) The private prekindergarten provider must provide basic health and safety on its premises and in its facilities. For a public school, compliance with ss. 1003.22 and 1013.12 satisfies this requirement. For a nonpublic school, compliance with s. 402.3025(2)(d) satisfies this requirement. For a child care facility, a licensed family child care home, or a large family child care home, compliance with s. 402.305, s. 402.313, or s. 402.3131, respectively, satisfies this requirement. For a facility exempt from licensure, compliance with s. 402.316(4) satisfies this requirement ~~and demonstrate, before delivering the Voluntary Prekindergarten Education Program, as verified by the early learning coalition, that the provider meets each of the requirements of the program under this part, including, but not limited to, the requirements for credentials and background screenings of prekindergarten instructors under paragraphs (c) and (d), minimum and maximum class sizes under paragraph (f),~~

~~prekindergarten director credentials under paragraph (g), and a developmentally appropriate curriculum under s. 1002.67(2)(b)~~.

(c) The private prekindergarten provider must have, for each prekindergarten class of 11 children or fewer, at least one prekindergarten instructor who meets each of the following requirements:

1. The prekindergarten instructor must hold, at a minimum, one of the following credentials:

a. A child development associate credential issued by the National Credentialing Program of the Council for Professional Recognition; ~~or~~

b. A credential approved by the Department of Children and Families, pursuant to s. 402.305(3)(c), as being equivalent to or greater than the credential described in sub-subparagraph a.;

c. An associate or higher degree in child development;

d. An associate or higher degree in an unrelated field, at least 6 credit hours in early childhood education or child development, and at least 480 hours of experience in teaching or providing child care services for children any age from birth through 8 years of age;

e. A baccalaureate or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science;

f. A baccalaureate or higher degree in family and child science and at least 480 hours of experience in teaching or providing child care services for children any age from birth through 8 years of age;

g. A baccalaureate or higher degree in elementary education if the prekindergarten instructor has been certified to teach

children of any age from birth through grade 6, regardless of whether the instructor's educator certificate is current, and if the instructor is not ineligible to teach in a public school because his or her educator certificate is suspended or revoked; or

h. A credential approved by the department as being equivalent to or greater than a credential described in sub-subparagraphs a.-f. The department may adopt criteria and procedures for approving such equivalent credentials.

~~The Department of Children and Families may adopt rules under ss. 120.536(1) and 120.54 which provide criteria and procedures for approving equivalent credentials under sub-subparagraph b.~~

2. The prekindergarten instructor must successfully complete an emergent literacy training course and a student performance standards training course approved by the office as meeting or exceeding the minimum standards adopted under s. 1002.59. The requirement for completion of the standards training course shall take effect July 1, 2015 ~~2014~~, and the course shall be available online.

(d) Beginning January 1, 2015, at least 50 percent of the instructors employed by a prekindergarten provider at each location must be trained in first aid and infant and child cardiopulmonary resuscitation, as evidenced by current documentation of course completion, unless the instructor is not responsible for supervising children in care. As a condition of employment, instructors hired on or after January 1, 2015, must complete this training within 60 days after employment. ~~Each prekindergarten instructor employed by the private~~

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~~prekindergarten provider must be of good moral character, must be screened using the level 2 screening standards in s. 435.04 before employment and rescreened at least once every 5 years, must be denied employment or terminated if required under s. 435.06, and must not be ineligible to teach in a public school because his or her educator certificate is suspended or revoked.~~

~~(c) A private prekindergarten provider may assign a substitute instructor to temporarily replace a credentialed instructor if the credentialed instructor assigned to a prekindergarten class is absent, as long as the substitute instructor is of good moral character and has been screened before employment in accordance with level 2 background screening requirements in chapter 435. The Office of Early Learning shall adopt rules to implement this paragraph which shall include required qualifications of substitute instructors and the circumstances and time limits for which a private prekindergarten provider may assign a substitute instructor.~~

(e) ~~(f)~~ Each of the private prekindergarten provider's prekindergarten classes must be composed of at least 4 students but may not exceed 20 students. In order to protect the health and safety of students, each private prekindergarten provider must also provide appropriate adult supervision for students at all times and, for each prekindergarten class composed of 12 or more students, must have, in addition to a prekindergarten instructor who meets the requirements of paragraph (c), at least one adult prekindergarten instructor who is not required to meet those requirements but who must meet each requirement of s. 402.305(2) ~~paragraph (d)~~. This paragraph does not supersede any requirement imposed on a provider under ss. 402.301-402.319.

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(f) Beginning January 1, 2016, the private prekindergarten provider must employ child care personnel who hold a high school diploma or its equivalent and are at least 18 years of age, unless the personnel are not responsible for supervising children in care or are under direct supervision and are not counted for the purposes of computing the personnel-to-child ratio.

(g) The private prekindergarten provider must have a prekindergarten director who has a prekindergarten director credential that is approved by the office as meeting or exceeding the minimum standards adopted under s. 1002.57. Successful completion of a child care facility director credential under s. 402.305(2)(f) before the establishment of the prekindergarten director credential under s. 1002.57 or July 1, 2006, whichever occurs later, satisfies the requirement for a prekindergarten director credential under this paragraph.

(h) The private prekindergarten provider must register with the early learning coalition on forms prescribed by the Office of Early Learning.

(i) The private prekindergarten provider must execute the statewide provider contract prescribed under s. 1002.75, except that an individual who owns or operates multiple private prekindergarten providers within a coalition's service area may execute a single agreement with the coalition on behalf of each provider.

(j) The private prekindergarten provider must maintain general liability insurance and provide the coalition with written evidence of general liability insurance coverage, including coverage for transportation of children if

prekindergarten students are transported by the provider. A provider must obtain and retain an insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. ~~A provider must add the coalition as a named certificateholder and as an additional insured.~~ A provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the entire period of the provider contract with the coalition.

(k) The private prekindergarten provider must obtain and maintain any required workers' compensation insurance under chapter 440 and any required reemployment assistance or unemployment compensation coverage under chapter 443, unless exempt under state or federal law.

(l) Notwithstanding paragraph (j), for a private prekindergarten provider that is a state agency or a subdivision thereof, as defined in s. 768.28(2), the provider must agree to notify the coalition of any additional liability coverage maintained by the provider in addition to that otherwise established under s. 768.28. The provider shall indemnify the coalition to the extent permitted by s. 768.28.

(m) The private prekindergarten provider shall be denied initial eligibility to offer the program if the provider has been cited for a Class I violation in the 12 months before seeking eligibility.

(n) ~~(m)~~ The private prekindergarten provider must deliver

the Voluntary Prekindergarten Education Program in accordance with this part and have child disciplinary policies that prohibit children from being subjected to discipline that is severe, humiliating, frightening, or associated with food, rest, toileting, spanking, or any other form of physical punishment as provided in s. 402.305(12).

~~(4) A prekindergarten instructor, in lieu of the minimum credentials and courses required under paragraph (3)(c), may hold one of the following educational credentials:~~

~~(a) A bachelor's or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science;~~

~~(b) A bachelor's or higher degree in elementary education, if the prekindergarten instructor has been certified to teach children any age from birth through 6th grade, regardless of whether the instructor's educator certificate is current, and if the instructor is not ineligible to teach in a public school because his or her educator certificate is suspended or revoked;~~

~~(c) An associate's or higher degree in child development;~~

~~(d) An associate's or higher degree in an unrelated field, at least 6 credit hours in early childhood education or child development, and at least 480 hours of experience in teaching or providing child care services for children any age from birth through 8 years of age; or~~

~~(e) An educational credential approved by the department as being equivalent to or greater than an educational credential described in this subsection. The department may adopt criteria and procedures for approving equivalent educational credentials under this paragraph.~~

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~~(5) Notwithstanding paragraph (3)(b), a private prekindergarten provider may not participate in the Voluntary Prekindergarten Education Program if the provider has child disciplinary policies that do not prohibit children from being subjected to discipline that is severe, humiliating, frightening, or associated with food, rest, toileting, spanking, or any other form of physical punishment as provided in s. 402.305(12).~~

Section 17. Subsection (1) of section 1002.59, Florida Statutes, is amended to read:

1002.59 Emergent literacy and performance standards training courses.—

(1) The office shall adopt minimum standards for one or more training courses in emergent literacy for prekindergarten instructors. Each course must comprise 5 clock hours and provide instruction in strategies and techniques to address the age-appropriate progress of prekindergarten students in developing emergent literacy skills, including oral communication, knowledge of print and letters, phonemic and phonological awareness, and vocabulary and comprehension development. Each course must also provide resources containing strategies that allow students with disabilities and other special needs to derive maximum benefit from the Voluntary Prekindergarten Education Program. Successful completion of an emergent literacy training course approved under this section satisfies requirements for approved training in early literacy and language development under ss. 402.305(2)(d)5., 402.313(4)(c) ~~402.313(6)~~, and 402.3131(5).

Section 18. Subsections (4) through (7) of section 1002.61,

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Florida Statutes, are amended to read:

1002.61 Summer prekindergarten program delivered by public schools and private prekindergarten providers.—

(4) ~~Notwithstanding ss. 1002.55(3)(c)1. and 1002.63(4),~~ Each public school and private prekindergarten provider that delivers the summer prekindergarten program must have, for each prekindergarten class, at least one prekindergarten instructor who is a certified teacher or holds one of the educational credentials specified in s. 1002.55(3)(c)1.e.-h. ~~1002.55(4)(a) or (b).~~ As used in this subsection, the term "certified teacher" means a teacher holding a valid Florida educator certificate under s. 1012.56 who has the qualifications required by the district school board to instruct students in the summer prekindergarten program. In selecting instructional staff for the summer prekindergarten program, each school district shall give priority to teachers who have experience or coursework in early childhood education.

(5) Each prekindergarten instructor employed by a ~~public school or~~ private prekindergarten provider delivering the summer prekindergarten program must be of good moral character, must undergo background screening pursuant to s. 402.305(2)(a) ~~be screened using the level 2 screening standards in s. 435.04~~ before employment, must be ~~and~~ rescreened at least once every 5 years, and must be denied employment or terminated if required under s. 435.06. Each prekindergarten instructor employed by a public school delivering the summer prekindergarten program~~, and~~ must satisfy the ~~not be ineligible to teach in a public school because his or her educator certificate is suspended or revoked. This subsection does not supersede~~ employment requirements for

instructional personnel in public schools as provided in s. 1012.32 ~~which are more stringent than the requirements of this subsection~~.

(6) A public school or private prekindergarten provider may assign a substitute instructor to temporarily replace a credentialed instructor if the credentialed instructor assigned to a prekindergarten class is absent, as long as the substitute instructor meets the requirements of subsection (5) ~~is of good moral character and has been screened before employment in accordance with level 2 background screening requirements in chapter 435. This subsection does not supersede employment requirements for instructional personnel in public schools which are more stringent than the requirements of this subsection.~~ The Office of Early Learning shall adopt rules to implement this subsection which must ~~shall~~ include required qualifications of substitute instructors and the circumstances and time limits for which a public school or private prekindergarten provider may assign a substitute instructor.

(7) Notwithstanding ss. 1002.55(3)(e) ~~1002.55(3)(f)~~ and 1002.63(7), each prekindergarten class in the summer prekindergarten program, regardless of whether the class is a public school's or private prekindergarten provider's class, must be composed of at least 4 students but may not exceed 12 students ~~beginning with the 2009 summer session~~. In order to protect the health and safety of students, each public school or private prekindergarten provider must also provide appropriate adult supervision for students at all times. This subsection does not supersede any requirement imposed on a provider under ss. 402.301-402.319.

Section 19. Subsections (5) and (6) of section 1002.63, Florida Statutes, are amended to read:

1002.63 School-year prekindergarten program delivered by public schools.—

(5) Each prekindergarten instructor employed by a public school delivering the school-year prekindergarten program must satisfy the ~~be of good moral character, must be screened using the level 2 screening standards in s. 435.04 before employment and rescreened at least once every 5 years, must be denied employment or terminated if required under s. 435.06, and must not be ineligible to teach in a public school because his or her educator certificate is suspended or revoked. This subsection does not supersede~~ employment requirements for instructional personnel in public schools as provided in s. 1012.32 ~~which are more stringent than the requirements of this subsection~~.

(6) A public school prekindergarten provider may assign a substitute instructor to temporarily replace a credentialed instructor if the credentialed instructor assigned to a prekindergarten class is absent, as long as the substitute instructor meets the requirements of subsection (5) ~~is of good moral character and has been screened before employment in accordance with level 2 background screening requirements in chapter 435. This subsection does not supersede employment requirements for instructional personnel in public schools which are more stringent than the requirements of this subsection~~. The Office of Early Learning shall adopt rules to implement this subsection which must ~~shall~~ include required qualifications of substitute instructors and the circumstances and time limits for which a public school prekindergarten provider may assign a

substitute instructor.

Section 20. Paragraph (a) of subsection (6) of section 1002.71, Florida Statutes, is amended to read:

1002.71 Funding; financial and attendance reporting.—

(6)(a) Each parent enrolling his or her child in the Voluntary Prekindergarten Education Program must agree to comply with the attendance policy of the private prekindergarten provider or district school board, as applicable. Upon enrollment of the child, the private prekindergarten provider or public school, as applicable, must provide the child's parent with program information, including, but not limited to, child development, expectations for parent engagement, the daily schedule, and the ~~a copy of the provider's or school district's~~ attendance policy, which must include procedures for contacting a parent on the second consecutive day a child is absent for which the reason is unknown ~~as applicable~~.

Section 21. Subsection (1) of section 1002.75, Florida Statutes, is amended to read:

1002.75 Office of Early Learning; powers and duties.—

(1) The Office of Early Learning shall adopt by rule a standard statewide provider contract to be used with each Voluntary Prekindergarten Education Program provider, with standardized attachments by provider type. The office shall publish a copy of the standard statewide provider contract on its website. The standard statewide contract must ~~shall~~ include, at a minimum, provisions that:

(a) Govern ~~for~~ provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the

health, safety, or welfare of children. The standard statewide contract shall also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services.

(b) Require each private prekindergarten provider to conspicuously post on the premises, pursuant to s. 402.3125(1)(b), in an area visible to parents each citation for a Class I violation, as defined by rule of the Department of Children and Families, which results in disciplinary action. Such posting must use simple language to describe each violation with specificity and include a copy of the citation and the contact information of the Department of Children and Families or the local licensing agency from which the parent may obtain additional information regarding the citation. Posting of a Class I violation by the provider must occur within 24 hours after receipt of the citation. Additionally, such provider shall post each inspection report on the premises in an area visible to parents, which report must remain posted until the next inspection report is available.

(c) Specify that child care personnel employed by the provider who are responsible for supervising children in care must be trained in developmentally appropriate practices aligned to the age and needs of children over which the personnel are assigned supervision duties. This requirement is met by the completion of developmentally appropriate practice courses administered by the Department of Children and Families under s. 402.305(2)(d)1. within 30 days after being assigned such children if the child care personnel has not previously completed the training.

Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable.

Section 22. Section 1002.77, Florida Statutes, is amended to read:

1002.77 Florida Early Learning Advisory Council.—

(1) There is created the Florida Early Learning Advisory Council within the Office of Early Learning. The purpose of the advisory council is to provide written input ~~submit recommendations~~ to the executive director ~~office~~ on early learning best practices, including ~~recommendations relating to the most~~ effective program administration; ~~of the Voluntary Prekindergarten Education Program under this part and the school readiness program under part VI of this chapter. The advisory council shall periodically analyze and provide recommendations to the office on the~~ effective and efficient use of local, state, and federal funds; ~~the content of~~ professional development training programs; and ~~best practices for the development and implementation of~~ coalition plans pursuant to s. 1002.85.

(2) The advisory council shall be composed of the following members:

(a) The chair of the advisory council who shall be appointed by and serve at the pleasure of the Governor.

(b) The chair of each early learning coalition.

(c) One member who shall be appointed by and serve at the pleasure of the President of the Senate.

(d) One member who shall be appointed by and serve at the pleasure of the Speaker of the House of Representatives.

The chair of the advisory council appointed by the Governor and the members appointed by the presiding officers of the Legislature must be from the business community and be in compliance with s. 1002.83(5).

(3) The advisory council shall meet at least quarterly upon the call of the executive director ~~but may meet as often as necessary to carry out its duties and responsibilities~~. The executive director is encouraged to ~~advisory council may~~ use communications media technology ~~any method of telecommunications~~ to conduct meetings in accordance with s. 120.54(5)(b)~~,~~ ~~including establishing a quorum through telecommunications, only if the public is given proper notice of a telecommunications meeting and reasonable access to observe and, when appropriate, participate~~.

(4)(a) Each member of the advisory council may ~~shall~~ serve without compensation but is entitled to receive reimbursement for per diem and travel expenses for attendance at council meetings as provided in s. 112.061.

(b) Each member of the advisory council is subject to the ethics provisions in part III of chapter 112.

(c) For purposes of tort liability, each member of the advisory council shall be governed by s. 768.28.

(5) The Office of Early Learning shall provide staff and administrative support for the advisory council as determined by the executive director.

Section 23. Paragraph (f) of subsection (1) and subsections (8) and (16) of section 1002.81, Florida Statutes, are amended to read:

1002.81 Definitions.—Consistent with the requirements of 45 C.F.R. parts 98 and 99 and as used in this part, the term:

(1) "At-risk child" means:

(f) A child in the custody of a parent who is considered homeless as verified by a designated lead agency on the homeless assistance continuum of care established under ss. 420.622-420.624 ~~Department of Children and Families certified homeless shelter~~.

(8) "Family income" means the combined gross income, whether earned or unearned, that is derived from any source by all family or household members who are 18 years of age or older who are currently residing together in the same dwelling unit. The term does not include:

(a) Income earned by a currently enrolled high school student who, since attaining the age of 18 years, or a student with a disability who, since attaining the age of 22 years, has not terminated school enrollment or received a high school diploma, high school equivalency diploma, special diploma, or certificate of high school completion.

(b) Income earned by a teen parent residing in the same residence as a separate family unit.

(c) Selected items from the state's Child Care and Development Fund Plan, such as ~~The term also does not include~~ food stamp benefits, documented child support and alimony payments paid out of the home, or federal housing assistance payments issued directly to a landlord or the associated utilities expenses.

(16) "Working family" means:

(a) A single-parent family in which the parent with whom

the child resides is employed or engaged in eligible work or education activities for at least 20 hours per week or is exempt from work requirements due to age or disability, as determined and documented by a physician licensed under chapter 458 or chapter 459;

(b) A two-parent family in which both parents with whom the child resides are employed or engaged in eligible work or education activities for a combined total of at least 40 hours per week; ~~or~~

(c) A two-parent family in which one of the parents with whom the child resides is exempt from work requirements due to age or disability, as determined and documented by a physician licensed under chapter 458 or chapter 459, and one parent is employed or engaged in eligible work or education activities at least 20 hours per week; or

(d) A two-parent family in which both of the parents with whom the child resides are exempt from work requirements due to age or disability, as determined and documented by a physician licensed under chapter 458 or chapter 459.

Section 24. Paragraphs (b), (j), (m), and (p) of subsection (2) of section 1002.82, Florida Statutes, are amended to read:

1002.82 Office of Early Learning; powers and duties.—

(2) The office shall:

(b) Preserve parental choice by permitting parents to choose from a variety of child care categories authorized in s. 1002.88(1)(a)~~, including center-based care, family child care, and informal child care to the extent authorized in the state's Child Care and Development Fund Plan as approved by the United States Department of Health and Human Services pursuant to 45~~

~~C.F.R. s. 98.18~~. Care and curriculum by a faith-based provider may not be limited or excluded in any of these categories.

(j) Develop and adopt standards and benchmarks that address the age-appropriate progress of children in the development of child care and development ~~school readiness~~ skills. The standards for children from birth to 5 years of age in the child care and development ~~school readiness~~ program must be aligned with the performance standards adopted for children in the Voluntary Prekindergarten Education Program and must address the following domains:

1. Approaches to learning.
2. Cognitive development and general knowledge.
3. Numeracy, language, and communication.
4. Physical development.
5. Self-regulation.

By July 1, 2015, the Office of Early Learning shall develop and implement an online training course on the performance standards for child care and development program provider personnel.

(m) Adopt by rule a standard statewide provider contract to be used with each child care and development ~~school readiness~~ program provider, with standardized attachments by provider type. The office shall publish a copy of the standard statewide provider contract on its website. The standard statewide contract must ~~shall~~ include, at a minimum, provisions that:

1. Govern ~~for~~ provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of the children. The standard

statewide provider contract shall also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services.

2. Require each provider that is eligible to provide the program pursuant to s. 1002.88(1)(a) to conspicuously post on the premises, pursuant to s. 402.3125(1)(b), in an area visible to parents each citation for a Class I violation, as defined by rule of the Department of Children and Families, which results in disciplinary action. Such posting must use simple language to describe each violation with specificity and include a copy of the citation and the contact information of the Department of Children and Families or the local licensing agency from which the parent may obtain additional information regarding the citation. Posting of a Class I violation by the provider must occur within 24 hours after receipt of the citation. Additionally, such provider shall post each inspection report on the premises in an area visible to parents, which report must remain posted until the next inspection report is available.

3. Specify that child care personnel employed by the provider who are responsible for supervising children in care must be trained in developmentally appropriate practices aligned to the age and needs of children over which the personnel are assigned supervision duties. This requirement is met by completion of developmentally appropriate practice courses administered by the Department of Children and Families under s. 402.305(2)(d)1. within 30 days after being assigned such children if the child care personnel has not previously completed the training.

4. Require child care personnel who are employed by the provider to complete an online training course on the performance standards adopted pursuant to paragraph (j).

Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable.

(p) Monitor and evaluate the performance of each early learning coalition in administering the child care and development ~~school readiness~~ program and the Voluntary Prekindergarten Education Program, ensuring proper payments for child care and development ~~school readiness~~ program and Voluntary Prekindergarten Education Program services, and implementing the coalition's child care and development ~~school readiness~~ program plan~~, and administering the Voluntary Prekindergarten Education Program~~. These monitoring and performance evaluations must include, at a minimum, onsite monitoring of each coalition's finances, management, operations, and programs.

Section 25. Section 1002.84, Florida Statutes, is amended to read:

1002.84 Early learning coalitions; child care and development ~~school readiness~~ powers and duties.—Each early learning coalition shall:

(1) Administer and implement a local comprehensive program of child care and development ~~school readiness~~ program services in accordance with this part and the rules adopted by the office, which enhances the cognitive, social, and physical development of children to achieve the performance standards.

(2) Establish a uniform waiting list to track eligible

children waiting for enrollment in the child care and development ~~school readiness~~ program in accordance with rules adopted by the office.

(3) Establish a resource and referral network operating under s. 1002.92 to assist parents in making an informed choice and provide maximum parental choice of providers and to provide information on available community resources.

(4) Establish a regional Warm-Line as directed by the office pursuant to s. 1002.82(2)(r). Regional Warm-Line staff shall provide onsite technical assistance, when requested, to assist child care facilities and family day care homes with inquiries relating to the strategies, curriculum, and environmental adaptations the child care facilities and family day care homes may need as they serve children with disabilities and other special needs.

(5) Establish an age-appropriate screening, for children ages birth to 5 years, of each child's development and an appropriate referral process for children with identified delays. Such screening is ~~shall~~ not ~~be~~ a requirement of entry into the child care and development ~~school readiness~~ program and is ~~shall be~~ only given with parental consent.

(6) Implement an age-appropriate preassessment and postassessment of children if specified in the coalition's approved plan.

(7) Determine child eligibility pursuant to s. 1002.87 and provider eligibility pursuant to s. 1002.88. At a minimum, child eligibility must be redetermined annually. Redetermination must also be conducted twice per year for an additional 50 percent of a coalition's enrollment through a statistically valid random

sampling. A coalition must document the reason why a child is no longer eligible for the child care and development ~~school readiness~~ program according to the standard codes prescribed by the office.

(8) Establish a parent sliding fee scale that requires a parent copayment to participate in the child care and development ~~school readiness~~ program. Providers are required to collect the parent's copayment. A coalition may, on a case-by-case basis, waive the copayment for an at-risk child or temporarily waive the copayment for a child whose family's income is at or below the federal poverty level and ~~family~~ experiences a natural disaster or an event that limits the parent's ability to pay, such as incarceration, placement in residential treatment, ~~or becoming homeless,~~ or an emergency situation such as a household fire or burglary, or while the parent is participating in parenting classes. A parent may not transfer child care and development ~~school readiness~~ program services to another child care and development ~~school readiness~~ program provider until the parent has submitted documentation from the current child care and development ~~school readiness~~ program provider to the early learning coalition stating that the parent has satisfactorily fulfilled the copayment obligation.

(9) Establish proper maintenance of records related to eligibility and enrollment files, provider payments, coalition staff background screenings, and other documents required for the implementation of the child care and development ~~school readiness~~ program.

(10) Establish a records retention requirement for sign-in

and sign-out records that is consistent with state and federal law. Attendance records may not be altered or amended after December 31 of the subsequent year.

(11) Follow the tangible personal property requirements of chapter 274 and rules adopted under that chapter.

(12) Comply with federal procurement requirements and the procurement requirements of ss. 215.971, 287.057, and 287.058, except that an early learning coalition is not required to competitively procure direct services for child care and development ~~school readiness~~ program and Voluntary Prekindergarten Education Program providers.

(13) Establish proper information technology security controls, including, but not limited to, periodically reviewing the appropriateness of access privileges assigned to users of certain systems; monitoring system hardware performance and capacity-related issues; and ensuring appropriate backup procedures and disaster recovery plans are in place.

(14) Develop written policies, procedures, and standards for monitoring vendor contracts, including, but not limited to, provisions specifying the particular procedures that may be used to evaluate contractor performance and the documentation that is to be maintained to serve as a record of contractor performance. This subsection does not apply to contracts with child care and development ~~school readiness~~ program providers or Voluntary Prekindergarten Education Program providers.

(15) Monitor child care and development ~~school readiness~~ program providers in accordance with its plan, or in response to a parental complaint, to verify that the standards prescribed in ss. 1002.82 and 1002.88 are being met using a standard

monitoring tool adopted by the office. Providers determined to be high-risk by the coalition, as demonstrated by substantial findings of violations of federal law or the general or local laws of the state, shall be monitored more frequently. Providers with 3 consecutive years of compliance may be monitored biennially.

(16) Adopt a payment schedule that encompasses all programs funded under this part and part V of this chapter. The payment schedule must take into consideration the average market rate, include the projected number of children to be served, and be submitted for approval by the office. Informal child care arrangements shall be reimbursed at not more than 50 percent of the rate adopted for a family day care home.

(17) Implement an anti-fraud plan addressing the detection, reporting, and prevention of overpayments, abuse, and fraud relating to the provision of and payment for child care and development ~~school readiness~~ program and Voluntary Prekindergarten Education Program services and submit the plan to the office for approval, as required by s. 1002.91.

(18) By October 1 of each year, submit an annual report to the office. The report shall conform to the format adopted by the office and must include:

(a) Segregation of child care and development ~~school readiness~~ program funds, Voluntary Prekindergarten Education Program funds, Child Care Executive Partnership Program funds, and other local revenues available to the coalition.

(b) Details of expenditures by fund source, including total expenditures for administrative activities, quality activities, nondirect services, and direct services for children.

(c) The total number of coalition staff and the related expenditures for salaries and benefits. For any subcontracts, the total number of contracted staff and the related expenditures for salaries and benefits must be included.

(d) The number of children served in the child care and development ~~school readiness~~ program, by provider type, enumerated by age and eligibility priority category, reported as the number of children served during the month, the average participation throughout the month, and the number of children served during the month.

(e) The total number of children disenrolled during the year and the reasons for disenrollment.

(f) The total number of providers by provider type.

(g) A listing of any child care and development ~~school readiness~~ program provider, by type, whose eligibility to deliver the child care and development ~~school readiness~~ program is revoked, including a brief description of the state or federal violation that resulted in the revocation.

(h) An evaluation of its direct enhancement services.

(i) The total number of children served in each provider facility.

(19) Maintain its administrative staff at the minimum necessary to administer the duties of the early learning coalition.

(20) To increase transparency and accountability, comply with ~~the requirements of~~ this section before contracting with a member of the coalition, an employee of the coalition, or a relative, as defined in s. 112.3143(1)(b), of a coalition member or of an employee of the coalition. Such contracts may not be

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executed without the approval of the office. Such contracts, as well as documentation demonstrating adherence to this section by the coalition, must be approved by a two-thirds vote of the coalition, a quorum having been established; all conflicts of interest must be disclosed before the vote; and any member who may benefit from the contract, or whose relative may benefit from the contract, must abstain from the vote. A contract under $25,000 between an early learning coalition and a member of that coalition or between a relative, as defined in s. 112.3143(1)(b), of a coalition member or of an employee of the coalition is not required to have the prior approval of the office but must be approved by a two-thirds vote of the coalition, a quorum having been established, and must be reported to the office within 30 days after approval. If a contract cannot be approved by the office, a review of the decision to disapprove the contract may be requested by the early learning coalition or other parties to the disapproved contract.

Section 26. Section 1002.87, Florida Statutes, is amended to read:

1002.87 Child care and development ~~School readiness~~ program; eligibility and enrollment.—

(1) Effective August 1, 2013, or upon reevaluation of eligibility for children currently served, whichever is later, each early learning coalition shall give priority for participation in the child care and development ~~school readiness~~ program as follows:

(a) Priority shall be given first to a child younger than 13 years of age from a family that includes a parent who is

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receiving temporary cash assistance under chapter 414 and subject to the federal work requirements.

(b) Priority shall be given next to an at-risk child younger than 9 years of age.

(c) Priority shall be given next to a child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. who is from a working family that is economically disadvantaged, and may include such child's eligible siblings, beginning with the school year in which the sibling is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. until the beginning of the school year in which the sibling enters ~~is eligible to begin~~ 6th grade, provided that the first priority for funding an eligible sibling is local revenues available to the coalition for funding direct services. However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.

(d) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(e) Priority shall be given next to an at-risk child who is at least 9 years of age but younger than 13 years of age. An at-risk child whose sibling is enrolled in the child care and development ~~school readiness~~ program within an eligibility priority category listed in paragraphs (a)-(c) shall be given priority over other children who are eligible under this

paragraph.

(f) Priority shall be given next to a child who is younger than 13 years of age from a working family that is economically disadvantaged. A child who is eligible under this paragraph whose sibling is enrolled in the child care and development ~~school readiness~~ program under paragraph (c) shall be given priority over other children who are eligible under this paragraph. However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.

(g) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 who is younger than 13 years of age.

(h) Priority shall be given next to a child who ~~has special needs,~~ has been determined eligible as an infant or toddler from birth to 3 years of age with an individualized family support plan receiving early intervention services or ~~as~~ a student with a disability with~~, has~~ a current individual education plan with a Florida school district~~, and is not younger than 3 years of age~~. A ~~special needs~~ child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(i) Notwithstanding paragraphs (a)-(d), priority shall be given last to a child who otherwise meets one of the eligibility criteria in paragraphs (a)-(d) but who is also enrolled concurrently in the federal Head Start Program and the Voluntary Prekindergarten Education Program.

(2) A child care and development ~~school readiness~~ program provider may be paid only for authorized hours of care provided

for a child in the child care and development ~~school readiness~~ program. A child enrolled in the Voluntary Prekindergarten Education Program may receive care from the child care and development ~~school readiness~~ program if the child is eligible according to the eligibility priorities in this section.

(3) Contingent upon the availability of funds, a coalition shall enroll eligible children, including those from its waiting list, according to the eligibility priorities in this section.

(4) The parent of a child enrolled in the child care and development ~~school readiness~~ program must notify the coalition or its designee within 10 days after any change in employment, income, or family size. Upon notification by the parent, the child's eligibility must be reevaluated.

(5) A child whose eligibility priority category requires the child to be from a working family ceases to be eligible for the child care and development ~~school readiness~~ program if a parent with whom the child resides does not reestablish employment within 60 days after becoming unemployed.

(6) Eligibility for each child must be reevaluated annually. Upon reevaluation, a child may not continue to receive child care and development ~~school readiness~~ program services if he or she has ceased to be eligible under this section. If a child no longer meets eligibility or program requirements, the coalition must immediately notify the child's parent and the provider that funding will end 2 weeks after the date on which the child was determined to be ineligible or when the current child care authorization expires, whichever occurs first.

(7) If a coalition disenrolls children from the child care and development ~~school readiness~~ program due to lack of funding

or a change in eligibility priorities, the coalition must disenroll the children in reverse order of the eligibility priorities listed in subsection (1) beginning with children from families with the highest family incomes. A notice of disenrollment must be sent to the parent and child care and development ~~school readiness~~ program provider at least 2 weeks before disenrollment or the expiration of the current child care authorization, whichever occurs first, to provide adequate time for the parent to arrange alternative care for the child. However, an at-risk child receiving services from the Child Welfare Program Office of the Department of Children and Families may not be disenrolled from the program without the written approval of the Child Welfare Program Office ~~of the Department of Children and Families~~ or the community-based lead agency.

(8) If a child is absent from the program for 2 consecutive days without parental notification to the program of such absence, the child care and development program provider shall contact the parent and determine the cause for absence and expected date of return. If a child is absent from the program for 5 consecutive days without parental notification to the program of such absence, the child care and development ~~school readiness~~ program provider shall report the absence to the early learning coalition for a determination of the need for continued care.

(9) Notwithstanding s. 39.604, a child care and development ~~school readiness~~ program provider, regardless of whether the provider is licensed, shall comply with the reporting requirements of the Rilya Wilson Act for each at-risk child

under the age of school entry who is enrolled in the school readiness program.

Section 27. Section 1002.88, Florida Statutes, is amended to read:

1002.88 Child care and development ~~School readiness~~ program provider standards; eligibility to deliver the child care and development ~~school readiness~~ program.—

(1) To be eligible to deliver the child care and development ~~school readiness~~ program, a child care and development ~~school readiness~~ program provider must:

(a)1. Be a nonpublic school in substantial compliance with s. 402.3025(2)(d), a child care facility licensed under s. 402.305, a family child ~~day~~ care home licensed ~~or registered~~ under s. 402.313, a large family child care home licensed under s. 402.3131, or a child care facility exempt from licensure operating under s. 402.316(4); or

2. Be an entity that is part of Florida's education system under s. 1000.04(1) ~~a public school or nonpublic school exempt from licensure under s. 402.3025, a faith-based child care provider exempt from licensure under s. 402.316, a before-school or after-school program described in s. 402.305(1)(c), or an informal child care provider to the extent authorized in the state's Child Care and Development Fund Plan as approved by the United States Department of Health and Human Services pursuant to 45 C.F.R. s. 98.18~~.

(b) Provide instruction and activities to enhance the age-appropriate progress of each child in attaining the child development standards adopted by the office pursuant to s. 1002.82(2)(j). A provider should include activities to foster

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brain development in infants and toddlers; provide an environment that is rich in language and music and filled with objects of various colors, shapes, textures, and sizes to stimulate visual, tactile, auditory, and linguistic senses; and include 30 minutes of reading to children each day. A provider must provide parents information on child development, expectations for parent engagement, the daily schedule, and the attendance policy.

(c) Provide basic health and safety of its premises and facilities in accordance with applicable licensing and inspection requirements ~~and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program~~. For a child care facility, a large family child care home, or a licensed family child ~~day~~ care home, compliance with s. 402.305, s. 402.3131, or s. 402.313 satisfies this requirement. For a public ~~or nonpublic~~ school, compliance with ss. ~~s. 402.3025 or s.~~ 1003.22 and 1013.12 satisfies this requirement. For a nonpublic school, compliance with s. 402.3025(2)(d) satisfies this requirement. For a facility exempt from licensure, compliance with s. 402.316(4) satisfies this requirement. A provider shall be denied initial eligibility to offer the program if the provider has been cited for a Class I violation in the 12 months before seeking eligibility. ~~A faith-based child care provider, an informal child care provider, or a nonpublic school, exempt from licensure under s. 402.316 or s. 402.3025, shall annually complete the health and safety checklist adopted by the office, post the checklist prominently on its premises in plain sight for visitors and parents, and submit it annually to its local early learning coalition.~~

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(d) Provide an appropriate staff-to-children ratio, pursuant to s. 402.305(4) or s. 402.302(8) or (11), as applicable, and as verified pursuant to s. 402.311.

(e) Provide a healthy and safe environment pursuant to s. 402.305(5), (6), and (7), as applicable, and as verified pursuant to s. 402.311.

(f) Implement one of the curricula approved by the office that meets the child development standards.

(g) Implement a character development program to develop basic values.

(h) Collaborate with the respective early learning coalition to complete initial screening for each child, aged 6 weeks to kindergarten eligibility, within 45 days after the child's first or subsequent enrollment, to identify a child who may need individualized supports.

(i) Implement minimum standards for child discipline practices that are age-appropriate and consistent with the requirements in s. 402.305(12). Such standards must provide that children not be subjected to discipline that is severe, humiliating, or frightening or discipline that is associated with food, rest, or toileting. Spanking or any other form of physical punishment is prohibited.

(j) Obtain and keep on file record of the child's immunizations, physical development, and other health requirements as necessary, including appropriate vision and hearing screening and examination, within 30 days after enrollment.

(k) Implement before-school or after-school programs that meet or exceed the requirements of s. 402.305(5), (6), and (7).

(l) ~~For a provider that is not an informal provider,~~ Maintain general liability insurance and provide the coalition with written evidence of general liability insurance coverage, including coverage for transportation of children if child care and development ~~school readiness~~ program children are transported by the provider. A private provider must obtain and retain an insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. ~~A provider must add the coalition as a named certificateholder and as an additional insured.~~ A private provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the entire period of the provider contract with the coalition.

~~(m) For a provider that is an informal provider, comply with the provisions of paragraph (l) or maintain homeowner's liability insurance and, if applicable, a business rider. If an informal provider chooses to maintain a homeowner's policy, the provider must obtain and retain a homeowner's insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. An informal provider must add the coalition as a named certificateholder and as an additional insured. An informal provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by~~

~~this paragraph must remain in full force and effect for the entire period of the provider's contract with the coalition.~~

(m) ~~(n)~~ Obtain and maintain any required workers' compensation insurance under chapter 440 and any required reemployment assistance or unemployment compensation coverage under chapter 443, unless exempt under state or federal law.

(n) ~~(o)~~ Notwithstanding paragraph (l), for a provider that is a state agency or a subdivision thereof, as defined in s. 768.28(2), agree to notify the coalition of any additional liability coverage maintained by the provider in addition to that otherwise established under s. 768.28. The provider shall indemnify the coalition to the extent permitted by s. 768.28.

(o) ~~(p)~~ Execute the standard statewide provider contract adopted by the office.

(p) ~~(q)~~ Operate on a full-time and part-time basis and provide extended-day and extended-year services to the maximum extent possible without compromising the quality of the program to meet the needs of parents who work.

(2) Beginning January 1, 2016, child care personnel employed by a child care and development program provider must hold a high school diploma or its equivalent and be at least 18 years of age, unless the personnel are not responsible for supervising children in care or are under direct supervision and are not counted for the purposes of computing the personnel-to-child ratio.

(3) Beginning January 1, 2015, at least 50 percent of the child care personnel employed by a child care and development program provider at each location must be trained in first aid and infant and child cardiopulmonary resuscitation, as evidenced

by current documentation of course completion, unless the personnel are not responsible for supervising children in care. As a condition of employment, personnel hired on or after January 1, 2015, must complete this training within 60 days after employment.

(4) ~~(2)~~ If a child care and development ~~school readiness~~ program provider fails or refuses to comply with this part or any contractual obligation of the statewide provider contract under s. 1002.82(2)(m), the coalition may revoke the provider's eligibility to deliver the child care and development ~~school readiness~~ program or receive state or federal funds under this chapter for ~~a period of~~ 5 years.

(5) ~~(3)~~ The office and the coalitions may not:

(a) Impose any requirement on a child care provider or early childhood education provider that does not deliver services under the child care and development ~~school readiness~~ program or receive state or federal funds under this part;

(b) Impose any requirement on a child care and development ~~school readiness~~ program provider that exceeds the authority provided under this part or part V of this chapter or rules adopted pursuant to this part or part V of this chapter; or

(c) Require a provider to administer a preassessment or postassessment.

Section 28. Section 1002.89, Florida Statutes, is amended to read:

1002.89 Child care and development ~~School readiness~~ program; funding.—

(1) Funding for the child care and development ~~school readiness~~ program shall be allocated among the early learning

coalitions in accordance with this section and the General Appropriations Act.

(2) The office shall administer child care and development ~~school readiness~~ program funds and prepare and submit a unified budget request for the child care and development ~~school readiness~~ program in accordance with chapter 216.

(3) All instructions to early learning coalitions for administering this section shall emanate from the office in accordance with the policies of the Legislature.

(4) All cost savings and all revenues received through a mandatory sliding fee scale shall be used to increase the number of children served.

(5) All state, federal, and local matching funds provided to an early learning coalition for purposes of this section shall be used for implementation of its approved child care and development ~~school readiness~~ program plan, including the hiring of staff to effectively operate the child care and development ~~school readiness~~ program.

(6) Costs shall be kept to the minimum necessary for the efficient and effective administration of the child care and development ~~school readiness~~ program with the highest priority of expenditure being direct services for eligible children. However, no more than 5 percent of the funds described in subsection (5) may be used for administrative costs and no more than 22 percent of the funds described in subsection (5) may be used in any fiscal year for any combination of administrative costs, quality activities, and nondirect services as follows:

(a) Administrative costs as described in 45 C.F.R. s. 98.52, which must ~~shall~~ include monitoring providers using the

standard methodology adopted under s. 1002.82 to improve compliance with state and federal regulations and law pursuant to the requirements of the statewide provider contract adopted under s. 1002.82(2)(m).

(b) Activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which must ~~shall~~ be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public to promote informed child care choices specified in 45 C.F.R. s. 98.33 ~~regarding participation in the school readiness program and parental choice~~.

2. Awarding grants and providing financial support to child care and development ~~school readiness~~ program providers and their staff to assist them in meeting applicable state requirements for child care performance standards, implementing developmentally appropriate curricula and related classroom resources that support curricula, providing literacy supports, obtaining a license or accreditation, and providing professional development, including scholarships and other incentives. Any grants awarded pursuant to this subparagraph shall comply with ~~the requirements of~~ ss. 215.971 and 287.058.

3. Providing training, ~~and~~ technical assistance, and financial support for child care and development ~~school readiness~~ program providers, staff, and parents on standards, child screenings, child assessments, developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety,

nutrition, first aid, cardiopulmonary resuscitation, the recognition of communicable diseases, and child abuse detection and prevention.

4. Providing from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding for infants and toddlers as necessary to meet federal requirements related to expenditures for quality activities for infant and toddler care.

5. Improving the monitoring of compliance with, and enforcement of, applicable state and local requirements as described in and limited by 45 C.F.R. s. 98.40.

6. Responding to Warm-Line requests by providers and parents ~~related to school readiness program children~~, including providing developmental and health screenings to child care and development ~~school readiness~~ program children.

(c) Nondirect services as described in applicable Office of Management and Budget instructions are those services not defined as administrative, direct, or quality services that are required to administer the child care and development ~~school readiness~~ program. Such services include, but are not limited to:

1. Assisting families to complete the required application and eligibility documentation.

2. Determining child and family eligibility.

3. Recruiting eligible child care providers.

4. Processing and tracking attendance records.

5. Developing and maintaining a statewide child care information system.

As used in this paragraph, the term "nondirect services" does not include payments to child care and development ~~school readiness~~ program providers for direct services provided to children who are eligible under s. 1002.87, administrative costs as described in paragraph (a), or quality activities as described in paragraph (b).

(7) Funds appropriated for the child care and development ~~school readiness~~ program may not be expended for the purchase or improvement of land; for the purchase, construction, or permanent improvement of any building or facility; or for the purchase of buses. However, funds may be expended for minor remodeling necessary for the administration of the program and upgrading of child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

Section 29. Subsection (7) of section 1002.91, Florida Statutes, is amended to read:

1002.91 Investigations of fraud or overpayment; penalties.—

(7) The early learning coalition may not contract with a child care and development ~~school readiness~~ program provider, ~~or~~ a Voluntary Prekindergarten Education Program provider, or an individual who is on the United States Department of Agriculture National Disqualified List. In addition, the coalition may not contract with any provider that shares an officer or director with a provider that is on the United States Department of Agriculture National Disqualified List.

Section 30. Paragraph (d) of subsection (3) of section 1002.94, Florida Statutes, is amended to read:

1002.94 Child Care Executive Partnership Program.—

(3)

(d) Each early learning coalition shall establish a community child care task force ~~for each child care purchasing pool~~. The task force must be composed of employers, parents, private child care providers, and one representative from the local children's services council, if one exists in the area ~~of the purchasing pool~~. The early learning coalition is expected to recruit the task force members from existing child care councils, commissions, or task forces already operating in the area ~~of a purchasing pool~~. A majority of the task force shall consist of employers.

Section 31. This act shall take effect July 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	HB 5601
INTRODUCER:	House Appropriations Subcommittee on Finance and Tax and Rep. Workman
SUBJECT:	Economic Development
DATE:	April 25, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Diez-Arguelles	Kynoch	AP	**Fav/1 Amendment**

I. Summary:

The Senate Appropriations Committee considered HB 5601 on April 10 and 22, 2014. The Committee adopted a "delete-all" amendment and a number of amendments to the delete-all amendment. The amendments have been engrossed into one amendment. The amendment:

- Reduces the state Communications Services Tax rate by 0.52 percentage point.
- Creates a 3-day "back to school" sales tax holiday.
- Allows a motorsports complex to apply for a sales tax distribution of up to $2 million.
- Changes the tax treatment of mobile phone prepaid calling plans.
- Allows a local government to repeal or reduce local business taxes without having to establish an equity study commission.
- Allows sales tax dealers to receive credits or refunds of 25% of sales taxes paid on purchases made with uncollectable private-label credit card accounts.
- Revises the calculation of the premium tax imposed on bail bond premiums so that the tax rate is applied only to the amount of the premium received by the insurance company, excluding amounts retained by the bail bondsman.
- Creates a revolving loan fund program for television productions filmed in the state. The amendment does not appropriate any moneys to the fund.
- Creates a 12-day sales tax holiday for hurricane supplies.
- Reduces the Sales Tax rate on electricity purchases by 2.65 percentage points, from 7% to 4.35% and creates an additional Gross Receipts Tax rate on electricity purchases of 2.6%, thereby increasing the combined Gross Receipts tax rate on these purchases from 2.5% to 5.1%. The effect of these changes is to provide a small tax reduction to purchasers of electricity and deposit additional revenues in the Public Education Capital Outlay Trust Fund to be used for construction and maintenance of educational facilities.

The amendment has a significant, negative fiscal impact on state and local government revenues. See the table in Section IX. B. for the fiscal impact of the amendment.

The mandates constitutional provision may apply to the amendment, requiring a two-thirds vote of the membership of each house for passage.

Additional information regarding the amendment is set forth in Section IX. B. of this analysis.

The rest of this analysis is of HB 5601, as passed by the House of Representatives.
HB 5601 makes the following changes:

- Creates four temporary "tax holiday" periods where sales of certain goods will be exempt from the sales tax – a "back to school" holiday, a hurricane supplies holiday, a physical fitness admissions holiday and an energy efficient products holiday.
- Creates a temporary sales tax exemption for cement mixing drums.
- Creates a permanent sales tax exemption for child restraint systems and booster seats for use in motor vehicles.
- Creates a permanent sales tax exemption for bicycle helmets marketed for use by youth.
- Increases the corporate income tax exemption from the first $50,000 of income to the first $75,000 of income.
- Expands the amount of credits available under the New Markets Tax Credit program from $178.8 million to $227.55 million.
- Delays the repeal of the Community Contributions Tax Credit program.
- Creates a $20 million revolving loan program to encourage the production of television programs in Florida.
- Amends the statutory definition of "prepaid calling arrangement" to provide that certain prepaid mobile communications services are subject to state and local sales taxes instead of state and local communications services taxes.
- Reduces the sales tax rate for electricity purchases.
- Decreases the sales tax rate on sales of electricity from seven to four percent and increases the gross receipts tax rate on electrical power or energy delivered to a non-exempt retail consumer from two and one-half to five and one-half percent.
- Transfers $100 million in recurring state sales tax revenue, currently deposited in the General Revenue Fund, to the State Transportation Trust Fund.

The bill has a significant, negative fiscal impact on state and local government revenues. See the table in Section V.A. for the fiscal impact of the bill.

The mandates constitutional provision may apply to this bill, requiring a two-thirds vote of the membership of each house for passage. See Section IV.A. of the analysis.

II. Present Situation:

The present situation for each issue in the bill is discussed below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Prepaid Calling Arrangements – Sections 1, 2, 4, and 5

Present situation: The communication services tax (CST) is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.[1] However, the definition of the term "sales price" expressly excludes the "sale or recharge of a prepaid calling arrangement," so CST is not collected on the sale of a prepaid calling arrangement. [2]

The term "prepaid calling arrangement" is defined to mean "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount."[3]

Chapter 212, F.S., provides for the application of the sales tax to the sale of tangible personal property and some services. The sales tax rate of 6 percent is applicable to charges for prepaid calling arrangements.[4] The term "prepaid calling arrangement" as defined in ch. 212, F.S., means "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount."[5] The definition of "prepaid calling arrangement" in ch. 202, F.S. is virtually identical to the definition in ch. 212, F.S.

When the definition of prepaid calling arrangement was placed in the statute[6], prepaid calling arrangements typically consisted of prepaid calling cards purchased in advance and limited to telephone calls. However, since then the telecommunications industry has developed to offer more prepaid plans compatible with the texting, data, video, and other capabilities of today's modern smartphones. This has led to increased utilization of prepaid mobile services. As markets and technology have evolved, the statutory definition has become increasingly incompatible and inconsistent with industry practice and the ability to collect communication services taxes.

As technology evolved, most communications service providers and other prepaid phone retailers continued to apply the sales tax to all prepaid mobile phone plans, even though the plans did not meet the strict definition of a "prepaid calling arrangement." This practice continues today for all prepaid plans.

Proposed change: The bill amends subsection 202.11(9), F.S., to revise the definition of the term "prepaid calling arrangement." For other than mobile communications services, the term

[1] Section 202.12, F.S.
[2] Section 202.11(13)(b)4., F.S.
[3] Section 202.11(9), F.S.
[4] Section 212.05(1)(e)1., F.S.
[5] *Id*.
[6] Chapter 2000-260, Laws of Florida.

includes a right to use communications services "for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which consists exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered."

For mobile communications services, the term includes "a right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;
2. The purchaser is not required to purchase additional units; and
3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services."

Predetermined units may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

The bill expands the definition of "prepaid calling arrangement" to include prepaid communication services other than those that consist exclusively of telephone calls. The changes recognize that under current industry practices prepaid services may include services other than telephone calls, such as text messaging, web access, and email.

In addition, the bill provides that the purchaser of prepaid units may use the units to purchase other communication services other than mobile communication services if the other services are provided to or through the same handset or other electronic device the purchaser uses to access mobile communication services. This provision may result in communication services currently subject to CST tax rates being subject to only sales tax in the future if they are sold as part of a prepaid calling arrangement.

These changes are remedial in nature and apply retroactively, but do not create the right to a refund or credit of any tax paid.

Electrical Energy or Power Provided to a Retail Customer – Sections 3, 6, and 7

Present situation: The sale of electric power or energy by an electric utility is subject to the state sales tax at the rate of 7 percent,[7] subject to numerous exemptions. The exemptions include sales for use in residential households, sales for certain agricultural purposes, sales for use in operating manufacturing machinery and equipment in a fixed location, and sales in enterprise zones. The distribution for sales and use tax receipts is governed by s. 212.20, F.S., with roughly 89% of the proceeds being deposited in the General Revenue Fund, and most of the remainder shared with counties and municipalities.

[7] Section 212.05(1)(e)1.c., F.S.

Chapter 203 imposes, at the rate of two and one-half percent, a tax on gross receipts from the sale, delivery, or transportation of natural gas, manufactured gas, or electricity to a retail consumer in Florida. All revenue received pursuant to this tax is deposited in the Public Education Capital Outlay and Debt Service ("PECO") Trust Fund. The use of such funds is limited to paying the principal and interest on bonds to finance capital projects for institutions of higher learning, community colleges, vocational technical schools, or public schools; the cost of any public educational facility capital project; and the cost of maintenance and repairs.

Proposed change: The bill decreases the sales tax rate on sales of electricity from seven to four percent and increases the gross receipts tax rate on electrical power or energy delivered to a non-exempt retail consumer from two and one-half to five and one-half percent. The new gross receipts tax additional rate will incorporate the existing exemptions from the sales tax in order to make this change revenue neutral to both the state and to taxpayers. These changes will result in an increase in the amount of revenue deposited in the PECO Trust Fund.

Cement Mixers – Section 6

Present situation: Chapter 212, F.S., levies a six percent state sales and use tax on most items of tangible personal property. Also, local governments are authorized to levy several types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Rates currently range from one-half percent to one and one-half percent. The surtax does not apply to any sales amount about $5,000 on any item of tangible personal property.[8] Section 212.08, F.S., provides a variety of exemptions from these taxes.

In 2013, the legislature passed an exemption for machinery and equipment used at a fixed location within Florida to manufacture, process, compound, or produce tangible goods for sale. This sales tax exemption is available for three years, from April 30, 2014 until April 30, 2017.[9]

Proposed change: The bill adds cement mixer drums that are affixed to mixer trucks, as well as the parts and labor necessary to affix the drums to mixer trucks, to the sales tax exemption for manufacturing machinery and equipment that will sunset on April 20, 2017.

Motor Vehicle Child Restraints – Section 6

Proposed change: The bill adds a permanent exemption from the sales tax for child restraint systems and booster seats used in motor vehicles.

Youth Bicycle Helmets – Section 6

Proposed change: The bill adds a permanent exemption from the sales tax for bicycle helmets marketed for use by youth.

[8] Section 212.054(2)(b)1., F.S.
[9] Chapter 2013-39, L.O.F.

State Transportation Trust Fund Distribution – Sections 8 and 16

Present situation: The State Transportation Trust Fund (STTF) is currently funded by a variety of tax sources, including portions of the revenue received from the tax on motor and aviation fuels imposed by ch. 206, F.S., motor vehicle fees imposed by ch. 320, F.S., the rental car surcharge imposed by s. 212.0606, F.S., and the documentary stamp tax imposed by ch. 201, F.S. The funds deposited in the trust fund are used for transportation purposes, as provided by law.[10]

Proposed change: The bill will transfer $100 million annually from sales and use tax revenue that would otherwise be deposited into the General Revenue Fund to the STTF. Newly created s. 339.0803, F.S., directs that, of those funds, $85 million will be used annually for transportation projects that connect major markets within this state or between this state and other states, and which increase Florida's viability in national and global markets. The remaining $15 million will be used annually for regionally-significant transportation projects that provide connectivity to and through rural areas. To be eligible for the regional funding, projects must be production ready in the five-year work program. State funds can be used to provide up to 75 percent of project costs. Preference will be given to projects identified as regionally significant, according to current law, and that have an increased level of non-state match.

Corporate Income Tax Exemption – Sections 9, 10, 12, and 13

Present situation: Florida levies an income tax of five and one-half percent on corporations,[11] banks, and savings associations.[12]

Florida's corporate income tax is imposed on a taxpayer's "net income." Net income is calculated by starting with the taxpayer's federal taxable income, making certain statutory adjustments, apportioning income attributable to Florida, and applying the statutory exemption.[13] Currently, the statutory exemption is $50,000.[14]

Proposed change: The bill increases the statutory exemption from $50,000 to $75,000.

Community Contribution Tax Credits – Sections 11 and 17

Present situation: The Community Contribution Tax Credit Program provides a 50 percent tax credit or refund for eligible donations made by Florida businesses to community development projects and housing projects for low-income persons sponsored by organizations that have been approved by the Department of Economic Opportunity to participate in the program.

The total amount of tax credits which may be granted for the Community Contribution Tax Credit Program is $10.5 million annually for projects that provide homeownership opportunities

[10] Section 206.46(1), F.S.
[11] "Corporation" is defined in s. 220.03(1)(e), F.S. Tax is imposed by s. 220.11, F.S. Only some Florida businesses are considered corporations subject to the Florida corporate income tax. Sole proprietorships, limited liability companies, and S corporations are not subject to the tax, except under limited circumstances. *See* s. 220.03(1)(e), F.S.
[12] "Bank" and "savings association" are defined in s. 220.62, F.S., and tax is imposed by s. 220.63, F.S.
[13] Section 220.12, F.S.
[14] Section 220.14, F.S.

for low-income and very-low-income households and $3.5 million for all other projects.[15] During Fiscal Year 2012-2013, 345 tax credit applications in 36 local governments were approved by the DEO.[16]

A business that makes a donation to an eligible sponsor must apply for a tax credit during the first 10 business days of the fiscal year after the donation is made. Each business is eligible to receive credits of up to a maximum of $200,000 per tax year.

Businesses may take the credit against corporate income tax pursuant to s. 220.183, F.S., insurance premium tax pursuant to s. 624.5105, F.S., or as a refund on sales tax collected pursuant to s. 212.08(5)(p), F.S. If requests for tax credits within the first 10 business days of a fiscal year exceed the tax credit allocation, tax credit applications will be approved on a pro rata basis. If they do not exceed that allocation, they will be approved on a first-come, first-served basis.

The Community Contribution Tax Credit Program expires on June 30, 2015.

Proposed change: The bill delays the expiration date of the program by one year from June 30, 2015 to June 30, 2016.

Qualified Television Loan Fund – Sections 14 and 22

Present situation: Florida does not provide a loan program for television program production.

Proposed change:

The Fund. The bill creates the Qualified Television Loan Fund (QTV fund) – a $20 million revolving loan fund – within the Department of Economic Opportunity (DEO). The QTV fund will make loans to companies that produce television shows in Florida. As the loans are repaid, the principal and interest will be returned to the fund and loaned to additional production companies.

The Fund Administrator. The DEO will contract with a private organization (fund administrator) to administer the QTV fund. The fund administrator will be selected based on the following qualifications:

- A track record of managing private sector equity or debt funds in the entertainment industry;
- Having a partnership with a qualified lending partner capable of providing at least two and one-half times the capital amount in the QTV fund; and
- Experience managing economic development or job creation-related funds.

The DEO will give preference to applicants headquartered in Florida.

Additional Capital. The fund administrator must partner with a qualified lending partner, who will invest its own capital along with funds from the QTV fund in qualifying projects. The fund

[15] Sections 212.08(5)(p)1.e., F.S.; 220.183(1)(c), F.S.; and 624.5105(1)(c), F.S.
[16] Department of Economic Opportunity, supra note 8.

administrator may also partner with other companies who provide equity financing, mezzanine financing, or other types of financing. Capital provided by private entities, including the qualified lending partner, must be kept in separate accounts, and such entities are responsible for paying their own management fees.

The Loans. The QTV fund and the qualified lending partner will make joint loans to production companies in order to fund production or improve the credit profile of the production's structured financial transactions. Loans from the QTV fund may not exceed 30 percent of the total production funding cost for the project and may not have a term exceeding 36 months, unless the fund administrator approves a longer period. The loan issued by the qualified lending partner will have a senior position to the loan issued by the QTV fund. Loans from private capital may not be made at more favorable terms and conditions than loans from the QTV fund.

All loans made by the QTV fund must be secured. The security may consist of domestic and international broadcaster license agreements, tax credits, or other revenues. Additionally, if the production cost per episode exceeds $1 million, the project must be bonded and secured by an industry-approved completion guarantor. With the exception of appropriated funds, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV fund or against the qualified lending partner.

The fund administrator is required to evaluate loan applications based on:
- Eligible collateral;
- The project's creditworthiness;
- The producer's track record;
- The possibility that the project will encourage economic benefits; and
- The extent to which the loan will attract private debt or equity investment.

Qualifying Productions. The production company is required to have an agreement with a major network for broadcasting on a major network, cable or streaming channel. If the production content is a series, at least 13 episodes must be ordered, unless a lesser number is approved by the fund administrator. The production must spend at least 80 percent of the production budget in Florida, unless the fund administrator approves a lesser percentage.

Reporting. Each year by February 28, the fund administrator is required to submit audited financial statements to the DEO, along with a fund annual report. The annual report must detail, for each loan:
- The name of the television program;
- The counties in which production occurred;
- The number of jobs created or retained because of the production;
- The loan amounts (including private loans made in association with the QTV loan);
- The loan repayment status;
- Details on any past due loans;
- Details on any loans in default;
- A description of assets securing the loans; and
- Any other information required by the department.

Management Fee. The fund administrator will be paid a fee equal to five percent of the assets under management for the first five years, and three percent of the assets under management every year thereafter until the end of the contract. After the first year, the fee may not exceed the investment proceeds earned from the fund's completed loans. Additionally, the fund administrator may receive 20 percent of the fund's net income on an annual basis. This amount may not be paid from the fund's principal.

Expiration. The program is repealed on December 31, 2024, and all funds remaining in the QTV fund at that point revert to the General Revenue Fund.

Appropriation. The bill appropriates $20 million in nonrecurring general revenue to the DEO to fund the Qualified Television Loan Fund program.

New Markets Tax Credit Program – Section 15

Present situation: Florida created the New Markets Development Program in 2009[17] to encourage capital investment in rural and low-income communities.[18] Under the program, the state grants tax credits in return for investments in low-income community businesses.[19] The Florida program is based on a similar federal program, created in 2000.[20]

The program involves two "investments": a taxpayer interested in tax credits makes a "qualified investment"[21] (a cash payment) to a qualified community development entity (CDE) in return for the tax credits. The CDE then makes a "qualified low-income community investment"[22] (either a cash loan or an equity investment) to a qualifying low-income community business.[23]

Prior to either investment taking place, the CDE applies to the DEO for a determination of whether its qualified low-income community investment qualifies under the program.[24] Upon approval, the DEO awards a tax credit equal to 39 percent of the CDE's qualifying low-income community investment.

The tax credits may not be claimed for two years. After the second year, the taxpayer may claim the credits over the next five years.[25]

[17] Chapter 2009-50, L.O.F. *See* ss. 288.991, F.S. – 288.9922, F.S.
[18] Section 288.9912, F.S.
[19] *Id.*
[20] The Federal New Markets Tax Credit Program was enacted as P.L. 106-554, Community Tax Relief Act of 2000 and signed into law on December 21, 2000. For an overview of the federal program, see Overview, http://cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited April 5, 2013).
[21] Section 288.9913(7), F.S.
[22] Section 288.9913(8), F.S.
[23] Section 288.9913(5), F.S.
[24] Section 288.9914(2), F.S.
[25] Section 288.9916(1), F.S.

When the program was created in 2009, the total tax credits that could be issued were limited to $97.5 million.[26] The limit was increased to $163.8 million (a $66.3 million increase) in 2012[27] and to $178.8 million (a $15 million increase) in 2013[28].

Proposed change: The bill increases the total amount of tax credits available from $178.8 million to $227.55 million (a $50 million increase).

Energy Star and WaterSense Sales Tax Holiday – Sections 18 and 22

Present situation: In 2006, the Legislature approved a sales tax holiday for energy-efficient products priced under $1,500 and that met or exceeded the requirements of the federal ENERGY STAR program[29]. The holiday ran from October 5 through October 11, 2006. The following items were exempted:

- Refrigerators.
- Dishwashers.
- Clothes washers.
- Air conditioners.
- Ceiling fans.
- Light bulbs.
- Dehumidifiers.
- Thermostats.

Proposed change: The bill provides that no sales tax will be collected on the first $1,500 of the sales price for a new ENERGY STAR product or WaterSense product[30] during the period beginning on September 19, 2014, and ending on September 21, 2014.

ENERGY STAR products eligible for this holiday are:

- Room air conditioners.
- Air purifiers.
- Ceiling fans.
- Clothes washers.
- Clothes dryers.
- Dehumidifiers.
- Dishwashers.
- Freezers.
- Refrigerators.
- Water heaters.
- Swimming pool pumps.
- Light bulbs.

[26] Section 7, 2009-50, L.O.F.
[27] Section 16, 2012-32, L.O.F.
[28] Section 36, 2013-42, L.O.F.
[29] ENERGY STAR products must meet energy efficiency standards established by the U.S. Environmental Protection Agency.
[30] WaterSense labeled products and meet the US Environmental Protection Agency specifications for water efficiency and performance.

WaterSense products eligible for this holiday are:
- Bathroom sink faucets.
- Faucet accessories.
- High-efficiency toilets and urinals.
- Showerheads.
- Weather or sensor-based irrigation controllers.

A person is limited to a single purchase for each specific type of item listed above with a sales price over $500 during the holiday, and a second purchase of the same type of product will be subject to tax on the entire price.

The bill contains a nonrecurring appropriations from the General Revenue Fund to the Department of Revenue of $43,941 to implement the Energy Efficient Appliances Sales Tax Holiday.

Physical Fitness Admissions Tax Holiday – Section 19

Present situation: Section 212.04, F.S., establishes a six percent state sales and use tax on admissions.

Proposed change: The bill provides that the sales and use tax levied on admissions will not be collected during the period beginning September 1, 2014, and ending September 8, 2014, on the sale of athletic, exercise, and physical fitness facility memberships. To participate in the holiday, a facility must be registered as a health studio with the Department of Agriculture and Consumer Services under ss. 501.012 through 501.019, F.S.

Back-to-School Sales Tax Holiday – Sections 20 and 22

Present situation: The Legislature has approved back-to-school sales tax holidays in eight of the past ten years. The length of the exemption period has varied from three to 10 days. The type and value of exempt items has also varied. The holiday is typically offered just prior to the start of a new school year.

Proposed change: The bill provides for a three-day sales tax holiday beginning August 1, 2014, and ending August 3, 2013. During the holiday, the following items that cost $100 or less are exempt from the state sales tax and county discretionary sales surtaxes:
- Clothing (defined as an "article of wearing apparel intended to be worn on or about the human body," but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts "school supplies" that cost $15 or less per item. Also exempt will be the first $750 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use, including tablets, laptops, monitors, input devices, and

non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempt.

The bill contains a nonrecurring appropriation from the General Revenue Fund to the Department of Revenue of $223,048 to implement the Back to School Sales Tax Holiday (this appropriation occurs during the 2013-14 fiscal year and carries forward into 2014-15).

Hurricane Preparedness Sales Tax Holiday – Sections 21 and 22

Present situation: The Legislature has approved sales tax holidays for hurricane preparedness in the past. In 2005, 2006, and 2007 the state established 12-day periods where items below certain thresholds were exempt from tax. The type and value of exempt items has also varied. In 2005 and 2007, the hurricane preparedness holidays ran from June 1 through June 12, and in 2006 the holiday was from May 21 through June 1.

Proposed change: The bill proposes a sales tax exemption for the following items for the period beginning on June 1, 2014, and ending on June 12, 2014:

- A portable self-powered light source selling for $20 or less.
- A portable self-powered radio, two-way radio, or weather band radio selling for $50 or less.
- A tarpaulin or other flexible waterproof sheeting selling for $50 or less.
- A self-contained first-aid kit selling for $30 or less.
- A ground anchor system or tie-down kit selling for $50 or less.
- A gas or diesel fuel tank selling for $25 or less.
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.
- A nonelectric food storage cooler selling for $30 or less.
- A portable generator selling for $750 or less.
- Reusable ice selling for $10 or less.

The bill contains a nonrecurring appropriation from the General Revenue Fund to the Department of Revenue of $280,912 to implement the Hurricane Preparedness Sales Tax Holiday (this appropriation occurs during the 2013-2014 fiscal year and carries forward into the 2014-2015 fiscal year).

Effective Date – Section 23

The bill has an effective date of July 1, 2104, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of

doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

This mandates provision may apply because the bill provides numerous sales tax exemptions that will reduce municipalities' and counties' local option sales tax collections, thereby reducing their revenue-raising authority. In addition, the bill redefines the types of services to which local Communication Services tax rates apply, thereby potentially reducing the authority of municipalities to raise revenue.

Subsection (c) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

This mandates provision may apply to the reduction in the sales tax rate for electricity, since counties and municipalities receive a share of sales tax revenue through distributions to the Local Government Half-Cent Sales Tax Clearing Trust Fund, the County Revenue Sharing Trust Fund, and the Municipal Revenue Sharing Trust Fund.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

HB 5601 has the following estimated fiscal impacts:

Fiscal Year 2014-2015 Estimated Fiscal Impacts (millions of $)								
	General Revenue		State Trust Funds		Local		Total	
Issue	Cash	Recur.	Cash	Recur.	Cash	Recur.	Cash	Recur.
Sales Tax: Physical Fitness Holiday (ss. 19, 22)	(4.1)	-	(*)	-	(0.9)	-	(5.0)	0.0
Sales Tax: Back to School Holiday (ss. 20, 22)	(32.3)	-	(*)	-	(7.3)	-	(39.6)	0.0
Sales Tax: Energy Efficient Holiday (ss. 18, 22)	(1.7)	-	(*)	-	(0.3)	-	(2.0)	0.0
Sales Tax: Hurricane Prep. Holiday (ss. 21 22)	(3.0)	-	(*)	-	(0.7)	-	(3.7)	0.0
Sales Tax: Car Seats (s. 6)	(2.0)	(2.2)	(*)	(*)	(0.5)	(0.5)	(2.5)	(2.7)
Sales Tax: Youth Bicycle Helmets (s. 6)	(0.2)	(0.2)	(*)	(*)	(*)	(*)	(0.2)	(0.2)
Sales Tax: Cement Mixers (s. 6)	(3.3)	-	(*)	-	(0.4)	-	(3.7)	0.0
Sales Tax/Gross Receipts: Electricity (ss. 3, 4)	(143.0)	(171.6)	161.3	193.6	(18.3)	(22.0)	0.0	0.0
Corp Income Tax: Income Exemption (ss. 9, 12)	(8.8)	(21.6)	-	-	-	-	(8.8)	(21.6)
QTV Fund (ss. 14, 22)	(20.0)	-	--	-	-	-	(20.0)	0.0
New Markets Credits (s. 15)	-	(10.0)	-	-	-	-	0.0	(10.0)
Transportation Funding (ss. 8,16)	(100.0)	(100.0)	100.0	100.0	-	-	0.0	0.0
Prepaid Calling Definition** (ss. 1, 4)	-	(1.4)	-	(5.7)	-	(11.2)	0.0	(18.3)
Tax Holiday Appropriations***	(0.54)	-	-	-	-	-	(0.54)	0.0
FY 2014-2015 Total	**(318.9)**	**(307.0)**	**261.3**	**287.9**	**(28.4)**	**(33.7)**	**(86.0)**	**(52.8)**
Community Contribution Tax Credits (ss. 6, 11, 17) **(FY 2015-2016)**	(12.6)	-	(*)	-	(1.4)	-	(14.0)	0.0
Bill Total	**(331.5)**	**(307.0)**	**261.3**	**287.9**	**(29.8)**	**(33.7)**	**(100.0)**	**(52.8)**

****Estimates reflect minimums. See paragraph below for further potential impacts.**

***** The appropriations for the Hurricane Preparedness and Back-to-School Holidays are for FY 2013-2014, with carry over into 2014-2015.**

In addition to the fiscal impact shown on the table above for the Prepaid Calling Definition issue, a loss of up to $600 million in audit recoveries may occur if the Department of Revenue were to successfully enforce the strict definition of "prepaid calling arrangement," with a potential loss of up to $200 million annually on a going-forward basis. These amounts reflect the estimate of what Communications Services Tax (CST) tax collections would have been in the past and would be in the future if CST tax, instead of sales tax, were collected on prepaid calling arrangements. However, because

current industry practice is to collect sales tax on prepaid mobile communications services, and the timing of any successful Department of Revenue action is unknown, it is uncertain if and when these losses would be realized.

B. Private Sector Impact:

The bill provides a number of tax exemptions that will benefit the purchasers of the exempt items.

Increasing the corporate income tax exemption from $50,000 to $75,000 will reduce corporate income taxes on all taxpayers that currently pay the tax; it is estimated to eliminate all corporate income tax liability for approximately 2,100 taxpayers.

C. Government Sector Impact:

Impacts to state government that are not tax-related are also included in the table in Section V.A.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 202.11, 203.01, 212.05, 212.08, 212.12, 212.20, 220.14, 220.183, 220.63, 288.9914, and 624.5105.

The bill creates the following sections of the Florida Statutes: 288.127 and 339.0803.

The bill creates undesignated sections of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 965938 by Appropriations on April 22, 2014:
The Senate Appropriations Committee adopted a "delete-all" all amendment to HB 5601. The amendment addresses the following issues.

Communications Services Tax (CST) Rate Reduction

Chapter 202, F.S., provides for the tax on communication services, including telecommunications, cable, direct-to-home satellite, and related services. The CST includes a state tax rate of 6.65 percent and a state gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent.[31] In addition, local governments may impose a local tax rate of up to 7.12 percent.[32]

Direct-to-home satellite service is taxed at a rate of 10.8 percent and is also subject to the 2.37 percent gross receipts tax. The local tax does not apply to these services. However, the state tax on direct-to-home satellite is higher than the state tax on other communication services, for a total tax rate of 13.17 percent. The amount of tax collected from the additional tax is distributed to local governments.

A portion of the state taxes collected – including taxes collected on direct-to-home satellite service – are deposited into the General Revenue Fund and a portion is distributed to local governments.[33] Gross Receipts Tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used for the capital funding of public schools, community colleges, and universities.

The amendment reduces the state CST rate by 0.52 percentage point, reducing the general rate from 6.65 percent to 6.13 percent and the rate on direct-to-home satellite from 10.8 percent to 10.28 percent. The amendment makes conforming changes to other portions of the statutes, including changes to distribution formulas to ensure that local governments continue to receive the same amount of distributions that they receive under current law.

The tax rate changes first apply to taxable transactions included on bills for communications services that are dated on or after January 1, 2005.

Motorsports Entertainment Complex

Sections 212.20, 288.1162, 288.11621 and 288.11631, F.S., currently authorize distributions of sales tax revenues to certain professional sports facilities and for Major League Baseball spring training facilities. Also, s. 288.1171, F.S., provides the procedure by which a motorsport entertainment complex may be certified to receive up to $2 million from a local government.

The amendment allows the Department of Economic Opportunity to certify one motorsports entertainment complex to receive annual distributions of up to $2 million from state sales tax revenues for up to 30 years. The amendment provides the criteria that must be met prior to receiving the certification.

[31] See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services.
[32] Section 202.19, F.S.
[33] Section 202.18, F.S.

Private Label Credit Cards (Bad Debt)

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the requirements for dealers to collect and remit sales tax. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida. The full amount of sales tax is due at the time a transaction occurs, even if the transaction is a credit sale, installment sale, or a sale made on any kind of deferred payment plan.

A dealer who has remitted sales tax may take a credit or obtain a refund for any tax paid on the unpaid balance due on worthless accounts. The dealer must take the credit or obtain a refund within 12 months following the month in which the bad debt has been charged off by the dealer for federal income tax purposes. If any amount of the worthless account is subsequently paid, the dealer is required to remit the appropriate tax to the Department of Revenue. The dealer that paid the tax and charged off the account is the only person allowed to take the credit or claim the refund. In the case of private-label credit cards, the lender that issued the credit card may not take the credit or claim the refund for any amounts subsequently charged off by the lender, since the lender is not the "dealer."

The amendment amends s. 212.17, F.S., to create another method for a dealer to take a credit or obtain a refund for taxes remitted for a charged-off debt related to a consumer account with a private-label credit card. The amendment allows a dealer to take a credit or obtain a refund on taxes remitted on the unpaid balance of a worthless or "uncollectible" private-label credit card account. The amendment sets forth the criteria for calculating the amount of the credit or refund and limits the amount of the credit or refund to 25 percent of the amount of taxes paid on a worthless account.

Bail Bond Premiums

Under s. 624.4094(1), F.S., the direct written premium retained by a bail bond insurer may not be less than 6.5 percent of the total payment for the bail bond; licensed bail bond agents or licensed managing general agents retain up to 93.5 percent of the premium. Section 624.4094(5), F.S., provides that the reporting and payment of insurance premium taxes and related excise taxes under ss. 624.509, 624.5091, and 624.5092, F.S., is calculated using gross bail bond premiums and that insurance premium tax and related excise taxes are calculated using gross bail bond premiums.

Section 624.509, F.S., requires insurers to pay a premium tax on premiums received during the preceding calendar year. The tax is 1.75 percent of the gross amount of premium.

The amendment changes the calculation of the premium tax imposed on bail bond premiums so that the tax rate is applied only to the amount of the premium received by the insurance company, excluding amounts retained by the bail bond agent.

Local Business Taxes

Chapter 205, Florida Statutes, authorizes counties and municipalities to levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within their jurisdictions. Section 205.0535 (2), F.S., requires that a municipality or county establish an equity study commission before revising its business taxes.

The amendment allows a county or municipality to repeal a local business tax or establish new rates that decrease the taxes and do not result in an increase of local business taxes for a taxpayer without having to establish an equity study commission.

Back to School Sales Tax Holiday

The amendment creates a state and local sales tax exemption for a 3-day period from August 1 through August 3, 2014, for the purchases of clothing costing $75 or less per item, school supplies costing $15 or less per item, and personal computers and related accessories costing $750 or less.

The amendment appropriates $223,048 from the General Revenue Fund to the Department of Revenue to implement the this provision and notify sales and use tax dealers prior to the beginning of the sales tax holiday.

Hurricane Preparedness Holiday

The amendment provides an exemption from state and local sales tax for specified items related to hurricane preparedness during a period of 12 consecutive days beginning on June 1, 2014. The timing of this period coincides with the start of hurricane season. The exempted items are:

- A portable, self-powered light source selling for $20 or less.
- A portable, self-powered radio, two-way radio, or weather band radio selling for $50 or less.
- A tarpaulin or other flexible waterproof sheeting selling for $50 or less.
- A self-contained first-aid kit selling for $30 or less.
- A ground anchor system or tie-down kit selling for $50 or less.
- A gas or diesel fuel tank selling for $25 or less.
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.
- A nonelectric food storage cooler selling for $30 or less.
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for $750 or less.

The amendment also authorizes the Department of Revenue to adopt rules to implement this provision.

The amendment appropriates $280,912 from the General Revenue Fund to the Department of Revenue for purposes of administering the provisions of the amendment.

Prepaid Calling Arrangements

The communication services tax (CST) is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.[34] However, the definition of the term "sales price" expressly excludes the "sale or recharge of a prepaid calling arrangement," so CST is not collected on the sale of a prepaid calling arrangement. [35]

The term "prepaid calling arrangement" is defined to mean "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount."[36]

Chapter 212, F.S., provides for the application of the sales tax to the sale of tangible personal property and some services. The sales tax rate of 6 percent is applicable to charges for prepaid calling arrangements.[37] The term "prepaid calling arrangement" as defined in ch. 212, F.S., means "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount."[38] The definition of "prepaid calling arrangement" in ch. 202, F.S. is virtually identical to the definition in ch. 212, F.S.

The amendment amends subsection 202.11(9), F.S., to revise the definition of the term "prepaid calling arrangement." For other than mobile communications services, the term includes a right to use communications services "for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which consists exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered."

For mobile communications services, the term includes "a right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;
2. The purchaser is not required to purchase additional units; and

[34] Section 202.12, F.S.
[35] Section 202.11(13)(b)4., F.S.
[36] Section 202.11(9), F.S.
[37] Section 212.05(1)(e)1., F.S.
[38] *Id*.

3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services."

The amendment expands the definition of "prepaid calling arrangement" to include prepaid communication services other than those that consist exclusively of telephone calls. The changes recognize that under current industry practices prepaid services may include services other than telephone calls, such as text messaging, web access, and email.

Commercial Electricity: Transfer of Sales Tax to Gross Receipts Tax

The sale of electric power or energy by an electric utility is subject to the state sales tax at the rate of 7 percent.[39]

Chapter 203, F.S., imposes, at the rate of 2.5 percent, a tax on gross receipts from the sale, delivery, or transportation of natural gas, manufactured gas, or electricity to a retail consumer in Florida. All revenue received pursuant to this tax is deposited in the Public Education Capital Outlay and Debt Service ("PECO") Trust Fund. The use of such funds is limited to paying the principal and interest on bonds to finance capital projects for institutions of higher learning, community colleges, vocational technical schools, or public schools; the cost of any public educational facility capital project; or the cost of maintenance and repairs.

The amendment decreases the sales tax rate on sales of electricity from 7.0 percent to 4.35 percent and creates an additional gross receipts tax rate on electrical power or energy delivered to a non-exempt retail consumer of 2.6 percent, thereby raising the combined gross receipts tax rate to 5.1 percent. The new gross receipts tax additional rate will incorporate the existing exemptions from the sales tax.

The effect of the amendment is to provide a small tax reduction to commercial purchasers of electricity (a tax rate reduction of 0.05 percentage point). Also, the amendment reduces revenues that are deposited in the General Revenue Fund and increases deposits to the Public Education Capital Outlay Fund (PECO). Funds deposited in the PECO trust fund are used to fund construction and maintenance of educational facilities.

Qualified Television Loan Fund

The amendment establishes a revolving loan fund to be used for loans to television productions filmed in Florida. The amendment does not appropriate any moneys to the fund.

[39] Section 212.05(1)(e)1.c., F.S.

Fiscal Impact of Amendment

The effect of the amendment on state and local government revenues is detailed in the following table:

	General Revenue		Trust Fund		Local Governments		Total	
Description	**Cash**	**Recurring**	**Cash**	**Recurring**	**Cash**	**Recurring**	**Cash**	**Recurring**
CST Rate Reduction - 0.52%	(23.9)	(63.7)	(insig)	(insig)	(3.1)	(8.3)	(27.0)	(72.0)
Motorsports	(1.7)	(2.0)	0.0	0.0	0.0	0.0	(1.7)	(2.0)
Private-label Credit Cards (bad debt)	(2.9)	(2.6)	(insig)	(insig)	(0.6)	(0.6)	(3.5)	(3.2)
Bail Bonds	(0.7)	(0.7)	0.0	0.0	0.0	0.0	(0.7)	(0.7)
Local Business Taxes	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Sales Tax Holiday - Back to School (3 days)	(31.8)	0.0	(insig)	0.0	(7.2)	0.0	(39.0)	0.0
Prepaid Calling	0.0	(1.4)	0.0	(5.7)	0.0	(11.2)	0.0	(18.3)
Tax Holiday Appropriations	(0.5)	0.0	0.0	0.0	0.0	0.0	(0.5)	0.0
Sales Tax: Hurricane Prep. Holiday	(2.9)	0.0	(insig)	0.0	(0.7)	0.0	(3.6)	0.0
Sales Tax/Gross Receipts: Electricity	(142.6)	(171.0)	139.8	167.8	0.0	0.0	(2.8)	(3.2)
QTV Fund	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	(207.0)	(241.4)	139.8	162.1	(11.6)	(20.1)	(78.8)	(99.4)

Mandates

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The mandates provision may apply because the amendment provides numerous sales tax exemptions that will reduce municipalities' and counties' local option sales tax collections, thereby reducing their revenue-raising authority. In addition, the amendment redefines the types of services to which local Communication Services tax rates apply, thereby potentially reducing the authority of municipalities to raise revenue.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (b) of subsection (1) of section 202.12, Florida Statutes, are amended to read:

202.12 Sales of communications services.—The Legislature finds that every person who engages in the business of selling communications services at retail in this state is exercising a taxable privilege. It is the intent of the Legislature that the

tax imposed by chapter 203 be administered as provided in this chapter.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction, and the tax is due and payable as follows:

(a) Except as otherwise provided in this subsection, at a rate of 6.07 ~~6.65~~ percent applied to the sales price of the communications service that ~~which~~:

1. Originates and terminates in this state;~~,~~ or

2. Originates or terminates in this state and is charged to a service address in this state,

when sold at retail, computed on each taxable sale for the purpose of remitting the tax due. The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph. If no tax is imposed by this paragraph due to the exemption provided under ~~by reason of~~ s. 202.125(1), the tax imposed by chapter 203 shall nevertheless be collected and remitted in the manner and at the time prescribed for tax collections and remittances under this chapter.

(b) At the rate of 10.22 ~~10.8~~ percent on the retail sales price of any direct-to-home satellite service received in this state. The proceeds of the tax imposed under this paragraph shall be accounted for and distributed in accordance with s. 202.18(2). The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph.

Section 2. Section 202.12001, Florida Statutes, is amended

to read:

202.12001 Combined rate for tax collected pursuant to ss. 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch. 2010-149, Laws of Florida, the dealer of communication services may collect a combined rate of 6.22 ~~6.8~~ percent comprised of 6.07 ~~6.65~~ percent and 0.15 percent required by ss. 202.12(1)(a) and 203.01(1)(b)3., respectively, if ~~as long as~~ the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of Revenue.

Section 3. Subsection (2) of section 202.18, Florida Statutes, is amended to read:

202.18 Allocation and disposition of tax proceeds.—The proceeds of the communications services taxes remitted under this chapter shall be treated as follows:

(2) The proceeds of the taxes remitted under s. 202.12(1)(b) shall be allocated ~~divided~~ as follows:

(a) The portion of such proceeds that constitute ~~which constitutes~~ gross receipts taxes, imposed at the rate prescribed in chapter 203, shall be deposited as provided by law and in accordance with s. 9, Art. XII of the State Constitution.

(b) Sixty and nine-tenths ~~Sixty-three~~ percent of the remainder shall be allocated to the state and distributed pursuant to s. 212.20(6), except that the proceeds allocated pursuant to s. 212.20(6)(d)2. shall be prorated to the participating counties in the same proportion as that month's collection of the taxes and fees imposed pursuant to chapter 212 and paragraph (1)(b).

(c)1. During each calendar year, the remaining portion of

such proceeds shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund. Seventy percent of such proceeds shall be allocated in the same proportion as the allocation of total receipts of the half-cent sales tax under s. 218.61 and the emergency distribution under s. 218.65 in the prior state fiscal year. Thirty percent of such proceeds shall be distributed pursuant to s. 218.67.

2. The proportion of the proceeds allocated based on the emergency distribution under s. 218.65 shall be distributed pursuant to s. 218.65.

3. In each calendar year, the proportion of the proceeds allocated based on the half-cent sales tax under s. 218.61 shall be allocated to each county in the same proportion as the county's percentage of total sales tax allocation for the prior state fiscal year and distributed pursuant to s. 218.62.

4. The department shall distribute the appropriate amount to each municipality and county each month at the same time that local communications services taxes are distributed pursuant to subsection (3).

Section 4. Section 203.001, Florida Statutes, is amended to read:

203.001 Combined rate for tax collected pursuant to ss. 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch. 2010-149, Laws of Florida, the dealer of communication services may collect a combined rate of 6.22 ~~6.8~~ percent comprised of 6.07 ~~6.65~~ percent and 0.15 percent required by ss. 202.12(1)(a) and 203.01(1)(b)3., respectively, if ~~as long as~~ the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of

Revenue.

Section 5. Effective July 1, 2014, paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.814 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1. and 2.,

0.095 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

4. After the distributions under subparagraphs 1., 2., and 3., 2.0440 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3409 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal

year on or before January 5th and continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 before July 1, 2000.

b. The department shall distribute $166,667 monthly ~~pursuant to s. 288.1162~~ to each applicant certified as a facility for a new or retained professional sports franchise pursuant to s. 288.1162. Up to $41,667 shall be distributed monthly by the department to each certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. However, not more than $416,670 may be distributed monthly in the aggregate to all certified applicants for facilities for spring training franchises. The department shall also distribute $166,667 monthly to an applicant certified as a motorsports entertainment complex under s. 288.1171. Distributions begin 60

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days after such certification and continue for not more than 30 years, except as otherwise provided in s. 288.11621. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided for under ~~in~~ s. 288.1162(5), ~~or~~ s. 288.11621(3), or s. 288.1171(7).

c. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made~~,~~ after certification and before July 1, 2000.

e. The department shall distribute up to $55,555 monthly to each certified applicant as defined in s. 288.11631 for a facility used by a single spring training franchise, or up to $111,110 monthly to each certified applicant as defined in s. 288.11631 for a facility used by more than one spring training franchise. Monthly distributions begin 60 days after such certification or July 1, 2016, whichever is later, and continue for not more than 30 years, except as otherwise provided in s.

288.11631. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.11631(3).

7. All other proceeds must remain in the General Revenue Fund.

Section 6. Effective July 1, 2014, subsection (2) of section 288.1171, Florida Statutes, is amended, present subsections (4) through (7) of that section are redesignated as subsections (5) through (8), respectively, and amended, and a new subsection (4) is added to that section, to read:

288.1171 Motorsports entertainment complex; definitions; certification; duties.—

(2) The department shall serve as the state agency for screening applicants for funding under s. 212.20, for local option funding under s. 218.64(3), and for certifying an applicant as a motorsports entertainment complex. The department shall develop and adopt rules for the receipt and processing of applications for funding under ss. 212.20 and ~~s.~~ 218.64(3). The department shall make a determination regarding any application filed by an applicant within ~~not later than~~ 120 days after the application is filed.

(4) The department may certify a single applicant as a motorsports entertainment complex for funding under s. 212.20 if the applicant meets all of the following conditions:

(a) The applicant meets the requirements of subsection (3).

(b) The applicant has a verified copy of the approval of a sanctioning body stating that motorsport events are sanctioned to occur at the applicant’s complex.

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(c) The applicant's facility has at least 50,000 fixed seats.

(d) The applicant has projections, verified by the department, which demonstrate that the motorsports entertainment complex will annually attract paid attendance of more than 100,000 persons.

(e) The applicant has an independent analysis or study, verified by the department, which demonstrates that the amount of revenues generated by the taxes imposed under chapter 212 with respect to the use and operation of the motorsports entertainment complex will annually equal or exceed $2 million.

(f) The applicant has demonstrated that it has provided, is capable of providing, or has financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the complex.

(g) The total cost of construction, reconstruction, expansion, or renovation of the complex exceeds $250 million.

The approved applicant may not seek funding under s. 218.64(3) while receiving funding under s. 212.20.

(5) ~~(4)~~ Upon determining that an applicant meets the requirements of subsection (3) or subsection (4), the department shall notify the applicant and the executive director of the Department of Revenue of such certification by means of an official letter granting certification. If the applicant fails to meet the certification requirements of subsection (3) or subsection (4), the department shall notify the applicant within ~~not later than~~ 10 days following such determination.

(6) ~~(5)~~ A motorsports entertainment complex that has been

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previously certified under this section and has received funding under such certification is ineligible for ~~any~~ additional certification.

(7)~~(6)~~ An applicant certified as a motorsports entertainment complex may use funds provided pursuant to s. 212.20 or s. 218.64(3) only for the following public purposes:

(a) Paying for the construction, reconstruction, expansion, or renovation of a motorsports entertainment complex.

(b) Paying debt service reserve funds, arbitrage rebate obligations, or other amounts relating ~~payable with respect~~ to bonds issued for the construction, reconstruction, expansion, or renovation of the motorsports entertainment complex or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

(c) Paying for construction, reconstruction, expansion, or renovation of transportation or other infrastructure improvements related to, necessary for, or appurtenant to the motorsports entertainment complex, including~~, without limitation,~~ paying debt service reserve funds, arbitrage rebate obligations, or other amounts relating ~~payable with respect~~ to bonds issued for the construction, reconstruction, expansion, or renovation of such transportation or other infrastructure improvements, and for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

(d) Paying for programs of advertising and promotion of or related to the motorsports entertainment complex or the municipality in which the motorsports entertainment complex is located, or the county if the motorsports entertainment complex is located in an unincorporated area, if such programs of

advertising and promotion are designed to increase paid attendance at the motorsports entertainment complex or increase tourism in or promote the economic development of the community in which the motorsports entertainment complex is located.

(8) ~~(7) The Department of Revenue may audit,~~ As provided in s. 11.45 ~~213.34~~, the Auditor General may conduct an audit to verify that the distributions pursuant to this section have been expended as required in this section. ~~Such information is subject to the confidentiality requirements of chapter 213.~~ If the Auditor General ~~Department of Revenue~~ determines that the distributions pursuant to certification ~~under this section~~ have not been expended as required by this section, the Auditor General shall notify the Department of Revenue, which ~~it~~ may pursue recovery of such funds pursuant to the laws and rules governing the assessment of taxes.

Section 7. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 1, 2014, through 11:59 p.m. on August 3, 2014, on the sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $75 or less per item. As used in this paragraph, the term "clothing" means:

1. An article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, rollerblades, and skates.

(b) School supplies having a sales price of $15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(c) Personal computers and related accessories that have a sales price of $750 or less and are purchased for noncommercial home or personal use. As used in this paragraph, the term:

1. "Personal computer" means an electronic device that accepts information in digital or similar form and manipulates such information for a result based on a sequence of instructions. The term includes an electronic book reader and a laptop, desktop, handheld, tablet, or tower computer but does not include a cellular telephone, video game console, digital media receiver, or device that is not primarily designed to process data.

2. "Related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software regardless of whether the accessories are used in association with a personal computer base unit but does not include furniture or systems, devices, software, monitors with a television tuner, or other peripherals that are designed or intended primarily for recreational use.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013, Florida Statutes, within a public lodging establishment as defined in s. 509.013, Florida Statutes, or

within an airport as defined in s. 330.27, Florida Statutes.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 8. For the 2013-2014 fiscal year, the sum of $223,048 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering section 7 of this act. Funds from the appropriation that remain unexpended or unencumbered as of June 30, 2014, shall revert and be reappropriated for the same purpose in the 2014-2015 fiscal year.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to taxation; amending s. 202.12, F.S.; reducing the tax rate applied to the sale of communications services; reducing the tax rate applied to the retail sale of direct-to-home satellite services; amending s. 202.12001, F.S.; conforming rates to the reduction of the communications services tax; amending s. 202.18, F.S.; revising the distribution of tax revenues received; amending s. 203.001. F.S.; conforming rates to the reduction of the communications services tax; amending s. 212.20,

F.S.; providing for a monthly distribution of a specified amount of sales tax revenue to a complex certified as a motorsports entertainment complex by the Department of Economic Opportunity; amending s. 288.1171, F.S.; authorizing the department to certify a single applicant as a motorsports entertainment complex if it meets specified criteria; authorizing the Auditor General to verify the expenditure of specified distributions and to notify the Department of Revenue of improperly expended funds so that it may pursue recovery; specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories are exempt from the sales tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/25/2014	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Delete lines 16 - 98
and insert:
(a) Except as otherwise provided in this subsection, at a rate of 6.13 ~~6.65~~ percent applied to the sales price of the communications service that ~~which~~:
1. Originates and terminates in this state;~~,~~ or
2. Originates or terminates in this state and is charged to

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a service address in this state,

when sold at retail, computed on each taxable sale for the purpose of remitting the tax due. The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph. If no tax is imposed by this paragraph due to the exemption provided under ~~by reason of~~ s. 202.125(1), the tax imposed by chapter 203 shall nevertheless be collected and remitted in the manner and at the time prescribed for tax collections and remittances under this chapter.

(b) At the rate of 10.28 ~~10.8~~ percent on the retail sales price of any direct-to-home satellite service received in this state. The proceeds of the tax imposed under this paragraph shall be accounted for and distributed in accordance with s. 202.18(2). The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph.

Section 2. Section 202.12001, Florida Statutes, is amended to read:

202.12001 Combined rate for tax collected pursuant to ss. 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch. 2010-149, Laws of Florida, the dealer of communication services may collect a combined rate of 6.28 ~~6.8~~ percent comprised of 6.13 ~~6.65~~ percent and 0.15 percent required by ss. 202.12(1)(a) and 203.01(1)(b)3., respectively, if ~~as long as~~ the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of Revenue.

Section 3. Subsection (2) of section 202.18, Florida Statutes, is amended to read:

202.18 Allocation and disposition of tax proceeds.—The proceeds of the communications services taxes remitted under this chapter shall be treated as follows:

(2) The proceeds of the taxes remitted under s. 202.12(1)(b) shall be allocated ~~divided~~ as follows:

(a) The portion of such proceeds that constitute ~~which constitutes~~ gross receipts taxes, imposed at the rate prescribed in chapter 203, shall be deposited as provided by law and in accordance with s. 9, Art. XII of the State Constitution.

(b) Sixty and nine-tenths ~~Sixty-three~~ percent of the remainder shall be allocated to the state and distributed pursuant to s. 212.20(6), except that the proceeds allocated pursuant to s. 212.20(6)(d)2. shall be prorated to the participating counties in the same proportion as that month's collection of the taxes and fees imposed pursuant to chapter 212 and paragraph (1)(b).

(c)1. During each calendar year, the remaining portion of such proceeds shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund. Seventy percent of such proceeds shall be allocated in the same proportion as the allocation of total receipts of the half-cent sales tax under s. 218.61 and the emergency distribution under s. 218.65 in the prior state fiscal year. Thirty percent of such proceeds shall be distributed pursuant to s. 218.67.

2. The proportion of the proceeds allocated based on the emergency distribution under s. 218.65 shall be distributed pursuant to s. 218.65.

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3. In each calendar year, the proportion of the proceeds allocated based on the half-cent sales tax under s. 218.61 shall be allocated to each county in the same proportion as the county's percentage of total sales tax allocation for the prior state fiscal year and distributed pursuant to s. 218.62.

4. The department shall distribute the appropriate amount to each municipality and county each month at the same time that local communications services taxes are distributed pursuant to subsection (3).

Section 4. Section 203.001, Florida Statutes, is amended to read:

203.001 Combined rate for tax collected pursuant to ss. 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch. 2010-149, Laws of Florida, the dealer of communication services may collect a combined rate of 6.28 ~~6.8~~ percent comprised of 6.13 ~~6.65~~ percent and 0.15 percent required by ss. 202.12(1)(a) and 203.01(1)(b)3., respectively, if ~~as long as~~ the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of Revenue.

Section 5. Subsection (9) of section 202.11, Florida Statutes, is amended to read:

202.11 Definitions.—As used in this chapter, the term:

(9) "Prepaid calling arrangement" means: ~~the separately stated retail sale by advance payment of~~

(a) A right to use communications services, other than mobile communications services, for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a

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predetermined basis, and which ~~that~~ consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered; or ~~and that are sold in predetermined units or dollars of which the number declines with use in a known amount.~~

(b) A right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;

2. The purchaser is not required to purchase additional units; and

3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services.

Predetermined units described in this subsection may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

Section 6. Paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible

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personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" has the same meaning as provided in s. 202.11 ~~means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount~~.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to have taken ~~take~~ place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for

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purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

(IV) No additional tax under this chapter or chapter 202 is due or payable if a purchaser of a prepaid calling arrangement, who has paid tax under this chapter on the sale or recharge of such arrangement, applies one or more units of the prepaid calling arrangement to obtain communications services as described in s. 202.11(9)(b)3., other services that are not communications services, or products.

b. The installation of telecommunication and telegraphic equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 7 percent.

2. The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, are ~~shall be~~ equally applicable to any tax paid under ~~the provisions of~~ this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. The term ~~word~~ "charges" under ~~in~~ this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of this ~~the~~ state, or any municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

Section 7. The amendments made to ss. 202.11 and 212.05,

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Florida Statutes, by this act are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 387

and insert:

the communications services tax; amending ss. 202.11 and 212.05, F.S.; revising the term "prepaid calling arrangement" to clarify and update which services are included under that definition and subject to a sales tax; providing for retroactive application; amending s. 212.20,

LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/25/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 98 and 99
insert:

Section 5. Subsections (4) and (5) of section 205.0535, Florida Statutes, are amended to read:

205.0535 Reclassification and rate structure revisions.—

(4) After the conditions specified in subsections (2) and (3) are met, municipalities and counties may, every other year

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thereafter, increase or decrease by ordinance the rates of business taxes by up to 5 percent. However, an increase must~~,~~ ~~however, may not~~ be enacted by at least ~~less than~~ a majority plus one vote of the governing body.

(5) ~~Nothing in~~ This chapter does not ~~shall be construed to~~ prohibit a municipality or county from decreasing or repealing any business tax authorized under this chapter. By majority vote, the governing body of a county or municipality may adopt an ordinance repealing a local business tax or establishing new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer. Such ordinances are not subject to subsections (2) and (3).

(6)~~(5)~~ A receipt may not be issued unless the federal employer identification number or social security number is obtained from the person to be taxed.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 387

and insert:

the communications services tax; amending s. 205.0535, F.S.; providing that a county or municipality may repeal or reduce a local business tax by majority vote; amending s. 212.20,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/25/2014	.	
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The Committee on Appropriations (Lee) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 98 and 99
insert:

Section 5. Section 212.17, Florida Statutes, is reordered and amended to read:

212.17 Tax credits or refunds ~~for returned goods, rentals, or admissions; goods acquired for dealer's own use and subsequently resold; additional powers of department~~.—

(1)(a) If ~~In the event~~ purchases are returned to a dealer

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by the purchaser or consumer after the tax imposed by this chapter has been collected from or charged to the account of the consumer or user, the dealer is ~~shall be~~ entitled to reimbursement of the amount of tax collected or charged by the dealer, in the manner prescribed by the department.

(b) A registered dealer that purchases property for the dealer's own use, pays tax on acquisition, and sells the property subsequent to acquisition without ~~ever~~ having used the property is entitled to reimbursement, in the manner prescribed by the department, of the amount of tax paid on the property's acquisition.

(c) If the tax has not been remitted by a dealer to the department, the dealer may deduct the same in submitting his or her return upon receipt of a signed statement by ~~of~~ the dealer as to the gross amount of such refunds during the period covered by the ~~said~~ signed statement, which may ~~period shall~~ not be longer than 90 days. The department shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected or paid. Such memorandum shall be accepted by the department at full face value from the dealer to whom it is issued upon~~, in~~ the remittance of ~~for~~ subsequent taxes accrued under ~~the provisions of~~ this chapter. If a dealer has retired from business and ~~has~~ filed a final return, a refund of tax may be made if it can be established to the satisfaction of the department that the tax was not due.

(2) A dealer who has paid the tax imposed by this chapter on tangible personal property sold under a retained title, conditional sale, or similar contract, or under a contract in which ~~wherein~~ the dealer retains a security interest in the

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property pursuant to chapter 679, may take credit or obtain a refund for the tax paid by the dealer on the unpaid balance due him or her when he or she repossesses the property, ~~(~~with or without judicial process,~~) the property~~ within 12 months after ~~following~~ the month in which the property was repossessed. If ~~When~~ such repossessed property is resold, the sale is subject in all respects to the tax imposed by this chapter.

(3) Except as provided in subsection (4), a dealer who has paid the tax imposed by this chapter on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts within 12 months after ~~following~~ the month in which the bad debt has been charged off for federal income tax purposes. If any accounts so charged off for which a credit or refund has been obtained are subsequently, ~~thereafter~~ in whole or in part, paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(4) With respect to the payment of taxes on purchases made through a private-label credit card program:

(a) If consumer accounts or receivables are found to be worthless or uncollectible, the dealer may claim a credit for, or obtain a refund of, the tax remitted by the dealer on the unpaid balance due if:

1. The accounts or receivables have been charged off as bad debt on the lender’s books and records on or after January 1, 2014;

2. A credit was not previously claimed and a refund was not previously allowed on any portion of the accounts or

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receivables; and

3. The credit or refund is claimed within 12 months after the month in which the bad debt has been charged off by the lender for federal income tax purposes.

(b) If the dealer or the lender subsequently collects, in whole or in part, the accounts or receivables for which a credit or refund has been granted under paragraph (a), the dealer must include the taxable percentage of the amount collected in the first return filed after the collection and pay the tax on the portion of that amount for which a credit or refund was granted.

(c) The credit or refund allowed includes all credit sale transaction amounts that are outstanding in the specific private-label credit card account or receivable at the time the account or receivable is charged off, regardless of the date on which the credit sale transaction actually occurred.

(d) A dealer may use one of the following methods to determine the amount of the credit or refund:

1. An apportionment method to substantiate the amount of tax imposed under this chapter which is included in the bad debt to which the credit or refund applies. The method must use the dealer’s Florida and non-Florida sales, the dealer’s taxable and nontaxable sales, and the amount of tax the dealer remitted to this state; or

2. A specified percentage of the accounts or receivables giving rise to the credit or refund, which is derived from a sampling of the dealer’s or lender’s records in accordance with a methodology agreed upon by the department and the dealer.

(e) For purposes of computing the credit or refund, payments on the accounts or receivables shall be allocated based

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on the terms and conditions of the contract between the dealer or lender and the consumer.

(f) The credit or refund for tax on bad debt may be claimed on any return filed by an entity related by a direct or indirect common ownership of 50 percent or more.

(g) The amount of the credit or refund that a dealer is eligible to recover under this subsection is limited to 25 percent of the tax paid to the department which is attributable to bad debt.

(h) As used in this subsection, the term:

1. "Dealer's affiliates" means an entity affiliated with the dealer under 26 U.S.C. s. 1504 or an entity that would be an affiliate under that section if the entity were a corporation.

2. "Lender" means a person who owns or has owned a private-label credit card account or an interest in a private-label credit card receivable that:

a. The person purchased directly from a dealer who remitted the tax imposed under this chapter or from the dealer's affiliates, or that was transferred from a third party;

b. The person originated pursuant to that person's contract with a dealer who remitted the tax imposed under this chapter or with the dealer's affiliates; or

c. Is affiliated in the manner described under 26 U.S.C. s. 1504, regardless of whether the different entities are corporations, with a person described in sub-subparagraph a. or sub-subparagraph b. or with an assignee or other transferee of such person.

3. "Private-label credit card" means a charge card or credit card that carries, refers to, or is branded with the name

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or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases from the dealer's affiliates or franchisees.

(6) ~~(4)(a)~~ The department shall:

(a) Design, prepare, print and furnish to all dealers, except dealers filing through electronic data interchange, or make available or prescribe to the dealers, all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. The~~, but~~ failure of a ~~any~~ dealer to secure such forms does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(b) ~~The department shall~~ Prescribe the format and instructions necessary for filing returns in a manner that is initiated through an electronic data interchange to ensure a full collection from dealers and an accounting for the taxes due. The failure of a ~~any~~ dealer to use such format does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(7) ~~(5)~~ The department and its assistants are ~~hereby~~ authorized and empowered to administer the oath for the purpose of enforcing and administering ~~the provisions of~~ this chapter.

(8) ~~(6)~~ The department may ~~has authority to~~ adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to administer and enforce ~~the provisions of~~ this section ~~chapter~~.

(5) ~~(7)~~ If ~~The department, where~~ admissions, license fees, ~~or~~ rental payments, or payments for services are made and ~~thereafter~~ returned to ~~the~~ payors after the taxes ~~thereon~~ have been paid, the department shall return or credit the taxpayer

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for taxes ~~so~~ paid on the moneys returned in the same manner as ~~is~~ provided for returns or credits of taxes if ~~where~~ purchases or tangible personal property are returnable to a dealer.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 387

and insert:

the communications services tax; amending s. 212.17, F.S.; providing procedures, requirements, and calculation methodologies that allow dealers to obtain tax credits or refunds for taxes paid on worthless or uncollectible private-label credit card accounts or receivables; providing a cap on the amount that may be recovered; providing definitions; amending s. 212.20,

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 98 and 99
insert:

Section 5. Subsection (5) of section 212.05, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible

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personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(5) Notwithstanding any other provision of this chapter, the maximum amount of tax imposed under this chapter and collected on each sale or use of a boat in this state may not exceed $18,000 and for each repair of a boat in this state may not exceed $120,000.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 387

and insert:

the communications services tax; amending s. 212.05, F.S.; providing a cap on the amount of sales tax collected for the repair of a boat; amending s. 212.20,

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LEGISLATIVE ACTION

Senate	.	House
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04/25/2014	.	
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The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Delete lines 99 - 135
and insert:
Section 5. Effective July 1, 2014, subsections (1), (3), (4), and (7) of section 203.01, Florida Statutes, are amended to read:
203.01 Tax on gross receipts for utility and communications services.—

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(1)(a)1. A tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state. The tax shall be levied as provided in paragraphs (b)-(j).

2. A tax is levied on communications services as defined in s. 202.11(1). The tax shall be applied to the same services and transactions as are subject to taxation under chapter 202, and to communications services that are subject to the exemption provided in s. 202.125(1). The tax shall be applied to the sales price of communications services when sold at retail, as the terms are defined in s. 202.11, shall be due and payable at the same time as the taxes imposed pursuant to chapter 202, and shall be administered and collected pursuant to ~~the provisions of~~ chapter 202.

3. An additional tax is levied on charges for, or the use of, electrical power or energy that is subject to the tax levied pursuant to s. 212.05(1)(e)1.c. or s. 212.06(1). The tax shall be applied to the same transactions or uses as are subject to taxation under s. 212.05(1)(e)1.c. or s. 212.06(1). If a transaction is exempt from the tax imposed under 212.05(1)(e)1.c. or s. 212.06)1) the transaction is also exempt from the tax imposed under this subparagraph. The tax shall be applied to charges for electrical power or energy and is due and payable at the same time as taxes imposed pursuant to chapter 212. Chapter 212 governs the administration and enforcement of the tax imposed by this subparagraph. The charges upon which the tax imposed by this subparagraph is applied do not include the taxes imposed by subparagraph 1. or s. 166.231. The tax imposed by this subparagraph becomes state funds at the moment of collection and is not considered as revenue of a utility for

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purposes of a franchise agreement between the utility and a local government.

(b)1. The rate applied to utility services shall be 2.5 percent.

2. The rate applied to communications services shall be 2.37 percent.

3. ~~There shall be~~ An additional rate of 0.15 percent shall be applied to communication services subject to the tax levied pursuant to s. 202.12(1)(a), (c), and (d). The exemption provided in s. 202.125(1) applies to the tax levied pursuant to this subparagraph.

4. The rate applied to electrical power or energy taxed under subparagraph (a)3. shall be 2.6 percent.

(c)1. The tax imposed under subparagraph (a)1. shall be levied against the total amount of gross receipts received by a distribution company for its sale of utility services if the utility service is delivered to the retail consumer by a distribution company and the retail consumer pays the distribution company a charge for utility service which includes a charge for both the electricity and the transportation of electricity to the retail consumer. The distribution company shall report and remit to the Department of Revenue by the 20th day of each month the taxes levied pursuant to this paragraph during the preceding month.

2. To the extent practicable, the Department of Revenue must distribute all receipts of taxes remitted under this chapter to the Public Education Capital Outlay and Debt Service Trust Fund in the same month as the department collects such taxes.

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(d)1. Each distribution company that receives payment for the delivery of electricity to a retail consumer in this state is subject to tax on the exercise of this privilege as provided by this paragraph unless the payment is subject to tax under paragraph (c). For the exercise of this privilege, the tax levied on the ~~such~~ distribution company's receipts for the delivery of electricity shall be determined by multiplying the number of kilowatt hours delivered by the index price and applying the rate in subparagraph (b)1. ~~paragraph (b)~~ to the result.

2. The index price is the Florida price per kilowatt hour for retail consumers in the previous calendar year, as published in the United States Energy Information Administration Electric Power Monthly and announced by the Department of Revenue on June 1 of each year to be effective for the 12-month period beginning July 1 of that year. For each residential, commercial, and industrial customer class, the applicable index posted for residential, commercial, and industrial shall ~~will~~ be applied in calculating the gross receipts to which the tax applies. If publication of the indices is delayed or discontinued, the last posted index shall be used until a current index is posted or the department adopts a comparable index by rule.

3. Tax due under this paragraph shall be administered, paid, and reported in the same manner as the tax due under paragraph (c).

4. The amount of tax due under this paragraph shall be reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the retail consumer purchased the electricity, whether imposed by and paid to this state, another

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state, a territory of the United States, or the District of Columbia. This reduction in tax shall be available to the retail consumer as a refund made pursuant to s. 215.26 and does not inure to the benefit of the person who receives payment for the delivery of the electricity. The methods of demonstrating proof of payment and the amount of such refund shall be made according to rules of the Department of Revenue.

(e)1. A ~~Every~~ distribution company that receives payment for the sale or transportation of natural or manufactured gas to a retail consumer in this state is subject to tax on the exercise of this privilege as provided by this paragraph. For the exercise of this privilege, the tax levied on the ~~such~~ distribution company's receipts for the sale or transportation of natural or manufactured gas shall be determined by dividing the number of cubic feet delivered by 1,000, multiplying the resulting number by the index price, and applying the rate in subparagraph (b)1. ~~paragraph (b)~~ to the result.

2. The index price is the Florida price per 1,000 cubic feet for retail consumers in the previous calendar year as published in the United States Energy Information Administration Natural Gas Monthly and announced by the Department of Revenue on June 1 of each year to be effective for the 12-month period beginning July 1 of that year. For each residential, commercial, and industrial customer class, the applicable index posted for residential, commercial, and industrial shall ~~will~~ be applied in calculating the gross receipts to which the tax applies. If publication of the indices is delayed or discontinued, the last posted index shall be used until a current index is posted or the department adopts a comparable index by rule.

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3. Tax due under this paragraph shall be administered, paid, and reported in the same manner as the tax due under paragraph (c).

4. The amount of tax due under this paragraph shall be reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the retail consumer purchased the natural gas or manufactured gas, whether imposed by and paid to this state, another state, a territory of the United States, or the District of Columbia. This reduction in tax shall be available to the retail consumer as a refund pursuant to s. 215.26 and does not inure to the benefit of the person providing the transportation service. The methods of demonstrating proof of payment and the amount of such refund shall be made according to rules of the Department of Revenue.

(f) Any person who imports into this state electricity, natural gas, or manufactured gas, or severs natural gas, for that person’s own use or consumption as a substitute for purchasing utility, transportation, or delivery services taxable under subparagraph (a)1. ~~this chapter~~ and who cannot demonstrate payment of the tax imposed by this chapter must register with the Department of Revenue and pay into the State Treasury each month an amount equal to the cost price, as defined in s. 212.02, of such electricity, natural gas, or manufactured gas times the rate set forth in subparagraph (b)1. ~~paragraph (b)~~, reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the electricity, natural gas, or manufactured gas was purchased or any person who provided delivery service or transportation service in connection with the electricity, natural gas, or manufactured gas. ~~For purposes~~

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~~of this paragraph, the term "cost price" has the meaning ascribed in s. 212.02(4).~~ The methods of demonstrating proof of payment and the amount of such reductions in tax shall be made according to rules of the Department of Revenue.

(g) Electricity produced by cogeneration or by small power producers which is transmitted and distributed by a public utility between two locations of a customer of the utility pursuant to s. 366.051 is subject to the tax imposed by subparagraph (a)1. ~~this section~~. The tax shall be applied to the cost price, as defined in s. 212.02, of such electricity ~~as provided in s. 212.02(4)~~ and shall be paid each month by the producer of such electricity.

(h) Electricity produced by cogeneration or by small power producers during the 12-month period ending June 30 of each year which is in excess of nontaxable electricity produced during the 12-month period ending June 30, 1990, is subject to the tax imposed by subparagraph (a)1. ~~this section.~~ The tax shall be applied to the cost price, as defined in s. 212.02, of such electricity ~~as provided in s. 212.02(4)~~ and shall be paid each month, beginning with the month in which total production exceeds the production of nontaxable electricity for the 12-month period ending June 30, 1990. As used in ~~For purposes of~~ this paragraph, the term "nontaxable electricity" means electricity produced by cogeneration or by small power producers which is not subject to tax under paragraph (g). Taxes paid pursuant to paragraph (g) may be credited against taxes due under this paragraph. Electricity generated as part of an industrial manufacturing process that ~~which~~ manufactures products from phosphate rock, raw wood fiber, paper, citrus, or

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any agricultural product is ~~shall~~ not ~~be~~ subject to the tax imposed by this paragraph. The term "industrial manufacturing process" means the entire process conducted at the location where the process takes place.

(i) Any person other than a cogenerator or small power producer described in paragraph (h) who produces for his or her own use electrical energy that ~~which~~ is a substitute for electrical energy produced by an electric utility as defined in s. 366.02 is subject to the tax imposed by subparagraph (a)1. ~~this section~~. The tax shall be applied to the cost price, as defined in s. 212.02, of such electrical energy ~~as provided in s. 212.02(4)~~ and shall be paid each month. ~~The provisions of~~ This paragraph does ~~do~~ not apply to ~~any~~ electrical energy produced and used by an electric utility.

(j) Notwithstanding any other provision of this chapter, with the exception of a communications services dealer reporting taxes administered under chapter 202, the department may require:

1. A quarterly return and payment when the tax remitted for the preceding four calendar quarters did not exceed $1,000;

2. A semiannual return and payment when the tax remitted for the preceding four calendar quarters did not exceed $500; or

3. An annual return and payment when the tax remitted for the preceding four calendar quarters did not exceed $100.

(3) The tax imposed by subparagraph (1)(a)1. ~~subsection (1)~~ does not apply to:

(a)1. The sale or transportation of natural gas or manufactured gas to a public or private utility, including a municipal corporation or rural electric cooperative association,

~~either~~ for resale or for use as fuel in the generation of electricity; or

2. The sale or delivery of electricity to a public or private utility, including a municipal corporation or rural electric cooperative association, for resale, or as part of an electrical interchange agreement or contract between such utilities for the purpose of transferring more economically generated power;

if ~~provided~~ the person deriving gross receipts from such sale demonstrates that a sale, transportation, or delivery for resale in fact occurred and complies with the following requirements: A sale, transportation, or delivery for resale must be in strict compliance with the rules ~~and regulations~~ of the Department of Revenue; and any sale subject to the tax imposed by this section which is not in strict compliance with the rules ~~and regulations~~ of the Department of Revenue shall be subject to the tax at the appropriate rate imposed on utilities under subparagraph (1)(b)1. ~~by paragraph (b)~~ on the person making the sale. Any person making a sale for resale may, through an informal protest provided ~~for~~ in s. 213.21 and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. The department shall adopt rules that provide that valid proof and documentation of the resale by a person making the sale for resale will be accepted by the department when submitted during the protest period but will not be accepted when submitted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72;

(b) Wholesale sales of electric transmission service;

(c) The use of natural gas in the production of oil or gas, or the use of natural or manufactured gas by a person transporting natural or manufactured gas, when used and consumed in providing such services; or

(d) The sale or transportation to, or use of, natural gas or manufactured gas by a person eligible for an exemption under s. 212.08(7)(ff)2. for use as an energy source or a raw material. Possession by a seller of natural or manufactured gas or by any person providing transportation or delivery of natural or manufactured gas of a written certification by the purchaser, certifying the purchaser's entitlement to the exclusion permitted by this paragraph, relieves the seller or person providing transportation or delivery from the responsibility of remitting tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if the department determines that the purchaser was not entitled to the exclusion. The certification must include an acknowledgment by the purchaser that it will be liable for tax pursuant to paragraph (1)(f) if the requirements for exclusion are not met.

(4) The tax imposed pursuant to subparagraph (1)(a)1. ~~this chapter~~ relating to the provision of ~~any~~ utility services at the option of the person supplying the taxable services may be separately stated as Florida gross receipts tax on the total amount of any bill, invoice, or other tangible evidence of the provision of such taxable services and may be added as a component part of the total charge. If ~~Whenever~~ a provider of taxable services elects to separately state such tax as a component of the charge for the provision of such taxable services, any ~~every~~ person, including all governmental units,

shall remit the tax to the person who provides such taxable services as a part of the total bill, and the tax is a component part of the debt of the purchaser to the person who provides such taxable services until paid and, if unpaid, is recoverable at law in the same manner as any other part of the charge for such taxable services. For a utility, the decision to separately state any increase in the rate of tax imposed by this chapter which is effective after December 31, 1989, and the ability to recover the increased charge from the customer is ~~shall~~ not ~~be~~ subject to regulatory approval.

(7) Gross receipts subject to the tax imposed under subparagraph (1)(a)1. ~~by this section~~ for the provision of electricity must ~~shall~~ include receipts from monthly customer charges or monthly customer facility charges.

Section 6. Effective July 1, 2014, paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

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(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to take place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, regardless of whether ~~or not~~ a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

b. The installation of telecommunication and telegraphic equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 4.35 ~~7~~ percent. Charges for electrical power and energy do not include taxes

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imposed under ss. 203.01(1)(a)3. and 166.231.

2. Section ~~The provisions of s.~~ 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, is ~~shall be~~ equally applicable to any tax paid under ~~the provisions of~~ this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. As used in this paragraph, the term ~~word~~ "charges" ~~in this paragraph~~ does not include any excise or similar tax levied by the Federal Government, a ~~any~~ political subdivision of the state, or a ~~any~~ municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

Section 7. Effective July 1, 2014, subsection (11) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(11) The department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to all taxable transactions that occur in counties that have a surtax at a rate other than 1 percent which ~~transactions~~ would otherwise have been transactions taxable at the rate of 6 percent. Likewise, the department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to transactions taxable at 4.35 ~~7~~ percent pursuant to

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s. 212.05(1)(e)1.c. ~~s. 212.05(1)(e)~~ and on transactions which would otherwise have been so taxable in counties which have adopted a discretionary sales surtax.

Section 8. In complying with the amendments to ss. 203.01 and 212.05, Florida Statutes, relating to the additional tax on electrical power or energy, made by this act, a seller of electrical power or energy may collect a combined rate of 6.95 percent, which consists of the 4.35 percent and 2.6 percent required under ss. 212.05(1)(e)1.c. and 203.01(1)(b)4., Florida Statutes, respectively, if the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of Revenue.

Section 9. Effective upon this act becoming a law, the Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, for the purpose of implementing the amendments to ss. 203.01, 212.05, 212.12, and 212.20, Florida Statutes, relating to the additional tax on electrical power or energy, made by this act. This section expires July 1, 2017.

Section 10. Effective July 1, 2014, paragraphs (c) and (d) of subsection (6) of section 212.20, Florida Statutes, are amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter, ~~and~~ s. 202.18(1)(b) and (2)(b), and s. 203.01(a)3. is ~~shall be~~ as follows:

(c)1. Proceeds from the fees imposed under ss.

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212.05(1)(h)3. and 212.18(3) shall remain with the General Revenue Fund.

2. The portion of the proceeds which constitutes gross receipts tax imposed pursuant to s. 203.01(a)3. shall be deposited as provided by law and in accordance with s. 9, Art. XII of the State Constitution.

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.8794 ~~8.814~~ percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1. and 2., 0.0956 ~~0.095~~ percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

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4. After the distributions under subparagraphs 1., 2., and 3., 2.0602 ~~2.0440~~ percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3514 ~~1.3409~~ percent of the available proceeds shall be

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 387 - 388

and insert:

the communications services tax; amending s. 203.01, F.S.; providing for an additional tax on charges for electrical power or energy and the rate for such tax; providing for the redistribution of certain taxes on electrical power and energy; amending ss. 212.05 and 212.12, F.S.; conforming provisions to changes made by the act; providing that a seller of electrical power may combine the collection of certain taxes if properly reflected in its return to the Department of Revenue; providing for emergency rules; amending s. 212.20, F.S.; revising the distribution of taxes, including the taxes collected on charges for electrical power and energy; providing for a monthly distribution of a

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 219 and 220
insert:

Section 6. Section 288.127, Florida Statutes, is created to read:

288.127 Qualified Television Loan Fund (QTV Fund).—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Fund administrator" means a private sector

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organization under contract with the department to manage and administer the QTV Fund.

(b) "Major broadcaster" means broadcasting organizations that include, but are not limited to, television broadcasting networks, cable television, direct broadcast satellite, telecommunications companies, and internet streaming or other digital media platforms.

(c) "Private investment capital" means capital from private, nongovernmental funding sources that will be coinvested with the QTV Fund in segregated accounts.

(d) "Qualified lending partner" means a financial institution, as defined in s. 655.005, selected by a fund administrator with demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, with a combined portfolio in film, television, and entertainment media of at least $500 million.

(e) "Qualified television content" means series, mini-series, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcast license agreement. The term does not include a production that contains content that is obscene, as defined in s. 847.001.

(2) PURPOSE.—The purpose of the QTV Fund is to create a public-private partnership in the form of a revolving loan fund to administer a loan program for television production. The QTV Fund shall be privately managed under state oversight to incentivize the use of this state as a site for producing

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qualified television content and to develop and sustain the workforce and infrastructure for television content production.

(3) CREATION.—The Qualified Television Loan Fund is created within the department. The QTV Fund shall be a public fund that is privately managed by the fund administrator under contract entered into with the department. The department shall disburse the funds appropriated for this program to the fund administrator to invest in the QTV Fund during the existence of the program pursuant to this section and the contract entered into between the fund administrator and the department. State funds in the QTV Fund may be used only to enter into loan agreements and to pay any administrative costs or other authorized fees under this section.

(a) The QTV Fund shall be a revolving loan fund that shall invest and reinvest the principal and interest of the fund in accordance with s. 617.2104, in such a manner as to not subject the funds to state or federal taxes and to be consistent with the investment policy statement adopted by the fund administrator. As the production companies repay the principal and interest for the QTV Fund, the state funds shall be returned, less any QTV Fund expenses, to the account to be lent to subsequent borrowers.

(b) Funds from the QTV Fund shall be disbursed by the fund administrator through a lending vehicle to make short-term loans pursuant to this section.

(4) FUND ADMINISTRATOR.—

(a) The department shall contract with a fund administrator by September 1, 2014, and award the contract in accordance with the competitive bidding requirements in s. 287.057.

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(b) The department shall select as fund administrator a private sector entity that demonstrates the ability to implement the program under this section and that meets the requirements set forth in this section. Preference shall be given to applicants that are headquartered in this state. Additional consideration may be given to applicants with experience in the management of economic development or job creation-related funds. The qualifications for the fund administrator must include, but are not limited to, the following:

1. A demonstrated track record of managing private sector equity or debt funds in the entertainment and media industries.

2. The ability to demonstrate through a partnership agreement that a qualified lending partner is in place, with the capability of providing leverage of a minimum of 2.5 times the capital amount of the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

(c) For overseeing and administering the QTV Fund, the fund administrator shall be reimbursed for the portion of costs the fund administrator incurrs in establishing and operating the Fund related to the state’s investment, which shall be paid from state funds in the QTV Fund. Any additional private investment capital in the segregated accounts is responsible for its own management fees. The fund administrator shall be entitled to a reasonable profit, but such distribution may not be made from any principal funds from the original appropriation.

(d) The fund administrator shall provide services defined under this section for the duration of the QTV Fund term unless removed for cause. Cause shall be further defined under the contract with the fund administrator and must include, but is

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not limited to, the engagement in fraud or other criminal acts by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(5) FUND ADMINISTRATOR POWERS AND DUTIES.—

(a) *Authority to contract.*—The fund administrator may enter into agreements with qualified lending partners for concurrent lending through the QTV Fund. A loan made by the qualified lending partner must be accounted for separately from the state funds or any other private investment capital. Such loan shall be made as senior debt. The fund administrator may raise private investment capital for mezzanine equity and other equity or raise junior capital for concurrent lending through the QTV Fund. However, loans from private investment capital may not be made at more favorable terms and conditions than the terms and conditions of the state funds in the QTV Fund. The state appropriation must be maintained in a separate account from any private investment capital and administered in a separate legal investment entity or entities. Private investment capital and loans shall be segregated from each other, and funds may not be commingled.

(b) *General duties.*—The fund administrator:

1. Shall prudently manage the funds in the QTV Fund as a revolving loan fund.

2. Shall contract with one or more qualified lending partners.

3. Shall provide improvement of the credit profile of a structured financial transaction for qualified production companies that produce qualified television content meeting the

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criteria in subsection (7).

4. May raise additional private investment capital to be held in separate accounts, in addition to the leverage provided by the qualified lending partner.

5. Shall administer the QTV Fund in accordance with this part.

6. Shall agree to maintain the recipient's books and records relating to funds received from the department according to generally accepted accounting principles and in accordance with the requirements of s. 215.97(7) and to make those books and records available to the department for inspection upon reasonable notice. The books and records must be maintained with detailed records showing the use of proceeds from loans to fund qualified television content.

7. Shall maintain its registered office in this state throughout the duration of the contract.

(c) *Financial reporting.*—The fund administrator shall submit to the department by February 28 each year audited financial statements for the preceding tax year which are audited by an independent certified public accountant after the end of each year in which the fund administrator is under contract with the department. In addition to providing an independent opinion on the annual financial statements, such audit provides a basis to verify the segregation of state funds from those of any private investment capital.

(d) *Program reporting.*—The fund administrator shall submit an annual report to the department by February 28 after the end of each year in which the fund administrator is under contract with the department. The report must include information on the

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loans made in the preceding calendar year and must include, but need not be limited to, the following:

1. The name of the qualified television content.

2. The names of the counties in which the production occurred.

3. The number of jobs created and retained as a result of the production.

4. The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner.

5. The loan repayment status for each loan.

6. The number, and amounts, of any loans with payments past due.

7. The number, and amounts, of any loans in default.

8. A description of the assets securing the loans.

9. Other information and documentation required by the department.

(e) *Plan of accountability.*—The fund administrator shall submit an annual plan of accountability of economic development, including a report detailing the job creation resulting from the QTV Fund loans made during the current year and cumulatively since the inception of the program. The fund administrator shall also provide any additional information requested by the department pertaining to economic development and job creation in the state.

(f) *Conflict-of-interest statement.*—The fund administrator shall provide a conflict-of-interest statement from its governing board certifying that no board member, director, employee, agent, immediate family member thereof, or other

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person connected to or affiliated with the fund administrator is receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the loan program or from a qualified lending partner. The department may waive this requirement for good cause shown.

(6) LOAN STRUCTURE.—

(a) The QTV Fund may make loans to production companies to fund production costs or provide improvement of the credit profile of a structured financial transaction for qualified television content that meets the criteria requirements of subsection (7). To make a loan, the fund administrator shall take into consideration the types of eligible collateral, the credit worthiness of the project, the producer's track record, the possibility that the project will encourage, enhance, or create economic benefits, and the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.

(b) The QTV Fund loan package shall be secured by contractual and predictable sources of repayment such as domestic and international broadcaster license agreements and other ancillary revenues that are derived from media content rights. Unsecured loans may not be made.

(c) The loans shall be made on the basis of a second lien or primary security rights on the media assets listed in paragraph (b).

(d) The QTV Fund shall provide funding only in conjunction with senior loans provided by a qualified lending partner. Loans from the QTV Fund may be subordinated to senior debt from the

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qualified lending partner and may not exceed 30 percent of the total production funding cost of any particular project.

(e) The production company's repayment of any loan shall be in accordance with the broadcast license agreement and the delivery of qualified television content to the major broadcaster and shall be within 60 days after such delivery.

(f) Loans made by the QTV Fund may not exceed 36 months in duration, except for extenuating circumstances for which the fund administrator may grant an extension upon making written findings to the department specifying the conditions requiring the extension.

(g) The fund administrator or a board member, employee, or agent thereof, or an immediate family member of a board member, employee, or agent, may not have a financial interest in an entity that is awarded a loan under a loan program and may not benefit directly or indirectly from the making of such a loan. A loan may not be made to a person if it violates this paragraph. As used in this section, the term "immediate family" means a parent, child, or spouse, or any other relative by blood, marriage, or adoption, of a board member, employee, or agent of the loan administrator.

(h) With the exception of funds appropriated to the department for the loan program, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV Fund or against the fund administrator, the qualified lending partner, or the department.

(7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund administrator must consider at a minimum the following criteria for evaluating the qualifying television content:

316994

(a) The content is intended for broadcast by a major broadcaster on a major network, cable, or streaming channel.

(b) The content is produced in this state, or a minimum of 80 percent of the production budget must be spent in this state. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object to the change within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment to the requirement in this paragraph.

(c) If the content is a series, there is a programming order for at least 13 episodes. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object to the change within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment to the requirement in this paragraph.

(d) The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement and the contract must cover at least 60 percent of the budget.

(e) The producer must retain a foreign sales agent and must be able to provide the fund administrator with the foreign sales agent’s official estimates of foreign and ancillary sales.

316994

(f) The project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect the state's funds.

(8) AUDITOR GENERAL AUDIT.—The Auditor General is authorized to conduct operational audits, as defined in s. 11.45, of the QTV Fund and fund administrator. The scope of audit must include, but is not limited to, internal controls evaluations, internal audit functions, reporting and performance requirements for the use of the funds, and compliance with state and federal law. The fund administrator shall provide to the Auditor General any detail or supplemental data required.

(9) RULEMAKING AUTHORITY.—The department may adopt rules to administer this section.

(10) EXPIRATION.—This section expires December 31, 2024, at which point all funds remaining in the QTV Fund shall revert to the General Revenue Fund.

(11) EMERGENCY RULES.—

(a) The executive director of the department is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54(4) for the purpose of implementing this section.

(b) Notwithstanding any other law, the emergency rules adopted pursuant to paragraph (a) remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(c) This subsection expires October 1, 2015.

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Section 7. Paragraph (b) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. The ~~VISIT~~ Florida Tourism Industry Marketing Corporation and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124.

4. The Florida Sports Foundation and related programs established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171.

5. The qualified television loan fund established under s. 288.127.

Section 8. For fiscal year 2014-2015, the sum of $20 million of nonrecurring funds is appropriated from the General Revenue Fund to the Economic Development Trust Fund of the

316994

Department of Economic Opportunity for the purpose of making disbursements in accordance with s. 288.127(3), Florida Statutes.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 378 - 391

and insert:

An act relating to economic development; amending s. 202.12, F.S.; reducing the tax rate applied to the sale of communications services; reducing the tax rate applied to the retail sale of direct-to-home satellite services; amending s. 202.12001, F.S.; conforming rates to the reduction of the communications services tax; amending s. 202.18, F.S.; revising the distribution of tax revenues received; amending s. 203.001. F.S.; conforming rates to the reduction of the communications services tax; amending s. 212.20, F.S.; providing for a monthly distribution of a specified amount of sales tax revenue to a complex certified as a motorsports entertainment complex by the Department of Economic Opportunity; creating s. 288.127, F.S.; providing definitions; providing a purpose; creating the Qualified Television Loan Fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing fund administrator qualifications; providing for the fund administrator's compensation and removal; specifying the fund administrator powers and duties; providing

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the structure of the loans; providing qualified television content criteria; permitting the Auditor General to conduct an operational audit of the fund and the fund administrator; authorizing the department to adopt rules; providing for expiration of the act; providing emergency rulemaking authority; amending s. 288.0001, F.S.; requiring an analysis of the qualified television loan fund in the Economic Development Programs Evaluation; providing an appropriation; amending s.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/25/2014	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 315 and 316
insert:

Section 7. Effective upon this act becoming a law, subsection (5) of section 624.4094, Florida Statutes, is amended to read:

624.4094 Bail bond premiums.—

~~(5) This section does not affect the reporting or payment~~

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~~of insurance premium taxes under ss. 624.509, 624.5091, and 624.5092, and the insurance premium tax and related excise taxes shall continue to be calculated using gross bail bond premiums.~~

Section 8. Effective upon this act becoming a law, subsection (1) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.—

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under s. 624.510, pay to the Department of Revenue a tax on insurance premiums, premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year, the amounts thereof to be determined as set forth in this section, to wit:

(a) An amount equal to 1.75 percent of the gross amount of such receipts on account of life and health insurance policies covering persons resident in this state and on account of all other types of policies and contracts, ~~(~~except annuity policies or contracts taxable under paragraph (b) and bail bond policies or contracts taxable under paragraph (c),~~)~~ covering property, subjects, or risks located, resident, or to be performed in this state, omitting premiums on reinsurance accepted, and less return premiums or assessments, but without deductions:

1. For reinsurance ceded to other insurers;

2. For moneys paid upon surrender of policies or

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certificates for cash surrender value;

3. For discounts or refunds for direct or prompt payment of premiums or assessments; and

4. On account of dividends of any nature or amount paid and credited or allowed to holders of insurance policies; certificates; or surety, indemnity, reciprocal, or interinsurance contracts or agreements; ~~and~~

(b) An amount equal to 1 percent of the gross receipts on annuity policies or contracts paid by holders thereof in this state; and~~.~~

(c) An amount equal to 1.75 percent of the direct written premiums for bail bonds, excluding any amounts retained by licensed bail bond agents or licensed managing general agents.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 398

and insert:

pursue recovery; amending s. 624.4094, F.S.; deleting a provision relating to the reporting or payment of specified insurance premium taxes; amending s. 624.509, F.S.; requiring an insurer to pay to the Department of Revenue a specified amount of the direct written premiums for bail bonds; specifying a period during which the

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LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/25/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 315 and 316
insert:

Section 7. Section 288.127, Florida Statutes, is created to read:

288.127 Qualified television loan fund.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Fund administrator" means a private sector

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organization under contract with the department to manage and administer the QTV Fund.

(b) "Major broadcaster" means broadcasting organizations that include, but are not limited to, television broadcasting networks, cable television, direct broadcast satellite, telecommunications companies, and internet streaming or other digital media platforms.

(c) "Private investment capital" means capital from private, nongovernmental funding sources that will be coinvested with the QTV Fund in segregated accounts.

(d) "Qualified lending partner" means a financial institution, as defined in s. 655.005, selected by a fund administrator that has demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, and a combined portfolio in film, television, and entertainment media of at least $500 million.

(e) "Qualified television content" means series, mini-series, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcast license agreement. The term does not include a production that contains content that is obscene, as defined in s. 847.001.

(f) "QTV Fund" means the qualified television loan fund.

(2) PURPOSE.—The purpose of the QTV Fund is to create a public-private partnership in the form of a revolving loan fund to administer a loan program for television production. The QTV Fund shall be privately managed under state oversight to

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incentivize the use of this state as a site for producing qualified television content and to develop and sustain the workforce and infrastructure for television content production.

(3) CREATION.—The qualified television loan fund is created within the department. The QTV Fund shall be a public fund that is privately managed by the fund administrator under contract with the department. The department shall disburse the funds appropriated for this program to the fund administrator to invest in the QTV Fund during the existence of the program pursuant to this section and the contract between the fund administrator and the department. State funds in the QTV Fund may be used only to enter into loan agreements and to pay any administrative costs or other authorized fees under this section.

(a) The QTV Fund shall be a revolving loan fund that invests and reinvests the principal and interest of the fund in accordance with s. 617.2104 in a manner so as to not subject the funds to state or federal taxes and to be consistent with the investment policy statement adopted by the fund administrator. As production companies repay the principal and interest to the QTV Fund, state funds, less any QTV Fund expenses, shall be returned to the account to be lent to subsequent borrowers.

(b) Funds from the QTV Fund shall be disbursed by the fund administrator through a lending vehicle to make short-term loans pursuant to this section.

(4) FUND ADMINISTRATOR.—

(a) The department shall contract with a fund administrator by September 1, 2014, and award the contract in accordance with the competitive bidding requirements in s. 287.057.

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(b) The department shall select as fund administrator a private sector entity that demonstrates the ability to implement the program under this section and that meets the requirements set forth in this section. Preference shall be given to applicants that are headquartered in this state. Additional consideration may be given to applicants that have experience in the management of economic development or job creation-related funds. The qualifications for the fund administrator must include, but are not limited to:

1. A demonstrated track record of managing private sector equity or debt funds in the entertainment and media industries.

2. The ability to demonstrate through a partnership agreement that a qualified lending partner is in place, which has the capability of providing leverage of a minimum of 2.5 times the capital amount of the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

(c) For overseeing and administering the QTV Fund, the fund administrator shall be reimbursed for the costs the fund administrator incurs in establishing and operating the fund related to the state’s investment, which shall be paid from state funds in the QTV Fund. Any additional private investment capital in the segregated accounts is responsible for its own management fees. The fund administrator is entitled to a reasonable profit, but such distribution may not be made from the principal funds from the original appropriation.

(d) The fund administrator shall provide services defined under this section for the duration of the QTV Fund term unless removed for cause. Cause shall be further defined under the

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contract with the fund administrator and must include, but is not limited to, the engagement in fraud or other criminal acts by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(5) FUND ADMINISTRATOR POWERS AND DUTIES.—

(a) *Authority to contract*.—The fund administrator may enter into agreements with qualified lending partners for concurrent lending through the QTV Fund. A loan made by the qualified lending partner must be accounted for separately from the state funds or other private investment capital. Such loan shall be made as senior debt. The fund administrator may raise private investment capital for mezzanine equity and other equity or raise junior capital for concurrent lending through the QTV Fund. However, loans from private investment capital may not be made at more favorable terms and conditions than the terms and conditions of the state funds in the QTV Fund. The state appropriation must be maintained in a separate account from private investment capital and administered in a separate legal investment entity or entities. Private investment capital and loans shall be segregated from each other, and funds may not be commingled.

(b) *General duties*.—The fund administrator:

1. Shall prudently manage the funds in the QTV Fund as a revolving loan fund.

2. Shall contract with one or more qualified lending partners.

3. Shall provide improvement of the credit profile of a structured financial transaction for qualified production

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companies that produce qualified television content meeting the criteria in subsection (7).

4. May raise additional private investment capital to be held in separate accounts, in addition to the leverage provided by the qualified lending partner.

5. Shall administer the QTV Fund in accordance with this part.

6. Shall agree to maintain the recipient's books and records relating to funds received from the department according to generally accepted accounting principles and in accordance with s. 215.97(7) and to make those books and records available to the department for inspection upon reasonable notice. The books and records must be maintained with detailed records showing the use of proceeds from loans to fund qualified television content.

7. Shall maintain its registered office in this state throughout the duration of the contract.

(c) *Financial reporting.*—The fund administrator shall annually submit to the department by February 28 audited financial statements for the preceding tax year which are audited by an independent certified public accountant after the end of each year in which the fund administrator is under contract with the department. In addition to providing an independent opinion on the annual financial statements, such audit provides a basis for verifying the segregation of state funds from those of any private investment capital.

(d) *Program reporting.*—The fund administrator shall submit a report to the department by February 28 after the end of each year in which the fund administrator is under contract with the

department. The report must include information on the loans made in the preceding calendar year, including:

1. The name of the qualified television content.

2. The names of the counties in which the production occurred.

3. The number of jobs created and retained as a result of the production.

4. The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner.

5. The loan repayment status for each loan.

6. The number and amounts of any loans with payments past due.

7. The number and amounts of any loans in default.

8. A description of the assets securing the loans.

9. Other information and documentation required by the department.

(e) *Plan of accountability.*—The fund administrator shall submit an annual plan of accountability of economic development, including a report detailing the job creation resulting from the QTV Fund loans made during the current year and cumulatively since the inception of the program. The fund administrator shall also provide any additional information requested by the department pertaining to economic development and job creation in the state.

(f) *Conflict-of-interest statement.*—The fund administrator shall provide a conflict-of-interest statement from its governing board certifying that no board member, director, employee, agent, immediate family member thereof, or other

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person connected to or affiliated with the fund administrator is receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the loan program or from a qualified lending partner. The department may waive this requirement for good cause shown.

(6) LOAN STRUCTURE.—

(a) The QTV Fund may make loans to production companies to fund production costs or provide improvement of the credit profile of a structured financial transaction for qualified television content that meets the criteria requirements of subsection (7). To make a loan, the fund administrator shall consider the types of eligible collateral, the credit worthiness of the project, the producer's track record, the possibility that the project will encourage, enhance, or create economic benefits, and the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.

(b) The QTV Fund loan package shall be secured by contractual and predictable sources of repayment such as domestic and international broadcaster license agreements and other ancillary revenues that are derived from media content rights. Unsecured loans may not be made.

(c) The loans shall be made on the basis of a second lien or primary security rights on the media assets listed in paragraph (b).

(d) The QTV Fund shall provide funding only in conjunction with senior loans provided by a qualified lending partner. Loans from the fund may be subordinated to senior debt from the

qualified lending partner and may not exceed 30 percent of the total production funding cost of any particular project.

(e) The production company's repayment of a loan shall be in accordance with the broadcast license agreement and the delivery of qualified television content to the major broadcaster and shall be within 60 days after such delivery.

(f) Loans made by the QTV Fund may not exceed 36 months in duration, except for extenuating circumstances for which the fund administrator may grant an extension upon making written findings to the department specifying the conditions requiring the extension.

(g) The fund administrator or a board member, employee, or agent thereof, or an immediate family member of a board member, employee, or agent, may not have a financial interest in an entity that is awarded a loan under a loan program and may not benefit directly or indirectly from the making of such loan. A loan may not be made to a person if it violates this paragraph. As used in this section, the term "immediate family" means a parent, child, or spouse, or other relative by blood, marriage, or adoption, of a board member, employee, or agent of the loan administrator.

(h) Except for funds appropriated to the department for the loan program, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV Fund or against the fund administrator, the qualified lending partner, or the department.

(7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund administrator must, at a minimum, consider the following criteria for evaluating the qualifying television content:

938816

(a) The content is intended for broadcast by a major broadcaster on a major network, cable, or streaming channel.

(b) The content is produced in this state, or a minimum of 80 percent of the production budget must be spent in this state. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment.

(c) If the content is a series, there is a programming order for at least 13 episodes. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment.

(d) The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement and the contract must cover at least 60 percent of the budget.

(e) The producer must retain a foreign sales agent and must be able to provide the fund administrator with the foreign sales agent’s official estimates of foreign and ancillary sales.

(f) The project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode

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exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect the state's funds.

(8) AUDITOR GENERAL AUDIT.—The Auditor General may conduct operational audits, as defined in s. 11.45, of the QTV Fund and fund administrator. The scope of audit must include, but is not limited to, internal controls evaluations, internal audit functions, reporting and performance requirements for the use of the funds, and compliance with state and federal law. The fund administrator shall provide to the Auditor General any detail or supplemental data required.

(9) RULEMAKING AUTHORITY.—The department may adopt rules to administer this section.

(10) EXPIRATION.—This section expires December 31, 2024, at which point all funds remaining in the QTV Fund revert to the General Revenue Fund.

(11) EMERGENCY RULES.—

(a) The executive director of the department is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54(4) for the purpose of implementing this section.

(b) Notwithstanding any other law, the emergency rules adopted pursuant to paragraph (a) remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(c) This subsection expires October 1, 2015.

Section 10. Paragraph (b) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

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288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. The ~~VISIT~~ Florida Tourism Industry Marketing Corporation and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124.

4. The Florida Sports Foundation and related programs established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171.

5. The qualified television loan fund established under s. 288.127.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 378 - 398

and insert:

An act relating to economic development; amending s. 202.12, F.S.; reducing the tax rate applied to the sale of communications services; reducing the tax rate applied to the retail sale of direct-to-home satellite services; amending s. 202.12001, F.S.; conforming rates to the reduction of the communications services tax; amending s. 202.18, F.S.; revising the distribution of tax revenues received; amending s. 203.001. F.S.; conforming rates to the reduction of the communications services tax; amending s. 212.20, F.S.; providing for a monthly distribution of a specified amount of sales tax revenue to a complex certified as a motorsports entertainment complex by the Department of Economic Opportunity; amending s. 288.1171, F.S.; authorizing the department to certify a single applicant as a motorsports entertainment complex if it meets specified criteria; authorizing the Auditor General to verify the expenditure of specified distributions and to notify the Department of Revenue of improperly expended funds so that it may pursue recovery; creating s. 288.127, F.S.; providing definitions; providing a purpose; creating the qualified television loan fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing fund administrator qualifications; providing for the fund administrator’s compensation and removal; specifying the fund administrator powers and duties; providing the structure of the loans; providing qualified television

938816

content criteria; permitting the Auditor General to conduct an operational audit of the fund and the fund administrator; authorizing the department to adopt rules; providing for expiration of the act; providing emergency rulemaking authority; amending s. 288.0001, F.S.; requiring an analysis of the qualified television loan fund in the Economic Development Programs Evaluation; specifying a period during which the

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 369 and 370
insert:

Section 9. Effective July 1, 2014, paragraph (c) of subsection (3) of section 288.9914, Florida Statutes, is amended to read:

288.9914 Certification of qualified investments; investment issuance reporting.—

877542

(3) REVIEW.—

(c) The department may not approve a cumulative amount of qualified investments that may result in the claim of more than $227.55 ~~$178.8~~ million in tax credits during the existence of the program or more than $46.6 ~~$36.6~~ million in tax credits in a single state fiscal year. However, the potential for a taxpayer to carry forward an unused tax credit may not be considered in calculating the annual limit.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 378 - 404

and insert:

An act relating to economic development; amending s. 202.12, F.S.; reducing the tax rate applied to the sale of communications services; reducing the tax rate applied to the retail sale of direct-to-home satellite services; amending s. 202.12001, F.S.; conforming rates to the reduction of the communications services tax; amending s. 202.18, F.S.; revising the distribution of tax revenues received; amending s. 203.001. F.S.; conforming rates to the reduction of the communications services tax; amending s. 212.20, F.S.; providing for a monthly distribution of a specified amount of sales tax revenue to a complex certified as a motorsports entertainment complex by the Department of Economic Opportunity; amending s. 288.1171, F.S.; authorizing the department to certify a single applicant as a motorsports entertainment

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complex if it meets specified criteria; authorizing the Auditor General to verify the expenditure of specified distributions and to notify the Department of Revenue of improperly expended funds so that it may pursue recovery; specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories are exempt from the sales tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; amending s. 288.9914, F.S.; revising limits on tax credits that may be approved by the Department of Economic Opportunity under the New Markets Development Program; providing effective dates.

971444

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 369 and 370
insert:

Section 9. Hurricane preparedness tax suspension.—

(1) Effective June 1, 2014, through June 12, 2014, a tax levied pursuant to chapter 212, Florida Statutes, may not be collected on the sale of:

(a) A portable self-powered light source selling for $20 or

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less.

(b) A portable self-powered radio, two-way radio, or weather band radio selling for $50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) A self-contained first-aid kit selling for $30 or less.

(e) A ground anchor system or tie-down kit selling for $50 or less.

(f) A gas or diesel fuel tank selling for $25 or less.

(g) A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.

(h) A nonelectric food storage cooler selling for $30 or less.

(i) A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for $750 or less.

(2) The Department of Revenue may adopt rules to implement this section.

(3) This section expires September 30, 2014.

Section 10. The sum of $221,400 is appropriated from the General Revenue Fund to the Department of Revenue for purposes of administering the hurricane preparedness tax suspension.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 404

and insert:

providing an appropriation; providing an exemption

971444

from the sales and use tax for sales of certain tangible personal property relating to hurricane preparedness for a certain period; providing for expiration; authorizing the Department of Revenue to adopt rules; providing an appropriation; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Sobel) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 369 and 370
insert:

Section 8. Sales tax holiday for Energy Star and WaterSense products.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on September 19, 2014, through 11:59 p.m. on September 21, 2014, on the first

341776

$1,500 of the sale price of a new Energy Star product or WaterSense product. However, a person is limited to one purchase of each specific type of Energy Star or WaterSense product listed in paragraph (2)(a) or paragraph (2)(b) that has a sales price of $500 or more. A second or subsequent purchase of a specific type of Energy Star product or WaterSense product that has a sales price of $500 or more is subject to tax.

(2) As used in this section, the term:

(a) "Energy Star product" means a room air conditioner, air purifier, ceiling fan, clothes washer, clothes dryer, dehumidifier, dishwasher, freezer, refrigerator, water heater, swimming pool pump, or package of light bulbs that is designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's requirements under the Energy Star program and that is affixed with an Energy Star label.

(b) "WaterSense product" means a bathroom sink faucet, faucet accessory, high-efficiency toilet or urinal, showerhead, or weather or sensor-based irrigation controller that is recognized as water efficient by the WaterSense program sponsored by the United States Environmental Protection Agency and that is affixed with a WaterSense label.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section. This subsection expires July 1, 2017.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

341776

Delete line 404

and insert:

providing an appropriation: providing for a sales tax holiday for certain Energy Star and WaterSense products; providing restrictions; providing definitions; authorizing the Department of Revenue to adopt emergency rules; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 369 and 370
insert:

Section 9. Section 288.127, Florida Statutes, is created to read:

288.127 Qualified Television Loan Fund (QTV Fund).—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Fund administrator" means a private sector

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organization under contract with the department to manage and administer the QTV Fund.

(b) "Major broadcaster" means broadcasting organizations that include, but are not limited to, television broadcasting networks, cable television, direct broadcast satellite, telecommunications companies, and internet streaming or other digital media platforms.

(c) "Private investment capital" means capital from private, nongovernmental funding sources that will be coinvested with the QTV Fund in segregated accounts.

(d) "Qualified lending partner" means a financial institution, as defined in s. 655.005, selected by a fund administrator with demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, with a combined portfolio in film, television, and entertainment media of at least $500 million.

(e) "Qualified television content" means series, mini-series, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcast license agreement. The term does not include a production that contains content that is obscene, as defined in s. 847.001.

(2) PURPOSE.—The purpose of the QTV Fund is to create a public-private partnership in the form of a revolving loan fund to administer a loan program for television production. The QTV Fund shall be privately managed under state oversight to incentivize the use of this state as a site for producing

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qualified television content and to develop and sustain the workforce and infrastructure for television content production.

(3) CREATION.—The Qualified Television Loan Fund is created within the department. The QTV Fund shall be a public fund that is privately managed by the fund administrator under contract entered into with the department. The department shall disburse the funds appropriated for this program to the fund administrator to invest in the QTV Fund during the existence of the program pursuant to this section and the contract entered into between the fund administrator and the department. State funds in the QTV Fund may be used only to enter into loan agreements and to pay any administrative costs or other authorized fees under this section.

(a) The QTV Fund shall be a revolving loan fund that shall invest and reinvest the principal and interest of the fund in accordance with s. 617.2104, in such a manner as to not subject the funds to state or federal taxes and to be consistent with the investment policy statement adopted by the fund administrator. As the production companies repay the principal and interest for the QTV Fund, the state funds shall be returned, less any QTV Fund expenses, to the account to be lent to subsequent borrowers.

(b) Funds from the QTV Fund shall be disbursed by the fund administrator through a lending vehicle to make short-term loans pursuant to this section.

(4) FUND ADMINISTRATOR.—

(a) The department shall contract with a fund administrator by September 1, 2014, and award the contract in accordance with the competitive bidding requirements in s. 287.057.

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(b) The department shall select as fund administrator a private sector entity that demonstrates the ability to implement the program under this section and that meets the requirements set forth in this section. Preference shall be given to applicants that are headquartered in this state. Additional consideration may be given to applicants with experience in the management of economic development or job creation-related funds. The qualifications for the fund administrator must include, but are not limited to, the following:

1. A demonstrated track record of managing private sector equity or debt funds in the entertainment and media industries.

2. The ability to demonstrate through a partnership agreement that a qualified lending partner is in place, with the capability of providing leverage of a minimum of 2.5 times the capital amount of the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

(c) For overseeing and administering the QTV Fund, the fund administrator shall be reimbursed for the portion of costs the fund administrator incurrs in establishing and operating the Fund related to the state’s investment, which shall be paid from state funds in the QTV Fund. Any additional private investment capital in the segregated accounts is responsible for its own management fees. The fund administrator shall be entitled to a reasonable profit, but such distribution may not be made from any principal funds from the original appropriation.

(d) The fund administrator shall provide services defined under this section for the duration of the QTV Fund term unless removed for cause. Cause shall be further defined under the contract with the fund administrator and must include, but is

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not limited to, the engagement in fraud or other criminal acts by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(5) FUND ADMINISTRATOR POWERS AND DUTIES.—

(a) *Authority to contract.*—The fund administrator may enter into agreements with qualified lending partners for concurrent lending through the QTV Fund. A loan made by the qualified lending partner must be accounted for separately from the state funds or any other private investment capital. Such loan shall be made as senior debt. The fund administrator may raise private investment capital for mezzanine equity and other equity or raise junior capital for concurrent lending through the QTV Fund. However, loans from private investment capital may not be made at more favorable terms and conditions than the terms and conditions of the state funds in the QTV Fund. The state appropriation must be maintained in a separate account from any private investment capital and administered in a separate legal investment entity or entities. Private investment capital and loans shall be segregated from each other, and funds may not be commingled.

(b) *General duties.*—The fund administrator:

1. Shall prudently manage the funds in the QTV Fund as a revolving loan fund.

2. Shall contract with one or more qualified lending partners.

3. Shall provide improvement of the credit profile of a structured financial transaction for qualified production companies that produce qualified television content meeting the

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criteria in subsection (7).

4. May raise additional private investment capital to be held in separate accounts, in addition to the leverage provided by the qualified lending partner.

5. Shall administer the QTV Fund in accordance with this part.

6. Shall agree to maintain the recipient's books and records relating to funds received from the department according to generally accepted accounting principles and in accordance with the requirements of s. 215.97(7) and to make those books and records available to the department for inspection upon reasonable notice. The books and records must be maintained with detailed records showing the use of proceeds from loans to fund qualified television content.

7. Shall maintain its registered office in this state throughout the duration of the contract.

(c) *Financial reporting.*—The fund administrator shall submit to the department by February 28 each year audited financial statements for the preceding tax year which are audited by an independent certified public accountant after the end of each year in which the fund administrator is under contract with the department. In addition to providing an independent opinion on the annual financial statements, such audit provides a basis to verify the segregation of state funds from those of any private investment capital.

(d) *Program reporting.*—The fund administrator shall submit an annual report to the department by February 28 after the end of each year in which the fund administrator is under contract with the department. The report must include information on the

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loans made in the preceding calendar year and must include, but need not be limited to, the following:

1. The name of the qualified television content.

2. The names of the counties in which the production occurred.

3. The number of jobs created and retained as a result of the production.

4. The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner.

5. The loan repayment status for each loan.

6. The number, and amounts, of any loans with payments past due.

7. The number, and amounts, of any loans in default.

8. A description of the assets securing the loans.

9. Other information and documentation required by the department.

(e) *Plan of accountability.*—The fund administrator shall submit an annual plan of accountability of economic development, including a report detailing the job creation resulting from the QTV Fund loans made during the current year and cumulatively since the inception of the program. The fund administrator shall also provide any additional information requested by the department pertaining to economic development and job creation in the state.

(f) *Conflict-of-interest statement.*—The fund administrator shall provide a conflict-of-interest statement from its governing board certifying that no board member, director, employee, agent, immediate family member thereof, or other

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person connected to or affiliated with the fund administrator is receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the loan program or from a qualified lending partner. The department may waive this requirement for good cause shown.

(6) LOAN STRUCTURE.—

(a) The QTV Fund may make loans to production companies to fund production costs or provide improvement of the credit profile of a structured financial transaction for qualified television content that meets the criteria requirements of subsection (7). To make a loan, the fund administrator shall take into consideration the types of eligible collateral, the credit worthiness of the project, the producer's track record, the possibility that the project will encourage, enhance, or create economic benefits, and the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.

(b) The QTV Fund loan package shall be secured by contractual and predictable sources of repayment such as domestic and international broadcaster license agreements and other ancillary revenues that are derived from media content rights. Unsecured loans may not be made.

(c) The loans shall be made on the basis of a second lien or primary security rights on the media assets listed in paragraph (b).

(d) The QTV Fund shall provide funding only in conjunction with senior loans provided by a qualified lending partner. Loans from the QTV Fund may be subordinated to senior debt from the

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qualified lending partner and may not exceed 30 percent of the total production funding cost of any particular project.

(e) The production company's repayment of any loan shall be in accordance with the broadcast license agreement and the delivery of qualified television content to the major broadcaster and shall be within 60 days after such delivery.

(f) Loans made by the QTV Fund may not exceed 36 months in duration, except for extenuating circumstances for which the fund administrator may grant an extension upon making written findings to the department specifying the conditions requiring the extension.

(g) The fund administrator or a board member, employee, or agent thereof, or an immediate family member of a board member, employee, or agent, may not have a financial interest in an entity that is awarded a loan under a loan program and may not benefit directly or indirectly from the making of such a loan. A loan may not be made to a person if it violates this paragraph. As used in this section, the term "immediate family" means a parent, child, or spouse, or any other relative by blood, marriage, or adoption, of a board member, employee, or agent of the loan administrator.

(h) With the exception of funds appropriated to the department for the loan program, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV Fund or against the fund administrator, the qualified lending partner, or the department.

(7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund administrator must consider at a minimum the following criteria for evaluating the qualifying television content:

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(a) The content is intended for broadcast by a major broadcaster on a major network, cable, or streaming channel.

(b) The content is produced in this state, or a minimum of 80 percent of the production budget must be spent in this state. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object to the change within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment to the requirement in this paragraph.

(c) If the content is a series, there is a programming order for at least 13 episodes. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object to the change within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment to the requirement in this paragraph.

(d) The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement and the contract must cover at least 60 percent of the budget.

(e) The producer must retain a foreign sales agent and must be able to provide the fund administrator with the foreign sales agent’s official estimates of foreign and ancillary sales.

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(f) The project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect the state's funds.

(8) AUDITOR GENERAL AUDIT.—The Auditor General is authorized to conduct operational audits, as defined in s. 11.45, of the QTV Fund and fund administrator. The scope of audit must include, but is not limited to, internal controls evaluations, internal audit functions, reporting and performance requirements for the use of the funds, and compliance with state and federal law. The fund administrator shall provide to the Auditor General any detail or supplemental data required.

(9) RULEMAKING AUTHORITY.—The department may adopt rules to administer this section.

(10) EXPIRATION.—This section expires December 31, 2024, at which point all funds remaining in the QTV Fund shall revert to the General Revenue Fund.

(11) EMERGENCY RULES.—

(a) The executive director of the department is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54(4) for the purpose of implementing this section.

(b) Notwithstanding any other law, the emergency rules adopted pursuant to paragraph (a) remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(c) This subsection expires October 1, 2015.

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Section 10. Paragraph (b) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. The ~~VISIT~~ Florida Tourism Industry Marketing Corporation and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124.

4. The Florida Sports Foundation and related programs established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171.

5. The qualified television loan fund established under s. 288.127.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 378 - 404

and insert:

An act relating to economic development; amending s. 202.12, F.S.; reducing the tax rate applied to the sale of communications services; reducing the tax rate applied to the retail sale of direct-to-home satellite services; amending s. 202.12001, F.S.; conforming rates to the reduction of the communications services tax; amending s. 202.18, F.S.; revising the distribution of tax revenues received; amending s. 203.001. F.S.; conforming rates to the reduction of the communications services tax; amending s. 212.20, F.S.; providing for a monthly distribution of a specified amount of sales tax revenue to a complex certified as a motorsports entertainment complex by the Department of Economic Opportunity; amending s. 288.1171, F.S.; authorizing the department to certify a single applicant as a motorsports entertainment complex if it meets specified criteria; authorizing the Auditor General to verify the expenditure of specified distributions and to notify the Department of Revenue of improperly expended funds so that it may pursue recovery; specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories are exempt from the sales tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; creating s. 288.127, F.S.;

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providing definitions; providing a purpose; creating the Qualified Television Loan Fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing fund administrator qualifications; providing for the fund administrator's compensation and removal; specifying the fund administrator powers and duties; providing the structure of the loans; providing qualified television content criteria; permitting the Auditor General to conduct an operational audit of the fund and the fund administrator; authorizing the department to adopt rules; providing for expiration of the act; providing emergency rulemaking authority; amending s. 288.0001, F.S.; requiring an analysis of the qualified television loan fund in the Economic Development Programs Evaluation; providing effective dates.

143508

LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/25/2014	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Between lines 369 and 370
insert:

Section 9. Effective upon becoming a law:

(1) Effective June 1, 2014, through June 12, 2014, no tax levied under chapter 212, Florida Statutes, may be collected on the sale of:

(a) A portable self-powered light source selling for $20 or

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less.

(b) A portable self-powered radio, two-way radio, or weather band radio selling for $50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) A self-contained first-aid kit selling for $30 or less.

(e) A ground anchor system or tie-down kit selling for $50 or less.

(f) A gas or diesel fuel tank selling for $25 or less.

(g) A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.

(h) A nonelectric food storage cooler selling for $30 or less.

(i) A portable generator used to provide light or communications or to preserve food in the event of a power outage, if the portable generator sells for $750 or less.

(2) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules under ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 10. Effective upon becoming a law, the sum of $280,912 is appropriated from the General Revenue Fund to the Department of Revenue for purposes of administering the tax exemptions relating to hurricane preparedness.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 404

and insert:

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providing an appropriation; providing an exemption from the sales and use tax for sales during a specified period of certain tangible personal property relating to hurricane preparedness; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing effective dates.

965938

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/25/2014	.	
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The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Effective July 1, 2014, subsection (9) of section 202.11, Florida Statutes, is amended to read:

202.11 Definitions.—As used in this chapter, the term:

(9) "Prepaid calling arrangement" means: ~~the separately stated retail sale by advance payment of~~

(a) A right to use communications services, other than

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mobile communications services, for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which ~~that~~ consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered; or ~~and that are sold in predetermined units or dollars of which the number declines with use in a known amount.~~

(b) A right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units' expiring or being exhausted unless the purchaser pays for additional units;

2. The purchaser is not required to purchase additional units; and

3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services.

Predetermined units described in this subsection may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

Section 2. Effective January 1, 2015, paragraphs (a) and (b) of subsection (1) of section 202.12, Florida Statutes, are

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amended to read:

202.12 Sales of communications services.—The Legislature finds that every person who engages in the business of selling communications services at retail in this state is exercising a taxable privilege. It is the intent of the Legislature that the tax imposed by chapter 203 be administered as provided in this chapter.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction, and the tax is due and payable as follows:

(a) Except as otherwise provided in this subsection, at a rate of 6.13 ~~6.65~~ percent applied to the sales price of the communications service that ~~which~~:

1. Originates and terminates in this state;~~,~~ or

2. Originates or terminates in this state and is charged to a service address in this state,

when sold at retail, computed on each taxable sale for the purpose of remitting the tax due. The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph. If no tax is imposed by this paragraph due to the exemption provided under ~~by reason of~~ s. 202.125(1), the tax imposed by chapter 203 shall nevertheless be collected and remitted in the manner and at the time prescribed for tax collections and remittances under this chapter.

(b) At the rate of 10.28 ~~10.8~~ percent on the retail sales price of any direct-to-home satellite service received in this state. The proceeds of the tax imposed under this paragraph

shall be accounted for and distributed in accordance with s. 202.18(2). The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph.

Section 3. Effective January 1, 2015, section 202.12001, Florida Statutes, is amended to read:

202.12001 Combined rate for tax collected pursuant to ss. 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch. 2010-149, Laws of Florida, the dealer of communication services may collect a combined rate of 6.28 ~~6.8~~ percent comprised of 6.13 ~~6.65~~ percent and 0.15 percent required by ss. 202.12(1)(a) and 203.01(1)(b)3., respectively, if ~~as long as~~ the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of Revenue.

Section 4. Effective January 1, 2015, subsection (2) of section 202.18, Florida Statutes, is amended to read:

202.18 Allocation and disposition of tax proceeds.—The proceeds of the communications services taxes remitted under this chapter shall be treated as follows:

(2) The proceeds of the taxes remitted under s. 202.12(1)(b) shall be allocated ~~divided~~ as follows:

(a) The portion of such proceeds that constitute ~~which constitutes~~ gross receipts taxes, imposed at the rate prescribed in chapter 203, shall be deposited as provided by law and in accordance with s. 9, Art. XII of the State Constitution.

(b) Sixty and nine-tenths ~~Sixty-three~~ percent of the remainder shall be allocated to the state and distributed pursuant to s. 212.20(6), except that the proceeds allocated

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pursuant to s. 212.20(6)(d)2. shall be prorated to the participating counties in the same proportion as that month's collection of the taxes and fees imposed pursuant to chapter 212 and paragraph (1)(b).

(c)1. During each calendar year, the remaining portion of such proceeds shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund. Seventy percent of such proceeds shall be allocated in the same proportion as the allocation of total receipts of the half-cent sales tax under s. 218.61 and the emergency distribution under s. 218.65 in the prior state fiscal year. Thirty percent of such proceeds shall be distributed pursuant to s. 218.67.

2. The proportion of the proceeds allocated based on the emergency distribution under s. 218.65 shall be distributed pursuant to s. 218.65.

3. In each calendar year, the proportion of the proceeds allocated based on the half-cent sales tax under s. 218.61 shall be allocated to each county in the same proportion as the county's percentage of total sales tax allocation for the prior state fiscal year and distributed pursuant to s. 218.62.

4. The department shall distribute the appropriate amount to each municipality and county each month at the same time that local communications services taxes are distributed pursuant to subsection (3).

Section 5. Effective January 1, 2015, section 203.001, Florida Statutes, is amended to read:

203.001 Combined rate for tax collected pursuant to ss. 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch. 2010-149, Laws of Florida, the dealer of communication services

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may collect a combined rate of 6.28 ~~6.8~~ percent comprised of 6.13 ~~6.65~~ percent and 0.15 percent required by ss. 202.12(1)(a) and 203.01(1)(b)3., respectively, if ~~as long as~~ the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of Revenue.

Section 6. Effective July 1, 2014, paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" has the same meaning as provided in s. 202.11 ~~means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access~~

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~~number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount~~.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to have taken ~~take~~ place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, regardless of whether ~~or not~~ a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

(IV) No additional tax under this chapter or chapter 202 is due or payable if a purchaser of a prepaid calling arrangement, who has paid tax under this chapter on the sale or recharge of such arrangement, applies one or more units of the prepaid calling arrangement to obtain communications services as described in s. 202.11(9)(b)3., other services that are not communications services, or products.

b. The installation of telecommunication and telegraphic equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 4.35 ~~7~~ percent. Charges for electrical power and energy do not include taxes

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imposed under ss. 166.231 and 203.01(1)(a)3.

2. Section ~~The provisions of s.~~ 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, is ~~shall be~~ equally applicable to any tax paid under ~~the provisions of~~ this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. As used in this paragraph, the term ~~word~~ "charges" ~~in this paragraph~~ does not include any excise or similar tax levied by the Federal Government, a ~~any~~ political subdivision of this ~~the~~ state, or a ~~any~~ municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

Section 7. The amendments made to ss. 202.11 and 212.05(1)(e)1.a., Florida Statutes, by this act are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 8. Sections 2, 3, 4, and 5 of this act apply to taxable transactions included on bills that are for communication services and that are dated on or after January 1, 2015.

Section 9. Subsections (4) and (5) of section 205.0535, Florida Statutes, are amended to read:

205.0535 Reclassification and rate structure revisions.—

(4) After the conditions specified in subsections (2) and

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(3) are met, municipalities and counties may, every other year thereafter, increase or decrease by ordinance the rates of business taxes by up to 5 percent. However, an increase must~~, however, may not~~ be enacted by at least ~~less than~~ a majority plus one vote of the governing body.

(5) ~~Nothing in~~ This chapter does not ~~shall be construed to~~ prohibit a municipality or county from decreasing or repealing any business tax authorized under this chapter. By majority vote, the governing body of a county or municipality may adopt an ordinance repealing a local business tax or establishing new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer. Such ordinances are not subject to subsections (2) and (3).

(6)~~(5)~~ A receipt may not be issued unless the federal employer identification number or social security number is obtained from the person to be taxed.

Section 10. Effective July 1, 2014, subsections (1), (3), (4), and (7) of section 203.01, Florida Statutes, are amended to read:

203.01 Tax on gross receipts for utility and communications services.—

(1)(a)1. A tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state. The tax shall be levied as provided in paragraphs (b)-(j).

2. A tax is levied on communications services as defined in s. 202.11(1). The tax shall be applied to the same services and transactions as are subject to taxation under chapter 202, and to communications services that are subject to the exemption provided in s. 202.125(1). The tax shall be applied to the sales

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price of communications services when sold at retail, as the terms are defined in s. 202.11, shall be due and payable at the same time as the taxes imposed pursuant to chapter 202, and shall be administered and collected pursuant to ~~the provisions of~~ chapter 202.

3. An additional tax is levied on charges for, or the use of, electrical power or energy that is subject to the tax levied pursuant to s. 212.05(1)(e)1.c. or s. 212.06(1). The tax shall be applied to the same transactions or uses as are subject to taxation under s. 212.05(1)(e)1.c. or s. 212.06(1). If a transaction is exempt from the tax imposed under 212.05(1)(e)1.c. or s. 212.06(1), the transaction is also exempt from the tax imposed under this subparagraph. The tax shall be applied to charges for electrical power or energy and is due and payable at the same time as taxes imposed pursuant to chapter 212. Chapter 212 governs the administration and enforcement of the tax imposed by this subparagraph. The charges upon which the tax imposed by this subparagraph is applied do not include the taxes imposed by subparagraph 1. or s. 166.231. The tax imposed by this subparagraph becomes state funds at the moment of collection and is not considered as revenue of a utility for purposes of a franchise agreement between the utility and a local government.

(b)1. The rate applied to utility services shall be 2.5 percent.

2. The rate applied to communications services shall be 2.37 percent.

3. ~~There shall be~~ An additional rate of 0.15 percent shall be applied to communication services subject to the tax levied

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pursuant to s. 202.12(1)(a), (c), and (d). The exemption provided in s. 202.125(1) applies to the tax levied pursuant to this subparagraph.

4. The rate applied to electrical power or energy taxed under subparagraph (a)3. shall be 2.6 percent.

(c)1. The tax imposed under subparagraph (a)1. shall be levied against the total amount of gross receipts received by a distribution company for its sale of utility services if the utility service is delivered to the retail consumer by a distribution company and the retail consumer pays the distribution company a charge for utility service which includes a charge for both the electricity and the transportation of electricity to the retail consumer. The distribution company shall report and remit to the Department of Revenue by the 20th day of each month the taxes levied pursuant to this paragraph during the preceding month.

2. To the extent practicable, the Department of Revenue must distribute all receipts of taxes remitted under this chapter to the Public Education Capital Outlay and Debt Service Trust Fund in the same month as the department collects such taxes.

(d)1. Each distribution company that receives payment for the delivery of electricity to a retail consumer in this state is subject to tax on the exercise of this privilege as provided by this paragraph unless the payment is subject to tax under paragraph (c). For the exercise of this privilege, the tax levied on the ~~such~~ distribution company's receipts for the delivery of electricity shall be determined by multiplying the number of kilowatt hours delivered by the index price and

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applying the rate in subparagraph (b)1. ~~paragraph (b)~~ to the result.

2. The index price is the Florida price per kilowatt hour for retail consumers in the previous calendar year, as published in the United States Energy Information Administration Electric Power Monthly and announced by the Department of Revenue on June 1 of each year to be effective for the 12-month period beginning July 1 of that year. For each residential, commercial, and industrial customer class, the applicable index posted for residential, commercial, and industrial shall ~~will~~ be applied in calculating the gross receipts to which the tax applies. If publication of the indices is delayed or discontinued, the last posted index shall be used until a current index is posted or the department adopts a comparable index by rule.

3. Tax due under this paragraph shall be administered, paid, and reported in the same manner as the tax due under paragraph (c).

4. The amount of tax due under this paragraph shall be reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the retail consumer purchased the electricity, whether imposed by and paid to this state, another state, a territory of the United States, or the District of Columbia. This reduction in tax shall be available to the retail consumer as a refund made pursuant to s. 215.26 and does not inure to the benefit of the person who receives payment for the delivery of the electricity. The methods of demonstrating proof of payment and the amount of such refund shall be made according to rules of the Department of Revenue.

(e)1. A ~~Every~~ distribution company that receives payment

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for the sale or transportation of natural or manufactured gas to a retail consumer in this state is subject to tax on the exercise of this privilege as provided by this paragraph. For the exercise of this privilege, the tax levied on the ~~such~~ distribution company's receipts for the sale or transportation of natural or manufactured gas shall be determined by dividing the number of cubic feet delivered by 1,000, multiplying the resulting number by the index price, and applying the rate in subparagraph (b)1. ~~paragraph (b)~~ to the result.

2. The index price is the Florida price per 1,000 cubic feet for retail consumers in the previous calendar year as published in the United States Energy Information Administration Natural Gas Monthly and announced by the Department of Revenue on June 1 of each year to be effective for the 12-month period beginning July 1 of that year. For each residential, commercial, and industrial customer class, the applicable index posted for residential, commercial, and industrial shall ~~will~~ be applied in calculating the gross receipts to which the tax applies. If publication of the indices is delayed or discontinued, the last posted index shall be used until a current index is posted or the department adopts a comparable index by rule.

3. Tax due under this paragraph shall be administered, paid, and reported in the same manner as the tax due under paragraph (c).

4. The amount of tax due under this paragraph shall be reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the retail consumer purchased the natural gas or manufactured gas, whether imposed by and paid to this state, another state, a territory of the United States, or

the District of Columbia. This reduction in tax shall be available to the retail consumer as a refund pursuant to s. 215.26 and does not inure to the benefit of the person providing the transportation service. The methods of demonstrating proof of payment and the amount of such refund shall be made according to rules of the Department of Revenue.

(f) Any person who imports into this state electricity, natural gas, or manufactured gas, or severs natural gas, for that person's own use or consumption as a substitute for purchasing utility, transportation, or delivery services taxable under subparagraph (a)1. ~~this chapter~~ and who cannot demonstrate payment of the tax imposed by this chapter must register with the Department of Revenue and pay into the State Treasury each month an amount equal to the cost price, as defined in s. 212.02, of such electricity, natural gas, or manufactured gas times the rate set forth in subparagraph (b)1. ~~paragraph (b)~~, reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the electricity, natural gas, or manufactured gas was purchased or any person who provided delivery service or transportation service in connection with the electricity, natural gas, or manufactured gas. ~~For purposes of this paragraph, the term "cost price" has the meaning ascribed in s. 212.02(4).~~ The methods of demonstrating proof of payment and the amount of such reductions in tax shall be made according to rules of the Department of Revenue.

(g) Electricity produced by cogeneration or by small power producers which is transmitted and distributed by a public utility between two locations of a customer of the utility pursuant to s. 366.051 is subject to the tax imposed by

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subparagraph (a)1 ~~this section~~. The tax shall be applied to the cost price, as defined in s. 212.02, of such electricity ~~as provided in s. 212.02(4)~~ and shall be paid each month by the producer of such electricity.

(h) Electricity produced by cogeneration or by small power producers during the 12-month period ending June 30 of each year which is in excess of nontaxable electricity produced during the 12-month period ending June 30, 1990, is subject to the tax imposed by subparagraph (a)1 ~~this section~~. The tax shall be applied to the cost price, as defined in s. 212.02, of such electricity ~~as provided in s. 212.02(4)~~ and shall be paid each month, beginning with the month in which total production exceeds the production of nontaxable electricity for the 12-month period ending June 30, 1990. As used in ~~For purposes of~~ this paragraph, the term "nontaxable electricity" means electricity produced by cogeneration or by small power producers which is not subject to tax under paragraph (g). Taxes paid pursuant to paragraph (g) may be credited against taxes due under this paragraph. Electricity generated as part of an industrial manufacturing process that ~~which~~ manufactures products from phosphate rock, raw wood fiber, paper, citrus, or any agricultural product is ~~shall~~ not ~~be~~ subject to the tax imposed by this paragraph. The term "industrial manufacturing process" means the entire process conducted at the location where the process takes place.

(i) Any person other than a cogenerator or small power producer described in paragraph (h) who produces for his or her own use electrical energy that ~~which~~ is a substitute for electrical energy produced by an electric utility as defined in

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s. 366.02 is subject to the tax imposed by subparagraph (a)1 ~~this section~~. The tax shall be applied to the cost price, as defined in s. 212.02, of such electrical energy ~~as provided in s. 212.02(4)~~ and shall be paid each month. ~~The provisions of~~ This paragraph does ~~do~~ not apply to ~~any~~ electrical energy produced and used by an electric utility.

(j) Notwithstanding any other provision of this chapter, with the exception of a communications services dealer reporting taxes administered under chapter 202, the department may require:

1. A quarterly return and payment when the tax remitted for the preceding four calendar quarters did not exceed $1,000;

2. A semiannual return and payment when the tax remitted for the preceding four calendar quarters did not exceed $500; or

3. An annual return and payment when the tax remitted for the preceding four calendar quarters did not exceed $100.

(3) The tax imposed by subparagraph (1)(a)1. ~~subsection (1)~~ does not apply to:

(a)1. The sale or transportation of natural gas or manufactured gas to a public or private utility, including a municipal corporation or rural electric cooperative association, ~~either~~ for resale or for use as fuel in the generation of electricity; or

2. The sale or delivery of electricity to a public or private utility, including a municipal corporation or rural electric cooperative association, for resale, or as part of an electrical interchange agreement or contract between such utilities for the purpose of transferring more economically generated power;

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if ~~provided~~ the person deriving gross receipts from such sale demonstrates that a sale, transportation, or delivery for resale in fact occurred and complies with the following requirements: A sale, transportation, or delivery for resale must be in strict compliance with the rules ~~and regulations~~ of the Department of Revenue; and any sale subject to the tax imposed by this section which is not in strict compliance with the rules ~~and regulations~~ of the Department of Revenue shall be subject to the tax at the appropriate rate imposed on utilities under subparagraph (1)(b)1. ~~by paragraph (b)~~ on the person making the sale. Any person making a sale for resale may, through an informal protest provided ~~for~~ in s. 213.21 and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. The department shall adopt rules that provide that valid proof and documentation of the resale by a person making the sale for resale will be accepted by the department when submitted during the protest period but will not be accepted when submitted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72;

(b) Wholesale sales of electric transmission service;

(c) The use of natural gas in the production of oil or gas, or the use of natural or manufactured gas by a person transporting natural or manufactured gas, when used and consumed in providing such services; or

(d) The sale or transportation to, or use of, natural gas or manufactured gas by a person eligible for an exemption under s. 212.08(7)(ff)2. for use as an energy source or a raw material. Possession by a seller of natural or manufactured gas

or by any person providing transportation or delivery of natural or manufactured gas of a written certification by the purchaser, certifying the purchaser's entitlement to the exclusion permitted by this paragraph, relieves the seller or person providing transportation or delivery from the responsibility of remitting tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if the department determines that the purchaser was not entitled to the exclusion. The certification must include an acknowledgment by the purchaser that it will be liable for tax pursuant to paragraph (1)(f) if the requirements for exclusion are not met.

(4) The tax imposed pursuant to subparagraph (1)(a)1. ~~this chapter~~ relating to the provision of ~~any~~ utility services at the option of the person supplying the taxable services may be separately stated as Florida gross receipts tax on the total amount of any bill, invoice, or other tangible evidence of the provision of such taxable services and may be added as a component part of the total charge. If ~~Whenever~~ a provider of taxable services elects to separately state such tax as a component of the charge for the provision of such taxable services, any ~~every~~ person, including all governmental units, shall remit the tax to the person who provides such taxable services as a part of the total bill, and the tax is a component part of the debt of the purchaser to the person who provides such taxable services until paid and, if unpaid, is recoverable at law in the same manner as any other part of the charge for such taxable services. For a utility, the decision to separately state any increase in the rate of tax imposed by this chapter which is effective after December 31, 1989, and the ability to

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recover the increased charge from the customer is ~~shall~~ not ~~be~~ subject to regulatory approval.

(7) Gross receipts subject to the tax imposed under subparagraph (1)(a)1. ~~by this section~~ for the provision of electricity must ~~shall~~ include receipts from monthly customer charges or monthly customer facility charges.

Section 11. Effective July 1, 2014, subsection (11) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(11) The department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to all taxable transactions that occur in counties that have a surtax at a rate other than 1 percent which ~~transactions~~ would otherwise have been transactions taxable at the rate of 6 percent. Likewise, the department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to transactions taxable at 4.35 ~~7~~ percent pursuant to s. 212.05(1)(e)1.c. ~~s. 212.05(1)(e)~~ and on transactions which would otherwise have been so taxable in counties which have adopted a discretionary sales surtax.

Section 12. In complying with the amendments to ss. 203.01 and 212.05, Florida Statutes, relating to the additional tax on electrical power or energy, made by this act, a seller of electrical power or energy may collect a combined rate of 6.95 percent, which consists of the 4.35 percent and 2.6 percent required under ss. 212.05(1)(e)1.c. and 203.01(1)(b)4., Florida

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Statutes, respectively, if the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of Revenue.

Section 13. The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, for the purpose of implementing the amendments to ss. 203.01, 212.05, 212.12, and 212.20, Florida Statutes, relating to changes to the taxation of electrical power or energy, made by this act. This section expires July 1, 2017.

Section 14. Effective July 1, 2014, paragraphs (c) and (d) of subsection (6) of section 212.20, Florida Statutes, are amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter, ~~and~~ s. 202.18(1)(b) and (2)(b), and s. 203.01(1)(a)3. is ~~shall be~~ as follows:

(c)1. Proceeds from the fees imposed under ss. 212.05(1)(h)3. and 212.18(3) shall remain with the General Revenue Fund.

2. The portion of the proceeds which constitutes gross receipts tax imposed pursuant to s. 203.01(1)(a)3. shall be deposited as provided by law and in accordance with s. 9, Art. XII of the State Constitution.

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

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1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.8794 ~~8.814~~ percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1. and 2., 0.0956 ~~0.095~~ percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

4. After the distributions under subparagraphs 1., 2., and 3., 2.0602 ~~2.0440~~ percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3514 ~~1.3409~~ percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as

great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal year on or before January 5th and continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school

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boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 before July 1, 2000.

b. The department shall distribute $166,667 monthly ~~pursuant to s. 288.1162~~ to each applicant certified as a facility for a new or retained professional sports franchise pursuant to s. 288.1162. Up to $41,667 shall be distributed monthly by the department to each certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. However, not more than $416,670 may be distributed monthly in the aggregate to all certified applicants for facilities for spring training franchises. The department shall also distribute $166,667 monthly to an applicant certified as a motorsports entertainment complex under s. 288.1171. Distributions begin 60 days after such certification and continue for not more than 30 years, except as otherwise provided in s. 288.11621. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided under ~~for in~~ s. 288.1162(5), ~~or~~ s. 288.11621(3), or s. 288.1171(6).

c. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

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d. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made~~,~~ after certification and before July 1, 2000.

e. The department shall distribute up to $55,555 monthly to each certified applicant as defined in s. 288.11631 for a facility used by a single spring training franchise, or up to $111,110 monthly to each certified applicant as defined in s. 288.11631 for a facility used by more than one spring training franchise. Monthly distributions begin 60 days after such certification or July 1, 2016, whichever is later, and continue for not more than 30 years, except as otherwise provided in s. 288.11631. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.11631(3).

7. All other proceeds must remain in the General Revenue Fund.

Section 15. Effective July 1, 2014, section 212.17, Florida Statutes, is reordered and amended to read:

212.17 Tax credits or refunds ~~for returned goods, rentals, or admissions; goods acquired for dealer's own use and subsequently resold; additional powers of department~~.—

(1)(a) If ~~In the event~~ purchases are returned to a dealer

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by the purchaser or consumer after the tax imposed by this chapter has been collected from or charged to the account of the consumer or user, the dealer is ~~shall be~~ entitled to reimbursement of the amount of tax collected or charged by the dealer, in the manner prescribed by the department.

(b) A registered dealer that purchases property for the dealer's own use, pays tax on acquisition, and sells the property subsequent to acquisition without ~~ever~~ having used the property is entitled to reimbursement, in the manner prescribed by the department, of the amount of tax paid on the property's acquisition.

(c) If the tax has not been remitted by a dealer to the department, the dealer may deduct the same in submitting his or her return upon receipt of a signed statement by ~~of~~ the dealer as to the gross amount of such refunds during the period covered by the ~~said~~ signed statement, which may ~~period shall~~ not be longer than 90 days. The department shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected or paid. Such memorandum shall be accepted by the department at full face value from the dealer to whom it is issued upon~~, in~~ the remittance of ~~for~~ subsequent taxes accrued under ~~the provisions of~~ this chapter. If a dealer has retired from business and ~~has~~ filed a final return, a refund of tax may be made if it can be established to the satisfaction of the department that the tax was not due.

(2) A dealer who has paid the tax imposed by this chapter on tangible personal property sold under a retained title, conditional sale, or similar contract, or under a contract in which ~~wherein~~ the dealer retains a security interest in the

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property pursuant to chapter 679, may take credit or obtain a refund for the tax paid by the dealer on the unpaid balance due him or her when he or she repossesses the property, ~~(~~with or without judicial process,~~) the property~~ within 12 months after ~~following~~ the month in which the property was repossessed. If ~~When~~ such repossessed property is resold, the sale is subject in all respects to the tax imposed by this chapter.

(3) Except as provided in subsection (4), a dealer who has paid the tax imposed by this chapter on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts within 12 months after ~~following~~ the month in which the bad debt has been charged off for federal income tax purposes. If any accounts so charged off for which a credit or refund has been obtained are subsequently, ~~thereafter~~ in whole or in part, paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(4) With respect to the payment of taxes on purchases made through a private-label credit card program:

(a) If consumer accounts or receivables are found to be worthless or uncollectible, the dealer may claim a credit for, or obtain a refund of, the tax remitted by the dealer on the unpaid balance due if:

1. The accounts or receivables have been charged off as bad debt on the lender’s books and records on or after January 1, 2014;

2. A credit was not previously claimed and a refund was not previously allowed on any portion of the accounts or

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receivables; and

3. The credit or refund is claimed within 12 months after the month in which the bad debt has been charged off by the lender for federal income tax purposes.

(b) If the dealer or the lender subsequently collects, in whole or in part, the accounts or receivables for which a credit or refund has been granted under paragraph (a), the dealer must include the taxable percentage of the amount collected in the first return filed after the collection and pay the tax on the portion of that amount for which a credit or refund was granted.

(c) The credit or refund allowed includes all credit sale transaction amounts that are outstanding in the specific private-label credit card account or receivable at the time the account or receivable is charged off, regardless of the date on which the credit sale transaction actually occurred.

(d) A dealer may use one of the following methods to determine the amount of the credit or refund:

1. An apportionment method to substantiate the amount of tax imposed under this chapter which is included in the bad debt to which the credit or refund applies. The method must use the dealer’s Florida and non-Florida sales, the dealer’s taxable and nontaxable sales, and the amount of tax the dealer remitted to this state; or

2. A specified percentage of the accounts or receivables giving rise to the credit or refund, which is derived from a sampling of the dealer’s or lender’s records in accordance with a methodology agreed upon by the department and the dealer.

(e) For purposes of computing the credit or refund, payments on the accounts or receivables shall be allocated based

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on the terms and conditions of the contract between the dealer or lender and the consumer.

(f) The credit or refund for tax on bad debt may be claimed on any return filed by an entity related by a direct or indirect common ownership of 50 percent or more.

(g) The amount of the credit or refund that a dealer is eligible to recover under this subsection is limited to 25 percent of the tax paid to the department which is attributable to bad debt.

(h) As used in this subsection, the term:

1. "Dealer's affiliates" means an entity affiliated with the dealer under 26 U.S.C. s. 1504 or an entity that would be an affiliate under that section if the entity were a corporation.

2. "Lender" means a person who owns or has owned a private-label credit card account or an interest in a private-label credit card receivable that:

a. The person purchased directly from a dealer who remitted the tax imposed under this chapter or from the dealer's affiliates, or that was transferred from a third party;

b. The person originated pursuant to that person's contract with a dealer who remitted the tax imposed under this chapter or with the dealer's affiliates; or

c. Is affiliated in the manner described under 26 U.S.C. s. 1504, regardless of whether the different entities are corporations, with a person described in sub-subparagraph a. or sub-subparagraph b. or with an assignee or other transferee of such person.

3. "Private-label credit card" means a charge card or credit card that carries, refers to, or is branded with the name

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or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases from the dealer's affiliates or franchises.

(6) ~~(4)(a)~~ The department shall:

(a) Design, prepare, print and furnish to all dealers, except dealers filing through electronic data interchange, or make available or prescribe to the dealers, all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. The~~, but~~ failure of a ~~any~~ dealer to secure such forms does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(b) ~~The department shall~~ Prescribe the format and instructions necessary for filing returns in a manner that is initiated through an electronic data interchange to ensure a full collection from dealers and an accounting for the taxes due. The failure of a ~~any~~ dealer to use such format does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(7) ~~(5)~~ The department and its assistants are ~~hereby~~ authorized and empowered to administer the oath for the purpose of enforcing and administering ~~the provisions of~~ this chapter.

(8) ~~(6)~~ The department may ~~has authority to~~ adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to administer and enforce ~~the provisions of~~ this section ~~chapter~~.

(5) ~~(7)~~ If ~~The department, where~~ admissions, license fees, ~~or~~ rental payments, or payments for services are made and ~~thereafter~~ returned to ~~the~~ payors after the taxes ~~thereon~~ have been paid, the department shall return or credit the taxpayer

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for taxes ~~so~~ paid on the moneys returned in the same manner as ~~is~~ provided for returns or credits of taxes if ~~where~~ purchases or tangible personal property are returnable to a dealer.

Section 16. Effective July 1, 2014, subsection (2) of section 288.1171, Florida Statutes, is amended, present subsections (4) through (7) of that section are redesignated as subsections (5) through (8), respectively, and amended, and a new subsection (4) is added to that section, to read:

288.1171 Motorsports entertainment complex; definitions; certification; duties.—

(2) The department shall serve as the state agency for screening applicants for funding under s. 212.20, for local option funding under s. 218.64(3), and for certifying an applicant as a motorsports entertainment complex. The department shall develop and adopt rules for the receipt and processing of applications for funding under ss. 212.20 and ~~s.~~ 218.64(3). The department shall make a determination regarding any application filed by an applicant within ~~not later than~~ 120 days after the application is filed.

(4) The department may certify a single applicant as a motorsports entertainment complex for funding under s. 212.20 if the applicant meets all of the following conditions:

(a) The applicant meets the requirements of subsection (3).

(b) The applicant has a verified copy of the approval of a sanctioning body stating that motorsport events are sanctioned to occur at the applicant’s complex.

(c) The applicant’s facility has at least 50,000 fixed seats.

(d) The applicant has projections, verified by the

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department, which demonstrate that the motorsports entertainment complex will annually attract paid attendance of more than 100,000 persons.

(e) The applicant has an independent analysis or study, verified by the department, which demonstrates that the amount of revenues generated by the taxes imposed under chapter 212 with respect to the use and operation of the motorsports entertainment complex will annually equal or exceed $2 million.

(f) The applicant has demonstrated that it has provided, is capable of providing, or has financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the complex.

(g) The total cost of construction, reconstruction, expansion, or renovation of the complex exceeds $250 million.

The approved applicant may not seek funding under s. 218.64(3) while receiving funding under s. 212.20.

(5)~~(4)~~ Upon determining that an applicant meets the requirements of subsection (3) or subsection (4), the department shall notify the applicant and the executive director of the Department of Revenue of such certification by means of an official letter granting certification. If the applicant fails to meet the certification requirements of subsection (3) or subsection (4), the department shall notify the applicant within ~~not later than~~ 10 days following such determination.

(6)~~(5)~~ A motorsports entertainment complex that has been previously certified under this section and has received funding under such certification is ineligible for ~~any~~ additional certification.

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(7)~~(6)~~ An applicant certified as a motorsports entertainment complex may use funds provided pursuant to s. 212.20 or s. 218.64(3) only for the following public purposes:

(a) Paying for the construction, reconstruction, expansion, or renovation of a motorsports entertainment complex.

(b) Paying debt service reserve funds, arbitrage rebate obligations, or other amounts relating ~~payable with respect~~ to bonds issued for the construction, reconstruction, expansion, or renovation of the motorsports entertainment complex or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

(c) Paying for construction, reconstruction, expansion, or renovation of transportation or other infrastructure improvements related to, necessary for, or appurtenant to the motorsports entertainment complex, including~~, without limitation,~~ paying debt service reserve funds, arbitrage rebate obligations, or other amounts relating ~~payable with respect~~ to bonds issued for the construction, reconstruction, expansion, or renovation of such transportation or other infrastructure improvements, and for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

(d) Paying for programs of advertising and promotion of or related to the motorsports entertainment complex or the municipality in which the motorsports entertainment complex is located, or the county if the motorsports entertainment complex is located in an unincorporated area, if such programs of advertising and promotion are designed to increase paid attendance at the motorsports entertainment complex or increase tourism in or promote the economic development of the community

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in which the motorsports entertainment complex is located.

(8) ~~(7) The Department of Revenue may audit,~~ As provided in s. 11.45 ~~213.34~~, the Auditor General may conduct an audit to verify that the distributions pursuant to this section have been expended as required in this section. ~~Such information is subject to the confidentiality requirements of chapter 213.~~ If the Auditor General ~~Department of Revenue~~ determines that the distributions pursuant to certification ~~under this section~~ have not been expended as required by this section, the Auditor General shall notify the Department of Revenue, which ~~it~~ may pursue recovery of such funds pursuant to the laws and rules governing the assessment of taxes.

Section 17. Section 288.127, Florida Statutes, is created to read:

288.127 Qualified television loan fund.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Fund administrator" means a private sector organization under contract with the department to manage and administer the QTV Fund.

(b) "Major broadcaster" means broadcasting organizations that include, but are not limited to, television broadcasting networks, cable television, direct broadcast satellite, telecommunications companies, and internet streaming or other digital media platforms.

(c) "Private investment capital" means capital from private, nongovernmental funding sources that will be coinvested with the QTV Fund in segregated accounts.

(d) "Qualified lending partner" means a financial institution, as defined in s. 655.005, selected by a fund

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administrator that has demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, and a combined portfolio in film, television, and entertainment media of at least $500 million.

(e) "Qualified television content" means series, mini-series, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcast license agreement. The term does not include a production that contains content that is obscene, as defined in s. 847.001.

(f) "QTV Fund" means the qualified television loan fund.

(2) PURPOSE.—The purpose of the QTV Fund is to create a public-private partnership in the form of a revolving loan fund to administer a loan program for television production. The QTV Fund shall be privately managed under state oversight to incentivize the use of this state as a site for producing qualified television content and to develop and sustain the workforce and infrastructure for television content production.

(3) CREATION.—The qualified television loan fund is created within the department. The QTV Fund shall be a public fund that is privately managed by the fund administrator under contract with the department. The department shall disburse the funds appropriated for this program to the fund administrator to invest in the QTV Fund during the existence of the program pursuant to this section and the contract between the fund administrator and the department. State funds in the QTV Fund may be used only to enter into loan agreements and to pay any

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administrative costs or other authorized fees under this section.

(a) The QTV Fund shall be a revolving loan fund that invests and reinvests the principal and interest of the fund in accordance with s. 617.2104 in a manner so as to not subject the funds to state or federal taxes and to be consistent with the investment policy statement adopted by the fund administrator. As production companies repay the principal and interest to the QTV Fund, state funds, less any QTV Fund expenses, shall be returned to the account to be lent to subsequent borrowers.

(b) Funds from the QTV Fund shall be disbursed by the fund administrator through a lending vehicle to make short-term loans pursuant to this section.

(4) FUND ADMINISTRATOR.—

(a) The department shall contract with a fund administrator by September 1, 2014, and award the contract in accordance with the competitive bidding requirements in s. 287.057.

(b) The department shall select as fund administrator a private sector entity that demonstrates the ability to implement the program under this section and that meets the requirements set forth in this section. Preference shall be given to applicants that are headquartered in this state. Additional consideration may be given to applicants that have experience in the management of economic development or job creation-related funds. The qualifications for the fund administrator must include, but are not limited to:

1. A demonstrated track record of managing private sector equity or debt funds in the entertainment and media industries.

2. The ability to demonstrate through a partnership

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agreement that a qualified lending partner is in place which has the capability of providing leverage of a minimum of 2.5 times the capital amount of the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

(c) For overseeing and administering the QTV Fund, the fund administrator shall be reimbursed for the costs the fund administrator incurs in establishing and operating the fund related to the state's investment, which shall be paid from state funds in the QTV Fund. Any additional private investment capital in the segregated accounts is responsible for its own management fees. The fund administrator is entitled to a reasonable profit, but such distribution may not be made from the principal funds from the original appropriation.

(d) The fund administrator shall provide services defined under this section for the duration of the QTV Fund term unless removed for cause. Cause shall be further defined under the contract with the fund administrator and must include, but is not limited to, the engagement in fraud or other criminal acts by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(5) FUND ADMINISTRATOR POWERS AND DUTIES.—

(a) Authority to contract.—The fund administrator may enter into agreements with qualified lending partners for concurrent lending through the QTV Fund. A loan made by the qualified lending partner must be accounted for separately from the state funds or other private investment capital. Such loan shall be made as senior debt. The fund administrator may raise private investment capital for mezzanine equity and other equity or

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raise junior capital for concurrent lending through the QTV Fund. However, loans from private investment capital may not be made at more favorable terms and conditions than the terms and conditions of the state funds in the QTV Fund. The state appropriation must be maintained in a separate account from private investment capital and administered in a separate legal investment entity or entities. Private investment capital and loans shall be segregated from each other, and funds may not be commingled.

(b) General duties.—The fund administrator:

1. Shall prudently manage the funds in the QTV Fund as a revolving loan fund.

2. Shall contract with one or more qualified lending partners.

3. Shall provide improvement of the credit profile of a structured financial transaction for qualified production companies that produce qualified television content meeting the criteria in subsection (7).

4. May raise additional private investment capital to be held in separate accounts, in addition to the leverage provided by the qualified lending partner.

5. Shall administer the QTV Fund in accordance with this part.

6. Shall agree to maintain the recipient’s books and records relating to funds received from the department according to generally accepted accounting principles and in accordance with s. 215.97(7) and to make those books and records available to the department for inspection upon reasonable notice. The books and records must be maintained with detailed records

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showing the use of proceeds from loans to fund qualified television content.

7. Shall maintain its registered office in this state throughout the duration of the contract.

(c) Financial reporting.—The fund administrator shall annually submit to the department by February 28 audited financial statements for the preceding tax year which— are audited by an independent certified public accountant after the end of each year in which the fund administrator is under contract with the department. In addition to providing an independent opinion on the annual financial statements, such audit provides a basis for verifying the segregation of state funds from those of any private investment capital.

(d) Program reporting.—The fund administrator shall submit a report to the department by February 28 after the end of each year in which the fund administrator is under contract with the department. The report must include information on the loans made in the preceding calendar year, including:

1. The name of the qualified television content.

2. The names of the counties in which the production occurred.

3. The number of jobs created and retained as a result of the production.

4. The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner.

5. The loan repayment status for each loan.

6. The number and amounts of any loans with payments past due.

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7. The number and amounts of any loans in default.

8. A description of the assets securing the loans.

9. Other information and documentation required by the department.

(e) Plan of accountability.—The fund administrator shall submit an annual plan of accountability of economic development, including a report detailing the job creation resulting from the QTV Fund loans made during the current year and cumulatively since the inception of the program. The fund administrator shall also provide any additional information requested by the department pertaining to economic development and job creation in the state.

(f) Conflict-of-interest statement.—The fund administrator shall provide a conflict-of-interest statement from its governing board certifying that no board member, director, employee, agent, immediate family member thereof, or other person connected to or affiliated with the fund administrator is receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the loan program or from a qualified lending partner. The department may waive this requirement for good cause shown.

(6) LOAN STRUCTURE.—

(a) The QTV Fund may make loans to production companies to fund production costs or provide improvement of the credit profile of a structured financial transaction for qualified television content that meets the criteria requirements of subsection (7). To make a loan, the fund administrator shall consider the types of eligible collateral, the credit worthiness

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of the project, the producer's track record, the possibility that the project will encourage, enhance, or create economic benefits, and the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.

(b) The QTV Fund loan package shall be secured by contractual and predictable sources of repayment such as domestic and international broadcaster license agreements and other ancillary revenues that are derived from media content rights. Unsecured loans may not be made.

(c) The loans shall be made on the basis of a second lien or primary security rights on the media assets listed in paragraph (b).

(d) The QTV Fund shall provide funding only in conjunction with senior loans provided by a qualified lending partner. Loans from the fund may be subordinated to senior debt from the qualified lending partner and may not exceed 30 percent of the total production funding cost of any particular project.

(e) The production company's repayment of a loan shall be in accordance with the broadcast license agreement and the delivery of qualified television content to the major broadcaster and shall be within 60 days after such delivery.

(f) Loans made by the QTV Fund may not exceed 36 months in duration, except for extenuating circumstances for which the fund administrator may grant an extension upon making written findings to the department specifying the conditions requiring the extension.

(g) The fund administrator or a board member, employee, or agent thereof, or an immediate family member of a board member,

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employee, or agent, may not have a financial interest in an entity that is awarded a loan under a loan program and may not benefit directly or indirectly from the making of such loan. A loan may not be made to a person if it violates this paragraph. As used in this section, the term "immediate family" means a parent, child, or spouse, or other relative by blood, marriage, or adoption, of a board member, employee, or agent of the loan administrator.

(h) Except for funds appropriated to the department for the loan program, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV Fund or against the fund administrator, the qualified lending partner, or the department.

(7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund administrator must, at a minimum, consider the following criteria for evaluating the qualifying television content:

(a) The content is intended for broadcast by a major broadcaster on a major network, cable, or streaming channel.

(b) The content is produced in this state, or a minimum of 80 percent of the production budget must be spent in this state. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment.

(c) If the content is a series, there is a programming order for at least 13 episodes. This requirement may be amended

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by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment.

(d) The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement and the contract must cover at least 60 percent of the budget.

(e) The producer must retain a foreign sales agent and must be able to provide the fund administrator with the foreign sales agent's official estimates of foreign and ancillary sales.

(f) The project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect the state's funds.

(8) AUDITOR GENERAL AUDIT.—The Auditor General may conduct operational audits, as defined in s. 11.45, of the QTV Fund and fund administrator. The scope of audit must include, but is not limited to, internal controls evaluations, internal audit functions, reporting and performance requirements for the use of the funds, and compliance with state and federal law. The fund administrator shall provide to the Auditor General any detail or supplemental data required.

(9) RULEMAKING AUTHORITY.—The department may adopt rules to administer this section.

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(10) EXPIRATION.—This section expires December 31, 2024, at which point all funds remaining in the QTV Fund revert to the General Revenue Fund.

(11) EMERGENCY RULES.—

(a) The executive director of the department is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54(4) for the purpose of implementing this section.

(b) Notwithstanding any other law, the emergency rules adopted pursuant to paragraph (a) remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(c) This subsection expires October 1, 2015.

Section 18. Paragraph (b) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program

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established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. The ~~VISIT~~ Florida Tourism Industry Marketing Corporation and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124.

4. The Florida Sports Foundation and related programs established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171.

5. The qualified television loan fund established under s. 288.127.

Section 19. Effective January 1, 2015, subsection (5) of section 624.4094, Florida Statutes, is amended to read:

624.4094 Bail bond premiums.—

~~(5) This section does not affect the reporting or payment of insurance premium taxes under ss. 624.509, 624.5091, and 624.5092, and the insurance premium tax and related excise taxes shall continue to be calculated using gross bail bond premiums.~~

Section 20. Effective January 1, 2015, subsection (1) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.—

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under s. 624.510, pay to the Department of Revenue a tax on insurance premiums, premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or

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considerations, received during the preceding calendar year, the amounts thereof to be determined as set forth in this section, to wit:

(a) An amount equal to 1.75 percent of the gross amount of such receipts on account of life and health insurance policies covering persons resident in this state and on account of all other types of policies and contracts, ~~(~~except annuity policies or contracts taxable under paragraph (b) and bail bond policies or contracts taxable under paragraph (c),~~)~~ covering property, subjects, or risks located, resident, or to be performed in this state, omitting premiums on reinsurance accepted, and less return premiums or assessments, but without deductions:

1. For reinsurance ceded to other insurers;

2. For moneys paid upon surrender of policies or certificates for cash surrender value;

3. For discounts or refunds for direct or prompt payment of premiums or assessments; and

4. On account of dividends of any nature or amount paid and credited or allowed to holders of insurance policies; certificates; or surety, indemnity, reciprocal, or interinsurance contracts or agreements; ~~and~~

(b) An amount equal to 1 percent of the gross receipts on annuity policies or contracts paid by holders thereof in this state; and~~.~~

(c) An amount equal to 1.75 percent of the direct written premiums for bail bonds, excluding any amounts retained by licensed bail bond agents or licensed managing general agents.

Section 21. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m.

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on August 1, 2014, through 11:59 p.m. on August 3, 2014, on the sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $75 or less per item. As used in this paragraph, the term "clothing" means:

1. An article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, rollerblades, and skates.

(b) School supplies having a sales price of $15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(c) Personal computers and related accessories that have a sales price of $750 or less and are purchased for noncommercial home or personal use. As used in this paragraph, the term:

1. "Personal computer" means an electronic device that accepts information in digital or similar form and manipulates such information for a result based on a sequence of instructions. The term includes an electronic book reader and a laptop, desktop, handheld, tablet, or tower computer but does not include a cellular telephone, video game console, digital media receiver, or device that is not primarily designed to

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process data.

2. "Related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software regardless of whether the accessories are used in association with a personal computer base unit but does not include furniture or systems, devices, software, monitors with a television tuner, or other peripherals that are designed or intended primarily for recreational use.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013, Florida Statutes, within a public lodging establishment as defined in s. 509.013, Florida Statutes, or within an airport as defined in s. 330.27, Florida Statutes.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 22. For the 2013-2014 fiscal year, the sum of $223,048 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering the provisions of this act relating to the tax exemption for specified school supplies. Funds from the appropriation that remain unexpended or unencumbered as of June 30, 2014, shall revert and be reappropriated for the same purpose in the 2014-2015 fiscal year.

Section 23. (1) Effective June 1, 2014, through June 12, 2014, no tax levied under chapter 212, Florida Statutes, may be collected on the sale of:

(a) A portable self-powered light source selling for $20 or less.

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(b) A portable self-powered radio, two-way radio, or weather band radio selling for $50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) A self-contained first-aid kit selling for $30 or less.

(e) A ground anchor system or tie-down kit selling for $50 or less.

(f) A gas or diesel fuel tank selling for $25 or less.

(g) A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.

(h) A nonelectric food storage cooler selling for $30 or less.

(i) A portable generator used to provide light or communications or to preserve food in the event of a power outage, if the portable generator sells for $750 or less.

(2) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules under ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 24. For the 2013-2014 fiscal year, the sum of $280,912 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for purposes of administering the tax exemptions for the purchase of tangible personal property relating to hurricane preparedness specified under this act.

Section 25. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

================ T I T L E A M E N D M E N T ================

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And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to economic development; amending s. 202.11, F.S.; revising the term "prepaid calling arrangement"; amending s. 202.12, F.S.; reducing the tax rate applied to the sale of communications services; amending s. 202.12001, F.S.; conforming rates to the reduction of the communications services tax; amending s. 202.18, F.S.; revising the distribution of tax revenues received; amending s. 203.001. F.S.; conforming rates to the reduction of the communications services tax; amending s. 212.05, F.S.; clarifying and updating which services are included under the definition "prepaid calling arrangement" and subject to a sales tax; conforming provisions to changes made by the act to taxes on electrical power and energy made; providing retroactive application; providing applicability; amending s. 205.0535, F.S.; providing that a county or municipality may repeal or reduce a local business tax by majority vote; amending s. 203.01, F.S.; providing for an additional tax on charges for, or the use of, certain electrical power or energy and the rate for such tax; providing an exemption; providing for the redistribution of certain taxes on electrical power and energy; amending s. 212.12, F.S.; conforming provisions to changes made by the act; providing that

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a seller of electrical power or energy may combine the collection of certain taxes if properly reflected in its return to the Department of Revenue; providing emergency rules; amending s. 212.20, F.S.; revising the distribution of taxes, including the taxes collected on charges for electrical power and energy; providing for a monthly distribution of a specified amount of sales tax revenue to a complex certified as a motorsports entertainment complex by the Department of Economic Opportunity; amending s. 212.17, F.S.; providing procedures, requirements, and calculation methodologies that allow dealers to obtain tax credits or refunds for taxes paid on worthless or uncollectible private-label credit card accounts or receivables; providing a cap on the amount that may be recovered; providing definitions; amending s. 288.1171, F.S.; authorizing the Department of Economic Opportunity to certify a single applicant as a motorsports entertainment complex if it meets specified criteria; authorizing the Auditor General to verify the expenditure of specified distributions and to notify the Department of Revenue of improperly expended funds so that it may pursue recovery; creating s. 288.127, F.S.; providing definitions; providing a purpose; creating the qualified television loan fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing fund administrator qualifications; providing for the fund administrator’s compensation and removal;

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specifying the fund administrator powers and duties; providing the structure of the loans; providing qualified television content criteria; permitting the Auditor General to conduct an operational audit of the fund and the fund administrator; authorizing the Department of Economic Opportunity to adopt rules; providing for expiration of the act; providing emergency rulemaking authority; providing for expiration of the emergency rulemaking authority; amending s. 288.0001, F.S.; requiring an analysis of the qualified television loan fund in the Economic Development Programs Evaluation; amending s. 624.4094, F.S.; deleting a provision relating to the reporting or payment of specified insurance premium taxes; amending s. 624.509, F.S.; requiring an insurer to pay to the Department of Revenue a specified amount of the direct written premiums for bail bonds; specifying a period during which the sale of certain clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories are exempt from the sales tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an exemption from the sales and use tax for sales during a specified period of certain tangible personal property relating to hurricane preparedness; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2014	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 136 - 301
and insert:
Section 3. Effective January 1, 2015, subsections (5) through (9) of section 203.01, Florida Statutes, are renumbered as subsections (6) through (10), respectively, paragraph (b) of subsection (1), paragraph (d) of subsection (3), and present subsections (4) and (8) are amended, and a new subsection (4) is added to that section, to read:

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203.01 Tax on gross receipts for utility and communications services.—

(1)

(b)1. The rate applied to utility services shall be 2.5 percent.

2. The rate applied to communications services shall be 2.37 percent.

3. There shall be an additional rate of 0.15 percent applied to communication services subject to the tax levied pursuant to s. 202.12(1)(a), (c), and (d). The exemption provided in s. 202.125(1) applies to the tax levied pursuant to this subparagraph.

4. There shall be an additional rate of 3 percent applied to the gross receipts for electrical power or energy delivered to a retail consumer in this state. Notwithstanding s. 203.0111, any increase in the gross receipts tax provided in this subparagraph applies to charges for electrical power or energy on any bill dated on or after the date upon which the increase takes effect.

(3) The tax imposed by subsection (1) does not apply to:

(d) The sale or transportation ~~to, or use~~ of~~,~~ natural gas or manufactured gas to, or the use of natural gas or manufactured gas by, a person eligible for an exemption under s. 212.08(7)(ff)2. for use as an energy source or a raw material. Possession by a seller of natural or manufactured gas or by any person providing transportation or delivery of natural or manufactured gas of a written certification by the purchaser, certifying the purchaser's entitlement to the exclusion permitted by this paragraph, relieves the seller or person

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providing transportation or delivery from the responsibility of remitting tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if the department determines that the purchaser was not entitled to the exclusion. The certification must include an acknowledgment by the purchaser that it will be liable for tax pursuant to paragraph (1)(f) if the requirements for exclusion are not met.

(4) The additional rate imposed by subparagraph (1)(b)4. does not apply to:

(a) The sale of electrical power or energy to a person eligible for an exemption under s. 212.08(7)(ff) for use in operating machinery and equipment at a fixed location in this state;

(b) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(5)(e) for certain agricultural purposes;

(c) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(7)(j) for use as a household fuel;

(d) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(15)(a) for use in an enterprise zone;

(e) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person who holds a valid Consumer’s Certificate of Exemption issued by the Department of Revenue;

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(f) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, foreign diplomats and consular personnel who hold a tax exemption card issued by the United States Department of State; or

(g) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, the Federal Government or any federal department, commission, agency, or other instrumentality thereof.

(5) ~~(4)~~ The taxes ~~tax~~ imposed pursuant to this chapter relating to the provision of any utility services at the option of the person supplying the taxable services may be separately stated as Florida gross receipts taxes ~~tax~~ on the total amount of any bill, invoice, or other tangible evidence of the provision of such taxable services and may be added as a component part of the total charge. Whenever a provider of taxable services elects to separately state such taxes ~~tax~~ as a component of the charge for the provision of such taxable services, every person, including all governmental units, shall remit the taxes ~~tax~~ to the person who provides such taxable services as a part of the total bill, and the taxes are ~~tax is~~ a component part of the debt of the purchaser to the person who provides such taxable services until paid and, if unpaid, are ~~is~~ recoverable at law in the same manner as any other part of the charge for such taxable services. If a utility provider elects to separately state the additional rate imposed by subparagraph (1)(b)4. on any bill, invoice, or other tangible evidence of the provision of such taxable service, the additional tax shall not be included as part of the taxable base on which the gross receipts tax is calculated. For a utility, the decision to

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separately state any increase in the rate of tax imposed by this chapter which is effective after December 31, 1989, and the ability to recover the increased charge from the customer shall not be subject to regulatory approval.

(9) ~~(8)~~ Notwithstanding ~~the provisions of~~ subsection (5) ~~(4)~~ and s. 212.07(2), sums that were charged or billed as taxes under this section and chapter 212 and that were remitted to the state in full as taxes shall not be subject to refund by the state or by the utility or other person that remitted the sums, when the amount remitted was not in excess of the amount of tax imposed by chapter 212 and this section.

Section 4. Effective January 1, 2015, paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of

158978

sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" has the same meaning as provided in s. 202.11 ~~means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount~~.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to have taken ~~take~~ place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

(IV) No additional tax under this chapter or chapter 202 is due or payable if a purchaser of a prepaid calling arrangement, who has paid tax under this chapter on the sale or recharge of such arrangement, applies one or more units of the prepaid calling arrangement to obtain communications services as described in s. 202.11(9)(b)3., other services that are not communications services, or products.

b. The installation of telecommunication and telegraphic

158978

equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 4 ~~7~~ percent.

2. The provisions of s. 212.17(3)~~,~~ regarding credit for tax paid on charges subsequently found to be worthless are~~, shall be~~ equally applicable to any tax paid under ~~the provisions of~~ this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. The term ~~word~~ "charges" under ~~in~~ this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of this ~~the~~ state, or any municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

Section 5. The Department of Revenue may delay the effective date of the tax rate changes in ss. 203.01 and 212.05, Florida Statutes, made by this act for up to 60 days for a taxpayer that is unable to comply despite good faith efforts or due to circumstances beyond the taxpayer's reasonable control. Grounds for approving such delay include that the taxpayer requires additional time to program computer systems to accommodate the tax changes or that complying with this requirement would cause the taxpayer an extraordinary financial hardship.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

158978

Delete line 18

and insert:

for electrical power or energy; authorizing the Department of Revenue to approve a delay in the effective date of certain tax rate changes made by this act for a taxpayer under certain conditions; providing for

626840

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 239 and 240
insert:

Section 4. Subsections (4) and (5) of section 205.0535, Florida Statutes, are amended to read:

205.0535 Reclassification and rate structure revisions.—

(4) After the conditions specified in subsections (2) and (3) are met, municipalities and counties may, every other year thereafter, increase or decrease by ordinance the rates of

626840

business taxes by up to 5 percent. However, an increase must~~,~~ ~~however, may not~~ be enacted by at least ~~less than~~ a majority plus one vote of the governing body.

(5) ~~Nothing in~~ This chapter does not ~~shall be construed to~~ prohibit a municipality or county from decreasing or repealing any business tax authorized under this chapter. By majority vote, the governing body of a county or municipality may adopt an ordinance repealing a local business tax or establishing new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer. Such ordinances are not subject to subsections (2) and (3).

(6)~~(5)~~ A receipt may not be issued unless the federal employer identification number or social security number is obtained from the person to be taxed.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 13 and 14

insert:

205.0535, F.S.; providing that a county or municipality may repeal or reduce a local business tax by majority vote; amending s.

416716

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 301 and 302
insert:

(5) Notwithstanding any other provision of this chapter, the maximum amount of tax imposed under this chapter and collected on each sale or use of a boat in this state may not exceed $18,000 and for each repair of a boat in this state may not exceed $120,000.

416716

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 240 - 241
and insert:
Section 4. Paragraph (e) of subsection (1) and subsection (5) of section 212.05, Florida Statutes, are amended to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 18
and insert:
for electrical power or energy; providing a cap on the amount of sales tax collected for the repair of a boat; providing for

350176

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 642 and 643
insert:

Section 8. Section 212.17, Florida Statutes, is reordered and amended to read:

212.17 Tax credits or refunds ~~for returned goods, rentals, or admissions; goods acquired for dealer's own use and subsequently resold; additional powers of department~~.—

(1)(a) If ~~In the event~~ purchases are returned to a dealer by the purchaser or consumer after the tax imposed by this

350176

chapter has been collected from or charged to the account of the consumer or user, the dealer is ~~shall be~~ entitled to reimbursement of the amount of tax collected or charged by the dealer, in the manner prescribed by the department.

(b) A registered dealer that purchases property for the dealer's own use, pays tax on acquisition, and sells the property subsequent to acquisition without ~~ever~~ having used the property is entitled to reimbursement, in the manner prescribed by the department, of the amount of tax paid on the property's acquisition.

(c) If the tax has not been remitted by a dealer to the department, the dealer may deduct the same in submitting his or her return upon receipt of a signed statement by ~~of~~ the dealer as to the gross amount of such refunds during the period covered by the ~~said~~ signed statement, which may ~~period shall~~ not be longer than 90 days. The department shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected or paid. Such memorandum shall be accepted by the department at full face value from the dealer to whom it is issued upon~~, in~~ the remittance of ~~for~~ subsequent taxes accrued under ~~the provisions of~~ this chapter. If a dealer has retired from business and ~~has~~ filed a final return, a refund of tax may be made if it can be established to the satisfaction of the department that the tax was not due.

(2) A dealer who has paid the tax imposed by this chapter on tangible personal property sold under a retained title, conditional sale, or similar contract, or under a contract in which ~~wherein~~ the dealer retains a security interest in the property pursuant to chapter 679, may take credit or obtain a

refund for the tax paid by the dealer on the unpaid balance due him or her when he or she repossesses the property, ~~(~~with or without judicial process,~~) the property~~ within 12 months after ~~following~~ the month in which the property was repossessed. If ~~When~~ such repossessed property is resold, the sale is subject in all respects to the tax imposed by this chapter.

(3) Except as provided under subsection (4), a dealer who has paid the tax imposed by this chapter on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts within 12 months after ~~following~~ the month in which the bad debt has been charged off for federal income tax purposes. If any accounts so charged off for which a credit or refund has been obtained are subsequently, ~~thereafter~~ in whole or in part, paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(4) With respect to the payment of taxes on purchases made through a private-label credit card program:

(a) If consumer accounts or receivables are found to be worthless or uncollectible, the dealer may claim a credit for, or obtain a refund of, the tax remitted by the dealer on the unpaid balance due if:

1. The accounts or receivables have been charged off as bad debt on the lender’s books and records on or after January 1, 2014;

2. A credit was not previously claimed and a refund was not previously allowed on any portion of the accounts or receivables; and

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3. The credit or refund is claimed within 12 months after the month in which the bad debt is charged off by the lender for federal income tax purposes.

(b) If the dealer or the lender subsequently collects, in whole or in part, the accounts or receivables for which a credit or refund has been granted under paragraph (a), the dealer must include the taxable percentage of the amount collected in the first return filed after the collection and pay the tax on the portion of that amount for which a credit or refund was granted.

(c) The credit or refund allowed includes all credit sale transaction amounts that are outstanding in the specific private-label credit card account or receivable at the time the account or receivable is charged off, regardless of the date on which the credit sale transaction actually occurred.

(d) A dealer may use one of the following methods to determine the amount of the credit or refund:

1. An apportionment method to substantiate the amount of tax imposed under this chapter which is included in the bad debt to which the credit or refund applies. The method must use the dealer’s Florida and non-Florida sales, the dealer’s taxable and nontaxable sales, and the amount of tax the dealer remitted to this state; or

2. A specified percentage of the accounts or receivables giving rise to the credit or refund, which is derived from a sampling of the dealer’s or lender’s records in accordance with a methodology agreed upon by the department and the dealer.

(e) For purposes of computing the credit or refund, payments on the accounts or receivables shall be allocated based on the terms and conditions of the contract between the dealer

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or lender and the consumer.

(f) The credit or refund for tax on bad debt may be claimed on any return filed by an entity related by a direct or indirect common ownership of 50 percent or more.

(g) The amount of the credit or refund a dealer is eligible to recover under this subsection is limited to 25 percent of the tax paid to the department which is attributable to bad debt.

(h) As used in this subsection, the term:

1. "Dealer's affiliates" means an entity affiliated with the dealer under 26 U.S.C. s. 1504 or an entity that would be an affiliate under that section if the entity were a corporation.

2. "Lender" means a person who owns or has owned a private-label credit card account or an interest in a private-label credit card receivable that:

a. The person purchased directly from a dealer who remitted the tax imposed under this chapter or from the dealer's affiliates, or that was transferred from a third party;

b. The person originated pursuant to that person's contract with a dealer who remitted the tax imposed under this chapter or with the dealer's affiliates; or

c. Is affiliated in the manner described under 26 U.S.C. s. 1504, regardless of whether the different entities are corporations, to a person described in sub-subparagraph a. or sub-subparagraph b. or to an assignee or other transferee of such person.

3. "Private-label credit card" means a charge card or credit card that carries, refers to, or is branded with the name or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases

from the dealer's affiliates or franchisees.

(6)~~(4)(a)~~ The department shall:

(a) Design, prepare, print and furnish to all dealers, except dealers filing through electronic data interchange, or make available or prescribe to the dealers, all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. The~~, but~~ failure of a ~~any~~ dealer to secure such forms does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(b) ~~The department shall~~ Prescribe the format and instructions necessary for filing returns in a manner that is initiated through an electronic data interchange to ensure a full collection from dealers and an accounting for the taxes due. The failure of a ~~any~~ dealer to use such format does not relieve the dealer from the payment of the tax at the time and in the manner provided.

(7)~~(5)~~ The department and its assistants are ~~hereby~~ authorized and empowered to administer the oath for the purpose of enforcing and administering ~~the provisions of~~ this chapter.

(8)~~(6)~~ The department may ~~has authority to~~ adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to administer and enforce ~~the provisions of~~ this section ~~chapter~~.

(5)~~(7)~~ If ~~The department, where~~ admissions, license fees, ~~or~~ rental payments, or payments for services are made and ~~thereafter~~ returned to ~~the~~ payors after the taxes ~~thereon~~ have been paid, the department shall return or credit the taxpayer for taxes ~~so~~ paid on the moneys returned in the same manner as ~~is~~ provided for returns or credits of taxes if ~~where~~ purchases

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or tangible personal property are returnable to a dealer.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 33

and insert:

provision to changes made by the act; amending s. 212.17, F.S.; providing procedures, requirements, and calculation methodologies that allow dealers to obtain tax credits or refunds for taxes paid on worthless or uncollectible private-label credit card accounts or receivables; providing a cap on the amount that may be recovered; providing definitions; amending s.

599428

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment

Delete line 760
and insert:
of each fiscal year and $9 million on the first day of each

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 798 - 1089
and insert:
Section 14. Effective upon becoming law, section 288.127, Florida Statutes, is created to read:
288.127 Qualified Television Loan Fund (QTV Fund).—
(1) DEFINITIONS.—As used in this section, the term:
(a) "Fund administrator" means a private sector organization under contract with the department to manage and

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administer the QTV Fund.

(b) "Major broadcaster" means broadcasting organizations that include, but are not limited to, television broadcasting networks, cable television, direct broadcast satellite, telecommunications companies, and internet streaming or other digital media platforms.

(c) "Private investment capital" means capital from private, nongovernmental funding sources that will be coinvested with the QTV Fund in segregated accounts.

(d) "Qualified lending partner" means a financial institution, as defined in s. 655.005, selected by a fund administrator with demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, with a combined portfolio in film, television, and entertainment media of at least $500 million.

(e) "Qualified television content" means series, mini-series, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcast license agreement. The term does not include a production that contains content that is obscene, as defined in s. 847.001.

(2) PURPOSE.—The purpose of the QTV Fund is to create a public-private partnership in the form of a revolving loan fund to administer a loan program for television production. The QTV Fund shall be privately managed under state oversight to incentivize the use of this state as a site for producing qualified television content and to develop and sustain the

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workforce and infrastructure for television content production.

(3) CREATION.—The Qualified Television Loan Fund is created within the department. The QTV Fund shall be a public fund that is privately managed by the fund administrator under contract entered into with the department. The department shall disburse the funds appropriated for this program to the fund administrator to invest in the QTV Fund during the existence of the program pursuant to this section and the contract entered into between the fund administrator and the department. State funds in the QTV Fund may be used only to enter into loan agreements and to pay any administrative costs or other authorized fees under this section.

(a) The QTV Fund shall be a revolving loan fund that shall invest and reinvest the principal and interest of the fund in accordance with s. 617.2104, in such a manner as to not subject the funds to state or federal taxes and to be consistent with the investment policy statement adopted by the fund administrator. As the production companies repay the principal and interest for the QTV Fund, the state funds shall be returned, less any QTV Fund expenses, to the account to be lent to subsequent borrowers.

(b) Funds from the QTV Fund shall be disbursed by the fund administrator through a lending vehicle to make short-term loans pursuant to this section.

(4) FUND ADMINISTRATOR.—

(a) The department shall contract with a fund administrator by September 1, 2014, and award the contract in accordance with the competitive bidding requirements in s. 287.057.

(b) The department shall select as fund administrator a

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private sector entity that demonstrates the ability to implement the program under this section and that meets the requirements set forth in this section. Preference shall be given to applicants that are headquartered in this state. Additional consideration may be given to applicants with experience in the management of economic development or job creation-related funds. The qualifications for the fund administrator must include, but are not limited to, the following:

1. A demonstrated track record of managing private sector equity or debt funds in the entertainment and media industries.

2. The ability to demonstrate through a partnership agreement that a qualified lending partner is in place, with the capability of providing leverage of a minimum of 2.5 times the capital amount of the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

(c) For overseeing and administering the QTV Fund, the fund administrator shall be reimbursed for the portion of costs the fund administrator incurrs in establishing and operating the Fund related to the state's investment, which shall be paid from state funds in the QTV Fund. Any additional private investment capital in the segregated accounts is responsible for its own management fees. The fund administrator shall be entitled to a reasonable profit, but such distribution may not be made from any principal funds from the original appropriation.

(d) The fund administrator shall provide services defined under this section for the duration of the QTV Fund term unless removed for cause. Cause shall be further defined under the contract with the fund administrator and must include, but is not limited to, the engagement in fraud or other criminal acts

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by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(5) FUND ADMINISTRATOR POWERS AND DUTIES.—

(a) *Authority to contract.*—The fund administrator may enter into agreements with qualified lending partners for concurrent lending through the QTV Fund. A loan made by the qualified lending partner must be accounted for separately from the state funds or any other private investment capital. Such loan shall be made as senior debt. The fund administrator may raise private investment capital for mezzanine equity and other equity or raise junior capital for concurrent lending through the QTV Fund. However, loans from private investment capital may not be made at more favorable terms and conditions than the terms and conditions of the state funds in the QTV Fund. The state appropriation must be maintained in a separate account from any private investment capital and administered in a separate legal investment entity or entities. Private investment capital and loans shall be segregated from each other, and funds may not be commingled.

(b) *General duties.*—The fund administrator:

1. Shall prudently manage the funds in the QTV Fund as a revolving loan fund.

2. Shall contract with one or more qualified lending partners.

3. Shall provide improvement of the credit profile of a structured financial transaction for qualified production companies that produce qualified television content meeting the criteria in subsection (7).

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4. May raise additional private investment capital to be held in separate accounts, in addition to the leverage provided by the qualified lending partner.

5. Shall administer the QTV Fund in accordance with this part.

6. Shall agree to maintain the recipient's books and records relating to funds received from the department according to generally accepted accounting principles and in accordance with the requirements of s. 215.97(7) and to make those books and records available to the department for inspection upon reasonable notice. The books and records must be maintained with detailed records showing the use of proceeds from loans to fund qualified television content.

7. Shall maintain its registered office in this state throughout the duration of the contract.

(c) *Financial reporting.*—The fund administrator shall submit to the department by February 28 each year audited financial statements for the preceding tax year which are audited by an independent certified public accountant after the end of each year in which the fund administrator is under contract with the department. In addition to providing an independent opinion on the annual financial statements, such audit provides a basis to verify the segregation of state funds from those of any private investment capital.

(d) *Program reporting.*—The fund administrator shall submit an annual report to the department by February 28 after the end of each year in which the fund administrator is under contract with the department. The report must include information on the loans made in the preceding calendar year and must include, but

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need not be limited to, the following:

1. The name of the qualified television content.

2. The names of the counties in which the production occurred.

3. The number of jobs created and retained as a result of the production.

4. The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner.

5. The loan repayment status for each loan.

6. The number, and amounts, of any loans with payments past due.

7. The number, and amounts, of any loans in default.

8. A description of the assets securing the loans.

9. Other information and documentation required by the department.

(e) *Plan of accountability.*—The fund administrator shall submit an annual plan of accountability of economic development, including a report detailing the job creation resulting from the QTV Fund loans made during the current year and cumulatively since the inception of the program. The fund administrator shall also provide any additional information requested by the department pertaining to economic development and job creation in the state.

(f) *Conflict-of-interest statement.*—The fund administrator shall provide a conflict-of-interest statement from its governing board certifying that no board member, director, employee, agent, immediate family member thereof, or other person connected to or affiliated with the fund administrator is

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receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the loan program or from a qualified lending partner. The department may waive this requirement for good cause shown.

(6) LOAN STRUCTURE.—

(a) The QTV Fund may make loans to production companies to fund production costs or provide improvement of the credit profile of a structured financial transaction for qualified television content that meets the criteria requirements of subsection (7). To make a loan, the fund administrator shall take into consideration the types of eligible collateral, the credit worthiness of the project, the producer's track record, the possibility that the project will encourage, enhance, or create economic benefits, and the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.

(b) The QTV Fund loan package shall be secured by contractual and predictable sources of repayment such as domestic and international broadcaster license agreements and other ancillary revenues that are derived from media content rights. Unsecured loans may not be made.

(c) The loans shall be made on the basis of a second lien or primary security rights on the media assets listed in paragraph (b).

(d) The QTV Fund shall provide funding only in conjunction with senior loans provided by a qualified lending partner. Loans from the QTV Fund may be subordinated to senior debt from the qualified lending partner and may not exceed 30 percent of the

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total production funding cost of any particular project.

(e) The production company's repayment of any loan shall be in accordance with the broadcast license agreement and the delivery of qualified television content to the major broadcaster and shall be within 60 days after such delivery.

(f) Loans made by the QTV Fund may not exceed 36 months in duration, except for extenuating circumstances for which the fund administrator may grant an extension upon making written findings to the department specifying the conditions requiring the extension.

(g) The fund administrator or a board member, employee, or agent thereof, or an immediate family member of a board member, employee, or agent, may not have a financial interest in an entity that is awarded a loan under a loan program and may not benefit directly or indirectly from the making of such a loan. A loan may not be made to a person if it violates this paragraph. As used in this section, the term "immediate family" means a parent, child, or spouse, or any other relative by blood, marriage, or adoption, of a board member, employee, or agent of the loan administrator.

(h) With the exception of funds appropriated to the department for the loan program, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV Fund or against the fund administrator, the qualified lending partner, or the department.

(7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund administrator must consider at a minimum the following criteria for evaluating the qualifying television content:

(a) The content is intended for broadcast by a major

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broadcaster on a major network, cable, or streaming channel.

(b) The content is produced in this state, or a minimum of 80 percent of the production budget must be spent in this state. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object to the change within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment to the requirement in this paragraph.

(c) If the content is a series, there is a programming order for at least 13 episodes. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object to the change within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment to the requirement in this paragraph.

(d) The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement and the contract must cover at least 60 percent of the budget.

(e) The producer must retain a foreign sales agent and must be able to provide the fund administrator with the foreign sales agent’s official estimates of foreign and ancillary sales.

(f) The project must be bonded and secured by an industry-

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approved completion guarantor if the production cost per episode exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect the state's funds.

(8) AUDITOR GENERAL AUDIT.—The Auditor General is authorized to conduct operational audits, as defined in s. 11.45, of the QTV Fund and fund administrator. The scope of audit must include, but is not limited to, internal controls evaluations, internal audit functions, reporting and performance requirements for the use of the funds, and compliance with state and federal law. The fund administrator shall provide to the Auditor General any detail or supplemental data required.

(9) RULEMAKING AUTHORITY.—The department may adopt rules to administer this section.

(10) EXPIRATION.—This section expires December 31, 2024, at which point all funds remaining in the QTV Fund shall revert to the General Revenue Fund.

(11) EMERGENCY RULES.—

(a) The executive director of the department is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54(4) for the purpose of implementing this section.

(b) Notwithstanding any other law, the emergency rules adopted pursuant to paragraph (a) remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(c) This subsection expires October 1, 2015.

Section 15. Effective upon becoming law, paragraph (b) of

306866

subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. The ~~VISIT~~ Florida Tourism Industry Marketing Corporation and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124.

4. The Florida Sports Foundation and related programs established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171.

5. The qualified television loan fund established under s. 288.127.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

306866

Delete lines 57 - 61

and insert:

television content criteria; permitting the Auditor General to conduct an operational audit of the fund and the fund administrator; authorizing the department to adopt rules; providing for expiration of the act; providing emergency rulemaking authority; amending s. 288.0001, F.S.; requiring an analysis of the qualified television loan fund in the Economic Development Programs Evaluation; amending s.

808202

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2014	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1104 - 1128

and insert:

339.0803 Funding for transportation projects.—Notwithstanding any other provision of law, beginning in the 2014-2015 fiscal year and each fiscal year thereafter, funds deposited into the State Transportation Trust Fund pursuant to s. 212.20(6)(d)6.f. must be used annually as follows:

(1) Eighty-five million shall be used for existing or

808202

planned strategic transportation projects that connect major markets within this state or between this state and other states, that focus on job creation, and that increase this state's viability in the national and global markets.

(2) Fifteen million shall be used for regionally significant transportation projects that support the state's economic regions and provide connectivity to and through rural areas. To be eligible for funding under this subsection, projects must be production-ready in the 5-year work program developed pursuant to s. 339.135. Funds under this subsection may be used to provide up to 75 percent of project costs for eligible projects. Preference shall be given to projects that have been identified as regionally significant in accordance with s. 339.155(4)(c), (d), and (e) and that have provided an increased level of nonstate match.

(3) Ten million shall be used for capital projects, equipment, or facilities for existing or planned public transit transportation projects.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 68

and insert:

specified transportation

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment

Delete line 1229
and insert:
on May 31, 2014, through 11:59 p.m. on June 12, 2014, on the

A bill to be entitled

An act relating to economic development; amending s. 202.11, F.S.; revising the definition of "prepaid calling arrangement"; providing for retroactive applicability and construction; amending s. 203.01, F.S.; imposing an additional rate on gross receipts for electrical power or energy; revising exemptions from the tax on gross receipts for utility and communications services; providing exemptions from the additional tax on gross receipts from electrical power or energy; requiring the additional tax to be excluded from the taxable base on which gross receipts are calculated under certain circumstances; amending s. 212.05, F.S.; revising the definition of "prepaid calling arrangement" to clarify and update which services are included under the definition and subject to sales tax; reducing the sales tax rate for charges for electrical power or energy; providing for retroactive applicability and construction; amending s. 212.08, F.S.; extending the expiration date applicable to the granting of community contribution tax credits against the sales and use tax for contributions to eligible sponsors of community projects approved by the Department of Economic Opportunity; revising a provision exempting certain machinery and equipment from the sales and use tax to

exempt certain mixer drums and parts and labor required to affix certain mixer drums to mixer trucks from the sales and use tax; exempting sales of child restraint systems and booster seats for use in motor vehicles and youth bicycle helmets from the sales and use tax; amending s. 212.12, F.S.; conforming a provision to a change made by the act; amending s. 212.20, F.S.; requiring the Department of Revenue to distribute funds to the State Transportation Trust Fund for strategic and regionally significant transportation projects; amending s. 220.14, F.S.; increasing the amount of income that is exempt from the corporate income tax; providing applicability; amending s. 220.183, F.S.; extending the expiration date applicable to the granting of community contribution tax credits against the corporate income tax for contributions to eligible sponsors of community projects approved by the Department of Economic Opportunity; amending s. 220.63, F.S.; increasing the amount of income that is exempt from the franchise tax imposed on banks and savings associations; providing applicability; creating s. 288.127, F.S.; providing definitions; providing a purpose; creating the Qualified Television Loan Fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing fund

administrator qualifications; providing for the fund administrator's compensation and removal; specifying the fund administrator powers and duties; providing the structure of the loans; providing qualified television content criteria; requiring the Auditor General to conduct an operational audit of the fund and the fund administrator; authorizing the department to adopt rules; providing for expiration of the act; providing emergency rulemaking authority; amending s. 288.9914, F.S.; revising limits on tax credits that may be approved by the Department of Economic Opportunity under the New Markets Development Program; creating s. 339.0803, F.S.; requiring a specified amount of funds deposited into the State Transportation Trust Fund to be used annually for strategic and regionally significant transportation projects; amending s. 624.5105, F.S.; extending the expiration date applicable to the granting of community contribution tax credits against the insurance premium tax for contributions to eligible sponsors of community projects approved by the Department of Economic Opportunity; providing for a sales tax holiday for certain Energy Star and WaterSense products; providing restrictions; providing definitions; authorizing the Department of Revenue to adopt emergency rules; providing that the admissions

tax may not be levied on the sale of athletic, exercise, and physical fitness facility memberships by certain health studios during a specified period; authorizing the Department of Revenue to adopt emergency rules; specifying a period during which the sale of clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories are exempt from the sales tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt emergency rules; providing an exemption from the sales and use tax for sales during a specified period of certain tangible personal property related to hurricane preparedness; authorizing the Department of Revenue to adopt emergency rules; providing appropriations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) of section 202.11, Florida Statutes, is amended to read:

202.11 Definitions.—As used in this chapter, the term:

(9) "Prepaid calling arrangement" means: ~~the separately stated retail sale by advance payment of~~

(a) A right to use communications services, other than mobile communications services, for which a separately stated

price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which ~~that~~ consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered; or ~~and that are sold in predetermined units or dollars of which the number declines with use in a known amount.~~

(b) A right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;

2. The purchaser is not required to purchase additional units; and

3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services.

Predetermined units described in this subsection may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

Section 2. The amendments made by this act to s. 202.11, Florida Statutes, are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 3. Subsections (5) through (9) of section 203.01, Florida Statutes, are renumbered as subsections (6) through (10), respectively, paragraph (b) of subsection (1), paragraph (d) of subsection (3), and present subsections (4) and (8) are amended, and a new subsection (4) is added to that section, to read:

203.01 Tax on gross receipts for utility and communications services.—

(1)

(b)1. The rate applied to utility services shall be 2.5 percent.

2. The rate applied to communications services shall be 2.37 percent.

3. There shall be an additional rate of 0.15 percent applied to communication services subject to the tax levied pursuant to s. 202.12(1)(a), (c), and (d). The exemption provided in s. 202.125(1) applies to the tax levied pursuant to this subparagraph.

4. There shall be an additional rate of 3 percent applied to the gross receipts for electrical power or energy delivered to a retail consumer in this state. Notwithstanding s. 203.0111,

any increase in the gross receipts tax provided by this subparagraph applies to charges for electrical power or energy on any bill dated on or after the date upon which the increase takes effect.

(3) The tax imposed by subsection (1) does not apply to:

(d) The sale or transportation ~~to, or use~~ of~~,~~ natural gas or manufactured gas to, or the use of natural gas or manufactured gas by, a person eligible for an exemption under s. 212.08(7)(ff)2. for use as an energy source or a raw material. Possession by a seller of natural or manufactured gas or by any person providing transportation or delivery of natural or manufactured gas of a written certification by the purchaser, certifying the purchaser's entitlement to the exclusion permitted by this paragraph, relieves the seller or person providing transportation or delivery from the responsibility of remitting tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if the department determines that the purchaser was not entitled to the exclusion. The certification must include an acknowledgment by the purchaser that it will be liable for tax pursuant to paragraph (1)(f) if the requirements for exclusion are not met.

(4) The additional rate imposed by subparagraph (1)(b)4. does not apply to:

(a) The sale of electrical power or energy to a person eligible for an exemption under s. 212.08(7)(ff) for use in operating machinery and equipment at a fixed location in this

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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state;

(b) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(5)(e) for certain agricultural purposes;

(c) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(7)(j) for use as a household fuel;

(d) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(15)(a) for use in an enterprise zone;

(e) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person who holds a valid Consumer's Certificate of Exemption issued by the Department of Revenue;

(f) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, foreign diplomats and consular personnel who hold a tax exemption card issued by the United States Department of State; or

(g) The sale or transportation of electrical power or energy to, or the use of electrical power or energy by, the Federal Government or any federal department, commission, agency, or other instrumentality thereof.

(5)~~(4)~~ The taxes ~~tax~~ imposed pursuant to this chapter

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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relating to the provision of any utility services at the option of the person supplying the taxable services may be separately stated as Florida gross receipts taxes ~~tax~~ on the total amount of any bill, invoice, or other tangible evidence of the provision of such taxable services and may be added as a component part of the total charge. Whenever a provider of taxable services elects to separately state such taxes ~~tax~~ as a component of the charge for the provision of such taxable services, every person, including all governmental units, shall remit the taxes ~~tax~~ to the person who provides such taxable services as a part of the total bill, and the taxes are ~~tax is~~ a component part of the debt of the purchaser to the person who provides such taxable services until paid and, if unpaid, are ~~is~~ recoverable at law in the same manner as any other part of the charge for such taxable services. If a utility provider elects to separately state the additional rate imposed by subparagraph (1)(b)4. on any bill, invoice, or other tangible evidence of the provision of such taxable service, the additional tax shall not be included as part of the taxable base on which the gross receipts tax is calculated. For a utility, the decision to separately state any increase in the rate of tax imposed by this chapter which is effective after December 31, 1989, and the ability to recover the increased charge from the customer shall not be subject to regulatory approval.

(9)~~(8)~~ Notwithstanding ~~the provisions of~~ subsection (5)~~(4)~~ and s. 212.07(2), sums that were charged or billed as taxes

under this section and chapter 212 and that were remitted to the state in full as taxes shall not be subject to refund by the state or by the utility or other person that remitted the sums, when the amount remitted was not in excess of the amount of tax imposed by chapter 212 and this section.

Section 4. Paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" has the same meaning as provided in s. 202.11 ~~means the separately stated retail sale by advance payment of communications services that consist~~

~~exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount~~.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to have taken ~~take~~ place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

(IV) No additional tax under this chapter or chapter 202 is due or payable if a purchaser of a prepaid calling arrangement, who has paid tax under this chapter on the sale or recharge of such arrangement, applies one or more units of the prepaid calling arrangement to obtain communications services as described in s. 202.11(9)(b)3., other services that are not communications services, or products.

b. The installation of telecommunication and telegraphic equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 4 ~~7~~ percent.

2. The provisions of s. 212.17(3)~~,~~ regarding credit for tax paid on charges subsequently found to be worthless are~~,~~ ~~shall be~~ equally applicable to any tax paid under ~~the provisions of~~ this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. The term ~~word~~ "charges" under ~~in~~ this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of this ~~the~~ state, or any municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

Section 5. The amendments made by this act to s. 212.05(1)(e)1.a., Florida Statutes, are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 6. Paragraph (p) of subsection (5) and paragraph (j) of subsection (7) of section 212.08, Florida Statutes, are amended, paragraph (kkk) of subsection (7), as created by chapter 2013-39, Laws of Florida, is amended, and paragraphs (lll) and (mmm) are added to subsection (7) of that section, to

read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(p) Community contribution tax credit for donations.—

1. Authorization.—Persons who are registered with the department under s. 212.18 to collect or remit sales or use tax and who make donations to eligible sponsors are eligible for tax credits against their state sales and use tax liabilities as provided in this paragraph:

a. The credit shall be computed as 50 percent of the person's approved annual community contribution.

b. The credit shall be granted as a refund against state sales and use taxes reported on returns and remitted in the 12 months preceding the date of application to the department for the credit as required in sub-subparagraph 3.c. If the annual credit is not fully used through such refund because of insufficient tax payments during the applicable 12-month period, the unused amount may be included in an application for a refund made pursuant to sub-subparagraph 3.c. in subsequent years against the total tax payments made for such year. Carryover credits may be applied for a 3-year period without regard to any

time limitation that would otherwise apply under s. 215.26.

c. A person may not receive more than $200,000 in annual tax credits for all approved community contributions made in any one year.

d. All proposals for the granting of the tax credit require the prior approval of the Department of Economic Opportunity.

e. The total amount of tax credits which may be granted for all programs approved under this paragraph, s. 220.183, and s. 624.5105 is $10.5 million annually for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and $3.5 million annually for all other projects.

f. A person who is eligible to receive the credit provided for in this paragraph, s. 220.183, or s. 624.5105 may receive the credit only under the one section of the person's choice.

2. Eligibility requirements.—

a. A community contribution by a person must be in the following form:

(I) Cash or other liquid assets;

(II) Real property;

(III) Goods or inventory; or

(IV) Other physical resources as identified by the Department of Economic Opportunity.

b. All community contributions must be reserved exclusively for use in a project. As used in this sub-

subparagraph, the term "project" means any activity undertaken by an eligible sponsor which is designed to construct, improve, or substantially rehabilitate housing that is affordable to low-income or very-low-income households as defined in s. 420.9071(19) and (28); designed to provide commercial, industrial, or public resources and facilities; or designed to improve entrepreneurial and job-development opportunities for low-income persons. A project may be the investment necessary to increase access to high-speed broadband capability in rural communities with enterprise zones, including projects that result in improvements to communications assets that are owned by a business. A project may include the provision of museum educational programs and materials that are directly related to any project approved between January 1, 1996, and December 31, 1999, and located in an enterprise zone designated pursuant to s. 290.0065. This paragraph does not preclude projects that propose to construct or rehabilitate housing for low-income or very-low-income households on scattered sites. With respect to housing, contributions may be used to pay the following eligible low-income and very-low-income housing-related activities:

(I) Project development impact and management fees for low-income or very-low-income housing projects;

(II) Down payment and closing costs for eligible persons, as defined in s. 420.9071(19) and (28);

(III) Administrative costs, including housing counseling and marketing fees, not to exceed 10 percent of the community

contribution, directly related to low-income or very-low-income projects; and

(IV) Removal of liens recorded against residential property by municipal, county, or special district local governments when satisfaction of the lien is a necessary precedent to the transfer of the property to an eligible person, as defined in s. 420.9071(19) and (28), for the purpose of promoting home ownership. Contributions for lien removal must be received from a nonrelated third party.

c. The project must be undertaken by an "eligible sponsor," which includes:

(I) A community action program;

(II) A nonprofit community-based development organization whose mission is the provision of housing for low-income or very-low-income households or increasing entrepreneurial and job-development opportunities for low-income persons;

(III) A neighborhood housing services corporation;

(IV) A local housing authority created under chapter 421;

(V) A community redevelopment agency created under s. 163.356;

(VI) A historic preservation district agency or organization;

(VII) A regional workforce board;

(VIII) A direct-support organization as provided in s. 1009.983;

(IX) An enterprise zone development agency created under

s. 290.0056;

(X) A community-based organization incorporated under chapter 617 which is recognized as educational, charitable, or scientific pursuant to s. 501(c)(3) of the Internal Revenue Code and whose bylaws and articles of incorporation include affordable housing, economic development, or community development as the primary mission of the corporation;

(XI) Units of local government;

(XII) Units of state government; or

(XIII) Any other agency that the Department of Economic Opportunity designates by rule.

In no event may a contributing person have a financial interest in the eligible sponsor.

d. The project must be located in an area designated an enterprise zone or a Front Porch Florida Community, unless the project increases access to high-speed broadband capability for rural communities with enterprise zones but is physically located outside the designated rural zone boundaries. Any project designed to construct or rehabilitate housing for low-income or very-low-income households as defined in s. 420.9071(19) and (28) is exempt from the area requirement of this sub-subparagraph.

e.(I) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-

income households as defined in s. 420.9071(19) and (28) are received for less than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant the tax credits for those applications as follows:

(A) If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credits shall be granted in full if the tax credit applications are approved.

(B) If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted pursuant to sub-sub-sub-subparagraph (A) shall be subtracted from the amount of available tax credits, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

(II) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other

than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant the tax credits for those applications on a pro rata basis.

3. Application requirements.—

a. Any eligible sponsor seeking to participate in this program must submit a proposal to the Department of Economic Opportunity which sets forth the name of the sponsor, a description of the project, and the area in which the project is located, together with such supporting information as is prescribed by rule. The proposal must also contain a resolution from the local governmental unit in which the project is located certifying that the project is consistent with local plans and regulations.

b. Any person seeking to participate in this program must

submit an application for tax credit to the Department of Economic Opportunity which sets forth the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. The sponsor shall verify the terms of the application and indicate its receipt of the contribution, which verification must be in writing and accompany the application for tax credit. The person must submit a separate tax credit application to the Department of Economic Opportunity for each individual contribution that it makes to each individual project.

c. Any person who has received notification from the Department of Economic Opportunity that a tax credit has been approved must apply to the department to receive the refund. Application must be made on the form prescribed for claiming refunds of sales and use taxes and be accompanied by a copy of the notification. A person may submit only one application for refund to the department within any 12-month period.

4. Administration.—

a. The Department of Economic Opportunity may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this paragraph, including rules for the approval or disapproval of proposals by a person.

b. The decision of the Department of Economic Opportunity must be in writing, and, if approved, the notification shall state the maximum credit allowable to the person. Upon approval, the Department of Economic Opportunity shall transmit a copy of

the decision to the Department of Revenue.

c. The Department of Economic Opportunity shall periodically monitor all projects in a manner consistent with available resources to ensure that resources are used in accordance with this paragraph; however, each project must be reviewed at least once every 2 years.

d. The Department of Economic Opportunity shall, in consultation with the statewide and regional housing and financial intermediaries, market the availability of the community contribution tax credit program to community-based organizations.

5. Expiration.—This paragraph expires June 30, 2016 ~~2015~~; however, any accrued credit carryover that is unused on that date may be used until the expiration of the 3-year carryover period for such credit.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as

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required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(j) Household fuels.—Also exempt from payment of the tax imposed by this chapter are sales of utilities to residential households or owners of residential models in this state by utility companies who pay the gross receipts tax imposed under s. 203.01(1)(b)1. ~~203.01~~, and sales of fuel to residential households or owners of residential models, including oil, kerosene, liquefied petroleum gas, coal, wood, and other fuel products used in the household or residential model for the purposes of heating, cooking, lighting, and refrigeration, regardless of whether such sales of utilities and fuels are separately metered and billed direct to the residents or are metered and billed to the landlord. If any part of the utility or fuel is used for a nonexempt purpose, the entire sale is taxable. The landlord shall provide a separate meter for nonexempt utility or fuel consumption. For the purposes of this paragraph, licensed family day care homes shall also be exempt.

(kkk) Certain machinery and equipment.—

1. Industrial machinery and equipment purchased by eligible manufacturing businesses which is used at a fixed

location within this state, or a mixer drum affixed to a mixer truck, used at any location within this state to mix, agitate, and transport freshly mixed concrete in a plastic state, for the manufacture, processing, compounding, or production of items of tangible personal property for sale shall be exempt from the tax imposed by this chapter. Parts and labor required to affix a mixer drum exempt under this paragraph to a mixer truck shall also be exempt. If at the time of purchase the purchaser furnishes the seller with a signed certificate certifying the purchaser's entitlement to exemption pursuant to this paragraph, the seller is relieved of the responsibility for collecting the tax on the sale of such items, and the department shall look solely to the purchaser for recovery of the tax if it determines that the purchaser was not entitled to the exemption.

2. For purposes of this paragraph, the term:

a. "Eligible manufacturing business" means any business whose primary business activity at the location where the industrial machinery and equipment is located is within the industries classified under NAICS codes 31, 32, and 33. As used in this subparagraph, "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

b. "Primary business activity" means an activity representing more than fifty percent of the activities conducted at the location where the industrial machinery and equipment is

located.

c. "Industrial machinery and equipment" means tangible personal property or other property that has a depreciable life of 3 years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale. A building and its structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The term includes parts and accessories for industrial machinery and equipment only to the extent that the parts and accessories are purchased prior to the date the machinery and equipment are placed in service.

3. This paragraph is repealed April 30, 2017.

(lll) Motor vehicle child restraint.—The sale of a child restraint system or booster seat for use in a motor vehicle is exempt from the tax imposed by this chapter.

(mmm) Youth bicycle helmets.—The sale of a bicycle helmet marketed for use by youth is exempt from the tax imposed by this

chapter.

Section 7. Subsection (11) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(11) The department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to all taxable transactions that occur in counties that have a surtax at a rate other than 1 percent which transactions would otherwise have been transactions taxable at the rate of 6 percent. Likewise, the department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to transactions taxable at 4 ~~7~~ percent pursuant to s. 212.05(1)(e)1.c. ~~212.05(1)(c)~~ and on transactions which would otherwise have been so taxable in counties which have adopted a discretionary sales surtax.

Section 8. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:

(d) The proceeds of all other taxes and fees imposed

pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.814 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1. and 2., 0.095 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

4. After the distributions under subparagraphs 1., 2., and 3., 2.0440 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3409 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal year on or before January 5th and continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the

district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 before July 1, 2000.

b. The department shall distribute $166,667 monthly pursuant to s. 288.1162 to each applicant certified as a facility for a new or retained professional sports franchise pursuant to s. 288.1162. Up to $41,667 shall be distributed monthly by the department to each certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. However, not more than $416,670 may be distributed monthly in the aggregate to all certified applicants for facilities for spring training franchises. Distributions begin 60 days after such certification and continue for not more than 30 years, except as otherwise provided in s. 288.11621. A certified applicant identified in this sub-subparagraph may not receive

more in distributions than expended by the applicant for the public purposes provided for in s. 288.1162(5) or s. 288.11621(3).

c. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made, after certification and before July 1, 2000.

e. The department shall distribute up to $55,555 monthly to each certified applicant as defined in s. 288.11631 for a facility used by a single spring training franchise, or up to $111,110 monthly to each certified applicant as defined in s. 288.11631 for a facility used by more than one spring training franchise. Monthly distributions begin 60 days after such certification or July 1, 2016, whichever is later, and continue for not more than 30 years, except as otherwise provided in s.

288.11631. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.11631(3).

f. The department shall distribute $20 million by August 1 of each fiscal year and $8 million on the first day of each subsequent month for the remainder of the fiscal year to the State Transportation Trust Fund to be used as directed by s. 339.0803.

7. All other proceeds must remain in the General Revenue Fund.

Section 9. Subsection (1) of section 220.14, Florida Statutes, is amended to read:

220.14 Exemption.—

(1) In computing a taxpayer's liability for tax under this code, $75,000 ~~there shall be exempt from the tax $50,000~~ of net income as defined in s. 220.12 is exempt from the tax or such lesser amount as will, without increasing the taxpayer's federal income tax liability, provide the state with an amount under this code which is equal to the maximum federal income tax credit which may be available from time to time under federal law.

Section 10. The amendments made by this act to s. 220.14, Florida Statutes, apply to taxable years beginning on or after January 1, 2015.

Section 11. Subsection (5) of section 220.183, Florida

Statutes, is amended to read:

220.183 Community contribution tax credit.—

(5) EXPIRATION.—The provisions of this section, except paragraph (1)(e), shall expire and be void on June 30, 2016 ~~2015~~.

Section 12. Subsection (3) of section 220.63, Florida Statutes, is amended to read:

220.63 Franchise tax imposed on banks and savings associations.—

(3) For purposes of this part, the franchise tax base is ~~shall be~~ adjusted federal income, as defined in s. 220.13, apportioned to this state, plus nonbusiness income allocated to this state pursuant to s. 220.16, less the deduction allowed in subsection (5) and less $75,000 ~~$50,000~~.

Section 13. The amendments made by this act to s. 220.63, Florida Statutes, apply to taxable years beginning on or after January 1, 2015.

Section 14. Section 288.127, Florida Statutes, is created to read:

288.127 Qualified Television Loan Fund (QTV Fund).—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Fund administrator" means a private sector organization under contract with the department to manage and administer the QTV Fund.

(b) "Major broadcaster" means broadcasting organizations that include, but are not limited to, television broadcasting

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networks, cable television, direct broadcast satellite, telecommunications companies, and internet streaming or other digital media platforms.

(c) "Private investment capital" means capital from private, nongovernmental funding sources that will be coinvested with the QTV Fund in segregated accounts.

(d) "Qualified lending partner" means a financial institution, as defined in s. 655.005, selected by a fund administrator with demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, with a combined portfolio in film, television, and entertainment media of at least $500 million.

(e) "Qualified television content" means series, mini-series, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcast license agreement. The term does not include a production that contains content that is obscene, as defined in s. 847.001.

(2) PURPOSE.—The purpose of the QTV Fund is to create a public-private partnership in the form of a revolving loan fund to administer a loan program for television production. The QTV Fund shall be privately managed under state oversight to incentivize the use of this state as a site for producing qualified television content and to develop and sustain the

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workforce and infrastructure for television content production.

(3) CREATION.—The Qualified Television Loan Fund is created within the department. The QTV Fund shall be a public fund that is privately managed by the fund administrator under contract entered into with the department. The department shall disburse the funds appropriated for this program to the fund administrator to invest in the QTV Fund during the existence of the program pursuant to this section and the contract entered into between the fund administrator and the department. State funds in the QTV Fund may be used only to enter into loan agreements and to pay any administrative costs or other authorized fees under this section.

(a) The QTV Fund shall be a revolving loan fund that shall invest and reinvest the principal and interest of the fund in accordance with s. 617.2104, in such a manner as to not subject the funds to state or federal taxes and to be consistent with the investment policy statement adopted by the fund administrator. As the production companies repay the principal and interest for the QTV Fund, the state funds shall be returned, less any QTV Fund expenses, to the account to be lent to subsequent borrowers.

(b) Funds from the QTV Fund shall be disbursed by the fund administrator through a lending vehicle to make short-term loans pursuant to this section.

(4) FUND ADMINISTRATOR.—

(a) The department shall contract with a fund

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administrator by September 1, 2014, and award the contract in accordance with the competitive bidding requirements in s. 287.057.

(b) The department shall select as fund administrator a private sector entity that demonstrates the ability to implement the program under this section and that meets the requirements set forth in this section. Preference shall be given to applicants that are headquartered in this state. Additional consideration may be given to applicants with experience in the management of economic development or job creation-related funds. The qualifications for the fund administrator must include, but are not limited to, the following:

1. A demonstrated track record of managing private sector equity or debt funds in the entertainment and media industries.

2. The ability to demonstrate through a partnership agreement that a qualified lending partner is in place, with the capability of providing leverage of a minimum of 2.5 times the capital amount of the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

(c) For overseeing and administering the QTV Fund, the fund administrator shall be paid an annual management fee equal to 5 percent of the assets under management during the first 5 years and 3 percent of the assets under management after the fifth year and for the remaining duration of the contract. However, after the first year of the QTV Fund, the annual management fee may not exceed the investment proceeds earned

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from the fund's completed loans. The annual management fee shall be paid from state funds in the QTV Fund and shall be paid in advance, in equal quarterly installments. Any additional private investment capital in the segregated accounts is responsible for its own management fees. In addition, the fund administrator may receive income or profit distribution equal to 20 percent of the net income of the QTV Fund on an annual basis. Such distribution may not be made from any principal funds from the original appropriation.

(d) The fund administrator shall provide services defined under this section for the duration of the QTV Fund term unless removed for cause. Cause shall be further defined under the contract with the fund administrator and must include, but is not limited to, the engagement in fraud or other criminal acts by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(5) FUND ADMINISTRATOR POWERS AND DUTIES.—

(a) *Authority to contract.*—The fund administrator may enter into agreements with qualified lending partners for concurrent lending through the QTV Fund. A loan made by the qualified lending partner must be accounted for separately from the state funds or any other private investment capital. Such loan shall be made as senior debt. The fund administrator may raise private investment capital for mezzanine equity and other equity or raise junior capital for concurrent lending through

the QTV Fund. However, loans from private investment capital may not be made at more favorable terms and conditions than the terms and conditions of the state funds in the QTV Fund. The state appropriation must be maintained in a separate account from any private investment capital and administered in a separate legal investment entity or entities. Private investment capital and loans shall be segregated from each other, and funds may not be commingled.

(b) *General duties.*—The fund administrator:

1. Shall prudently manage the funds in the QTV Fund as a revolving loan fund.

2. Shall contract with one or more qualified lending partners.

3. Shall provide improvement of the credit profile of a structured financial transaction for qualified production companies that produce qualified television content meeting the criteria in subsection (7).

4. May raise additional private investment capital to be held in separate accounts, in addition to the leverage provided by the qualified lending partner.

5. Shall administer the QTV Fund in accordance with this part.

6. Shall agree to maintain the recipient's books and records relating to funds received from the department according to generally accepted accounting principles and in accordance with the requirements of s. 215.97(7) and to make those books

and records available to the department for inspection upon reasonable notice. The books and records must be maintained with detailed records showing the use of proceeds from loans to fund qualified television content.

7. Shall maintain its registered office in this state throughout the duration of the contract.

(c) *Financial reporting.*—The fund administrator shall submit to the department by February 28 each year audited financial statements for the preceding tax year which are audited by an independent certified public accountant after the end of each year in which the fund administrator is under contract with the department. In addition to providing an independent opinion on the annual financial statements, such audit provides a basis to verify the segregation of state funds from those of any private investment capital.

(d) *Program reporting.*—The fund administrator shall submit an annual report to the department by February 28 after the end of each year in which the fund administrator is under contract with the department. The report must include information on the loans made in the preceding calendar year and must include, but need not be limited to, the following:

1. The name of the qualified television content.

2. The names of the counties in which the production occurred.

3. The number of jobs created and retained as a result of the production.

4. The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner.

5. The loan repayment status for each loan.

6. The number, and amounts, of any loans with payments past due.

7. The number, and amounts, of any loans in default.

8. A description of the assets securing the loans.

9. Other information and documentation required by the department.

(e) *Plan of accountability.*—The fund administrator shall submit an annual plan of accountability of economic development, including a report detailing the job creation resulting from the QTV Fund loans made during the current year and cumulatively since the inception of the program. The fund administrator shall also provide any additional information requested by the department pertaining to economic development and job creation in the state.

(f) *Conflict-of-interest statement.*—The fund administrator shall provide a conflict-of-interest statement from its governing board certifying that no board member, director, employee, agent, or other person connected to or affiliated with the fund administrator is receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the loan program or from a qualified lending partner. The department may waive this

requirement for good cause shown.

(6) LOAN STRUCTURE.—

(a) The QTV Fund may make loans to production companies to fund production costs or provide improvement of the credit profile of a structured financial transaction for qualified television content that meets the criteria requirements of subsection (7). To make a loan, the fund administrator shall take into consideration the types of eligible collateral, the credit worthiness of the project, the producer's track record, the possibility that the project will encourage, enhance, or create economic benefits, and the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.

(b) The QTV Fund loan package shall be secured by contractual and predictable sources of repayment such as domestic and international broadcaster license agreements, tax credits, and other ancillary revenues that are derived from media content rights. Unsecured loans may not be made.

(c) The loans shall be made on the basis of a second lien or primary security rights on the media assets listed in paragraph (b).

(d) The QTV Fund shall provide funding only in conjunction with senior loans provided by a qualified lending partner. Loans from the QTV Fund may be subordinated to senior debt from the qualified lending partner and may not exceed 30 percent of the total production funding cost of any particular project.

(e) The production company's repayment of any loan shall be in accordance with the broadcast license agreement and the delivery of qualified television content to the major broadcaster and shall be within 60 days after such delivery.

(f) Loans made by the QTV Fund may not exceed 36 months in duration, except for extenuating circumstances for which the fund administrator may grant an extension upon making written findings to the department specifying the conditions requiring the extension.

(g) With the exception of funds appropriated to the department for the loan program, the credit of the state may not be pledged. The state shall not be liable or obligated in any way for claims against the QTV Fund or against the qualified lending partner.

(7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund administrator must consider at a minimum the following criteria for evaluating the qualifying television content:

(a) The content is intended for broadcast by a major broadcaster on a major network, cable, or streaming channel.

(b) The content is produced in this state, or a minimum of 80 percent of the production budget must be spent in this state. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object to the

change within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment to the requirement in this paragraph.

(c) If the content is a series, there is a programming order for at least 13 episodes. This requirement may be amended by the fund administrator upon notice to the department. Such notice must include a specific justification for the change and must be transmitted to the department in writing. The department has 10 business days to object to the change. If the department does not object to the change within 10 business days, the change is deemed acceptable by the department, and the fund administrator may grant the amendment to the requirement in this paragraph.

(d) The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement and the contract must cover at least 60 percent of the budget.

(e) The producer must retain a foreign sales agent and must be able to provide the fund administrator with the foreign sales agent's official estimates of foreign and ancillary sales.

(f) The project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect the state's funds.

(8) AUDITOR GENERAL REPORT.—The Auditor General shall

conduct an operational audit, as defined in s. 11.45, of the QTV Fund and fund administrator. The scope of review must include, but is not limited to, internal controls evaluations, internal audit functions, reporting and performance requirements for the use of the funds, and compliance with state and federal law. The fund administrator shall provide to the Auditor General any detail or supplemental data required.

(9) RULEMAKING AUTHORITY.—The department may adopt rules to administer this section.

(10) EXPIRATION.—This section expires December 31, 2024, at which point all funds remaining in the QTV Fund shall revert to the General Revenue Fund.

(11) EMERGENCY RULES.—

(a) The executive director of the department is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54(4) for the purpose of implementing this section.

(b) Notwithstanding any other law, the emergency rules adopted pursuant to paragraph (a) remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(c) This subsection expires October 1, 2015.

Section 15. Paragraph (c) of subsection (3) of section 288.9914, Florida Statutes, is amended to read:

288.9914 Certification of qualified investments;

investment issuance reporting.—

(3) REVIEW.—

(c) The department may not approve a cumulative amount of qualified investments that may result in the claim of more than $227.55 ~~$178.8~~ million in tax credits during the existence of the program or more than $36.6 million in tax credits in a single state fiscal year. However, the potential for a taxpayer to carry forward an unused tax credit may not be considered in calculating the annual limit.

Section 16. Section 339.0803, Florida Statutes, is created to read:

339.0803 Funding for strategic and regionally significant transportation projects.—Funds deposited into the State Transportation Trust Fund pursuant to s. 212.20(6)(d)6.f. must be used annually, first as set forth in subsection (1), and then as set forth in subsection (2), notwithstanding any other provision of law.

(1) Beginning in the 2014-2015 fiscal year and in each fiscal year thereafter, $85 million shall be used annually for transportation projects within this state for existing or planned strategic transportation projects that connect major markets within this state or between this state and other states, focus on job creation, and increase this state's viability in the national and global markets.

(2) Beginning in the 2014-2015 fiscal year and in each fiscal year thereafter, $15 million shall be used annually for

regionally significant transportation projects that support this state's economic regions and provide connectivity to and through rural areas. To be eligible for funding under this subsection, projects must be production-ready in the 5-year work program developed pursuant to s. 339.135. Funds required to be used under this subsection may be used to provide up to 75 percent of project costs for eligible projects. Preference shall be given to projects that have been identified as regionally significant in accordance with s. 339.155(4)(c), (d), and (e) and that have provided an increased level of non-state match.

Section 17. Subsection (6) of section 624.5105, Florida Statutes, is amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.—

(6) EXPIRATION.—The provisions of this section, except paragraph (1)(e), shall expire and be void on June 30, 2016 ~~2015~~.

Section 18. Sales tax holiday for Energy Star and WaterSense products.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on September 19, 2014, through 11:59 p.m. on September 21, 2014, on the first $1,500 of the sale price of a new Energy Star product or WaterSense product. However, a person is limited to one purchase of each specific type of Energy Star or WaterSense

product listed in paragraph (2)(a) or paragraph (2)(b) with a sales price of $500 or more. A second or subsequent purchase of a specific type of Energy Star product or WaterSense product with a sales price of $500 or more is subject to tax.

(2) As used in this section, the term:

(a) "Energy Star product" means a room air conditioner, air purifier, ceiling fan, clothes washer, clothes dryer, dehumidifier, dishwasher, freezer, refrigerator, water heater, swimming pool pump, or package of light bulbs that is designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's requirements under the Energy Star program and that is affixed with an Energy Star label.

(b) "WaterSense product" means a bathroom sink faucet, faucet accessory, high-efficiency toilet or urinal, showerhead, or weather or sensor-based irrigation controller that is recognized as water efficient by the WaterSense program sponsored by the United States Environmental Protection Agency and that is affixed with a WaterSense label.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 19. Physical fitness admissions tax suspension.—

(1) The tax levied under s. 212.04, Florida Statutes, may not be collected during the period from 12:01 a.m. on September 1, 2014, through 11:59 p.m. on September 8, 2014, on the sale of

athletic, exercise, and physical fitness facility memberships by a health studio registered under ss. 501.012-501.019, Florida Statutes.

(2) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 20. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 1, 2014, through 11:59 p.m. on August 3, 2014, on the sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $100 or less per item. As used in this paragraph, the term "clothing" means:

1. Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, roller blades, and skates.

(b) School supplies having a sales price of $15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers,

computer disks, protractors, compasses, and calculators.

(2) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 1, 2014, through 11:59 p.m. on August 3, 2014, on the first $750 of the sales price of personal computers or personal computer-related accessories purchased for noncommercial home or personal use. As used in this subsection, the term:

(a) "Personal computers" includes electronic book readers, laptops, desktops, handhelds, tablets, and tower computers. The term does not include cellular telephones, video game consoles, digital media receivers, or devices that are not primarily designed to process data.

(b) "Personal computer-related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. The term does not include furniture or systems, devices, software, or peripherals designed or intended primarily for recreational use.

(c) "Monitors" does not include devices that have a television tuner.

(3) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2),

Florida Statutes.

(4) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 21. (1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on June 1, 2014, through 11:59 p.m. on June 12, 2014, on the sale of:

(a) A portable self-powered light source selling for $20 or less.

(b) A portable self-powered radio, two-way radio, or weatherband radio selling for $50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) A self-contained first-aid kit selling for $30 or less.

(e) A ground anchor system or tie-down kit selling for $50 or less.

(f) A gas or diesel fuel tank selling for $25 or less.

(g) A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.

(h) A nonelectric food storage cooler selling for $30 or less.

(i) A portable generator used to provide light or communications or preserve food in the event of a power outage

selling for $750 or less.

(j) Reusable ice selling for $10 or less.

(2) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 22. (1) For fiscal year 2014-2015, the sum of $20 million of nonrecurring funds is appropriated from the General Revenue Fund to the Economic Development Trust Fund of the Department of Economic Opportunity for the purpose of making disbursements in accordance with s. 288.127(3), Florida Statutes.

(2) For fiscal year 2014-2015, the sum of $43,941 of nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering section 18 of this act.

(3) For fiscal year 2013-2014, the sum of $223,048 of nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering section 20 of this act. On June 30, 2014, the unexpended balance of this appropriation shall revert to the General Revenue Fund and be reappropriated for the same purpose for fiscal year 2014-2015.

(4) For fiscal year 2013-2014, the sum of $280,912 of nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering section 21 of this act. On June 30, 2014, the unexpended balance

of this appropriation shall revert to the General Revenue Fund and be reappropriated for the same purpose for fiscal year 2014-2015.

Section 23. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

Topic _____ Bill Number 5601 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☑ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.22.14
Meeting Date

Topic Economic Development

Bill Number HB 5601 *(if applicable)*

Name Jessica Love

Amendment Barcode 281752 *(if applicable)*

Job Title Government Consultant

Address PO Box 10098 *Street*

Phone 850.766.7136

City Tallahassee State FL Zip 32302

E-mail jessica.love@gray-robinson.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Builders & Contractors of FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Am't

Bill Number 5401

Name Frank Meiners

(if applicable)

Amendment Barcode ~~477076~~ 142308

(if applicable)

Job Title

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Tall FL 32302
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E-mail frank@cbgmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/27
Meeting Date

Topic _____ Bill Number 5001 *(if applicable)*

Name Frank Meiners Amendment Barcode ~~[illegible]~~ 381753 *(if applicable)*

Job Title _____

Address PO Box 1632 Phone 591-0177
Street

Safe 32502 E-mail frank@cfgmed.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Economic Development

Bill Number HB 5601 *(if applicable)*

Name Jonathan Rees

Amendment Barcode 281752 *(if applicable)*

Job Title Deputy Legislative Affairs Director

Address 400 S. Monroe St.
Street

Phone (850) 617-7700

Tallahassee FL 32309
City *State* *Zip*

E-mail Jonathon.Rees@freshfromflorida.com

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic SB 7

Bill Number 5601
(if applicable)

Name Frank Meinas

Amendment Barcode
(if applicable)

Job Title

Address PO Box 1655
Street

Phone 591-0177

Tampa FL 33601
City *State* *Zip*

E-mail frankc@chamber.com

Speaking: [X] For [ ] Against [ ] Information

Representing AIF

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic _____ Bill Number SB 1 *(if applicable)*

Name Diana Ferguson Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 119 S Monroe St Ste 202 Phone 850-681-4788
Street

Tallahassee FL 32308 E-mail dferguson@rgfirm.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing T-Mobile

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic Tax

Bill Number 5601 *(if applicable)*

Name Melissa Joiner Ramba

Amendment Barcode *(if applicable)*

Job Title Director of Government Affairs

Address 227 S Adams St
Street
Tallahassee FL
City *State* *Zip*

Phone

E-mail Melissa@frf.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/14
Meeting Date

Topic TAP PACKAGE (PREPAID) Bill Number 5601 *(if applicable)*

Name JC Flores Amendment Barcode *(if applicable)*

Job Title Regional Director - External Affairs

Address 150 W. Flagler St. Phone 305-347-5406
Street

Miami FL 33130 E-mail JF323w@att.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AT&T waive in support.

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

_____
Meeting Date

Topic Tax Package

Bill Number SCO01 *(if applicable)*

Name Carolyn Johnson

Amendment Barcode _____ *(if applicable)*

Job Title Policy Director

Address 136 S Bronough St
Street
Tallahassee
City *State* *Zip*

Phone _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/2014
Meeting Date

281752

Topic PECO Funding

Bill Number 5601 / Amendment
(if applicable)

Name WAYNE BLANTON

Amendment Barcode
(if applicable)

Job Title Exec. Director

Address 203 S. Monroe St.
Street

Tallahassee, Fla 32301
City *State* *Zip*

Phone 414-2578

E-mail blanton@fsba.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Fla. School Boards Assoc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Education
Ethics and Elections
Gaming
Governmental Oversight and Accountability
Rules

SENATOR LIZBETH BENACQUISTO
Majority Leader
30th District

April 21, 2014

The Honorable Joe Negron, Chair
Senate Appropriations Committee
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron,

Please excuse me from attending the Senate Committee on Appropriations on April 22nd. I have a commitment at that time. Please contact me if you have any questions.

Sincerely,

Lizbeth Benacquisto
Senate District 30
Majority Leader

REPLY TO:
❒ 1926 Victoria Ave, 2nd Floor, Fort Myers, Florida 33901 (239) 338-2570
❒ 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 4/22/2014 9:02:47 AM
Ends: 4/22/2014 5:59:38 PM Length: 08:56:52

9:02:49 AM Sen. Negron (Chair)
9:04:47 AM
9:04:53 AM S 142
9:04:56 AM Sen. Hays
9:05:05 AM Sen. Negron
9:05:08 AM
9:05:10 AM H 5601
9:05:21 AM Sen. Hukill
9:06:01 AM Sen. Negron
9:06:04 AM Sen. Joyner
9:06:17 AM Sen. Hukill
9:07:00 AM Sen. Negron
9:07:28 AM Am. 477076
9:07:40 AM Sen. Hukill
9:09:03 AM Sen. Negron
9:09:19 AM Am. 938816
9:09:35 AM Sen. Bean
9:11:35 AM Sen. Negron
9:11:40 AM Sen. Margolis
9:12:02 AM Sen. Bean
9:12:16 AM Sen. Margolis
9:12:25 AM Sen. Bean
9:12:28 AM Sen. Negron
9:12:31 AM Sen. Joyner
9:12:48 AM Sen. Bean
9:13:07 AM Sen. Negron
9:13:12 AM Sen. Latvala
9:13:25 AM Sen. Bean
9:14:02 AM Sen. Latvala
9:14:10 AM Sen. Bean
9:14:33 AM Sen. Joyner
9:14:49 AM Sen. Bean
9:14:56 AM Sen. Joyner
9:15:09 AM Sen. Bean
9:15:24 AM Sen. Joyner
9:15:29 AM Sen. Bean
9:16:02 AM Sen. Lee
9:16:42 AM Sen. Bean
9:16:59 AM Sen. Negron
9:17:19 AM Sen. Sobel
9:18:02 AM Sen. Negron
9:18:19 AM Am. 143508
9:18:33 AM Sen. Bradley
9:18:44 AM Sen. Negron
9:18:52 AM Frank Meiners, Associated Industries of Florida (waives in support)
9:19:03 AM Sen. Joyner
9:19:15 AM Sen. Bradley
9:19:39 AM Sen. Negron
9:19:50 AM Am. 281752
9:19:58 AM Sen. Hukill
9:21:09 AM Sen. Negron
9:21:22 AM Am. 477076 (cont.)

9:21:40 AM Jonathan Rees, Deputy Legislative Affairs Director, DACS (waives in support)
9:21:42 AM Wayne Blanton, Executive Director, Florida School Boards Association (waives in support)
9:21:44 AM Diana Ferguson, Attorney, T-Mobile (waives in support)
9:21:50 AM Melissa Joiner Ramba, Director of Government Affairs, Florida Retail Federation (waives in support)
9:21:54 AM JC Flores, Regional Director- External Affairs, AT&T (waives in support)
9:21:56 AM Frank Meiners, Associated Industries of Florida (waives in support)
9:22:10 AM Sen. Hukill
9:23:17 AM Sen. Negron
9:23:17 AM H 5601 (cont.)
9:23:40 AM Carolyn Johnson, Policy Director, Florida Chamber of Commerce (waives in support)
9:23:50 AM Jessica Love, Government Consultant, Associated Builders & Contractors of Florida (waives in support)
9:23:52 AM Brian Pitts, Trustee, Justice-2-Jesus
9:26:32 AM Sen. Negron
9:26:58 AM Sen. Joyner
9:28:36 AM Sen. Negron
9:29:07 AM Sen. Hukill
9:29:12 AM Sen. Negron
9:30:02 AM
9:30:04 AM S 142 (cont.)
9:30:06 AM Sen. Hays
9:30:35 AM Am. 421220
9:30:45 AM Sen. Hays
9:30:47 AM Sen. Negron
9:30:52 AM Am. 110440
9:30:55 AM Sen. Gardiner
9:31:24 AM Sen. Negron
9:31:30 AM Am. 962718
9:31:48 AM Sen. Gardiner
9:31:52 AM Sen. 979050
9:31:59 AM Sen. Bean
9:32:18 AM Sen. Negron
9:32:33 AM Am. 421220 (cont.)
9:32:48 AM S 142 (cont.)
9:32:53 AM Joe Anne Hart, Director of Government Affairs, Florida Dental Association (waives in support)
9:32:59 AM Brian Pitts, Trustee, Justice-2-Jesus
9:34:19 AM Sen. Negron
9:34:27 AM Sen. Joyner
9:34:44 AM Sen. Hays
9:35:23 AM Sen. Joyner
9:35:41 AM Sen. Hays
9:35:53 AM Sen. Negron
9:36:49 AM
9:36:51 AM S 1114
9:37:04 AM Sen. Simpson
9:37:14 AM Am. 343792
9:37:21 AM Sen. Galvano
9:37:28 AM Sen. Simpson
9:39:26 AM Sen. Negron
9:39:41 AM Sen. Latvala
9:39:57 AM Sen. Simpson
9:40:03 AM Sen. Latvala
9:40:33 AM Sen. Simpson
9:41:21 AM Sen. Negron
9:41:25 AM Sen. Latvala
9:41:40 AM Sen. Ring
9:41:55 AM Sen. Negron
9:42:03 AM Sen. Montford
9:42:50 AM Sen. Simpson
9:43:00 AM Sen. Montford
9:43:40 AM Sen. Thrasher
9:44:15 AM
9:44:17 AM S 1512

9:44:21 AM Sen. Stargel
9:45:11 AM Sen. Joyner
9:45:18 AM Sen. Stargel
9:45:44 AM Sen. Joyner
9:46:13 AM Sen. Stargel
9:46:41 AM Sen. Negron
9:46:48 AM Am. 910124
9:46:52 AM Sen. Galvano
9:49:46 AM Sen. Smith
9:50:03 AM Sen. Galvano
9:50:35 AM Sen. Margolis
9:51:29 AM Sen. Galvano
9:51:55 AM Sen. Montford
9:52:49 AM Sen. Galvano
9:53:37 AM Sen. Montford
9:54:14 AM Sen. Galvano
9:54:56 AM Sen. Sobel
9:55:26 AM Sen. Galvano
9:55:48 AM Sen. Sobel
9:56:04 AM Sen. Galvano
9:56:32 AM Sen. Joyner
9:56:58 AM Sen. Galvano
9:57:10 AM Sen. Joyner
9:57:47 AM Sen. Galvano
9:58:05 AM Sen. Joyner
9:58:21 AM Sen. Galvano
9:58:36 AM Sen. Joyner
9:58:59 AM Sen. Galvano
9:59:29 AM Sen. Joyner
9:59:52 AM Sen. Galvano
10:00:33 AM Sen. Negron
10:01:02 AM Sen. Joyner
10:01:16 AM Sen. Galvano
10:01:42 AM Sen. Joyner
10:02:09 AM Sen. Galvano
10:02:30 AM Sen. Margolis
10:04:22 AM Sen. Sobel
10:04:33 AM Sen. Galvano
10:06:23 AM Sen. Joyner
10:07:03 AM Sen. Galvano
10:07:20 AM Sen. Joyner
10:07:54 AM Sen. Joyner
10:08:23 AM Sen. Galvano
10:08:47 AM James Herzog, Associate Director for Education, Florida Conference of Catholic Bishops
10:09:30 AM Sen. Joyner
10:10:12 AM J. Herzog
10:11:00 AM Sen. Joyner
10:11:18 AM J. Herzog
10:11:29 AM Sen. Margolis
10:12:28 AM Sen. Negron
10:13:12 AM Sen. Galvano
10:13:36 AM Sen. Negron
10:13:39 AM Am. 252548
10:14:04 AM Sen. Stargel
10:14:37 AM Sen. Negron
10:14:41 AM Am. 359000
10:14:45 AM Sen. Stargel
10:14:57 AM Sen. Negron
10:15:03 AM Sen. Montford
10:15:18 AM Sen. Stargel
10:15:35 AM Sen. Negron
10:15:45 AM Am. 596022

10:15:50 AM Sen. Stargel
10:16:10 AM Sen. Joyner
10:16:37 AM Sen. Stargel
10:17:03 AM Sen. Negron
10:17:14 AM Am. 827068
10:17:20 AM Sen. Stargel
10:17:53 AM Sen. Joyner
10:18:08 AM Sen. Stargel
10:18:38 AM Sen. Joyner
10:19:08 AM Sen. Stargel
10:19:21 AM Sen. Joyner
10:19:32 AM Sen. Stargel
10:20:02 AM Sen. Joyner
10:20:19 AM Sen. Stargel
10:20:49 AM Sen. Joyner
10:21:03 AM Sen. Negron
10:21:10 AM Sen. Margolis
10:21:57 AM Sen. Stargel
10:22:54 AM Sen. Margolis
10:23:08 AM Sen. Stargel
10:23:21 AM Sen. Negron
10:23:33 AM Am. 175992
10:23:43 AM Sen. Gardiner
10:24:44 AM Sen. Negron
10:24:58 AM PCS 532862
10:25:11 AM S 1512 (cont.)
10:25:20 AM Mindy Gould, Legislative Chair, Florida PTA (waives in support)
10:25:31 AM Jim Horne, AIF (waives in support)
10:25:36 AM Larry Dupree, citizen (waives in support)
10:25:38 AM Ken Williams, citizen (waives in support)
10:25:42 AM Linda Russell, Florida Education Association
10:28:27 AM Sen. Negron
10:28:32 AM Debbie Harrison Rumberger, Government Liaison, Florida League of Women Voters
10:29:25 AM Sen. Negron
10:29:46 AM Sen. Gardiner
10:31:20 AM Sen. Joyner
10:34:16 AM Sen. Negron
10:34:23 AM Sen. Sobel
10:36:18 AM Sen. Montford
10:38:07 AM Sen. Negron
10:38:12 AM Sen. Stargel
10:39:35 AM Sen. Negron
10:40:15 AM
10:40:17 AM S 470
10:40:22 AM Sen. Detert
10:41:01 AM Sen. Negron
10:41:09 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
10:41:26 AM Melissa Joiner Ramba, Director of Government Affairs, Florida Retail Federation (waives in support)
10:41:30 AM John Costella, Consultant, Miller Coors (waives in support)
10:41:33 AM Eric Criss, President, Beer Industry of Florida (waives in support)
10:41:36 AM Jose Gonzalez, Director State Affairs, Anheviser-Busch (waives in support)
10:41:54 AM Sen. Joyner
10:42:11 AM Sen. Detert
10:42:18 AM Sen. Negron
10:42:58 AM
10:43:00 AM S 1114 (cont.)
10:43:14 AM Sen. Simpson
10:43:46 AM Sen. Montford
10:44:08 AM Sen. Simpson
10:46:37 AM Sen. Montford
10:47:16 AM Sen. Simpson
10:47:26 AM Sen. Montford

10:47:53 AM Sen. Simpson
10:48:04 AM Sen. Margolis
10:48:50 AM Sen. Simpson
10:49:23 AM Sen. Joyner
10:50:27 AM Sen. Simpson
10:51:54 AM Sen. Joyner
10:52:36 AM Sen. Simpson
10:52:51 AM Sen. Joyner
10:53:21 AM Sen. Simpson
10:53:28 AM Sen. Joyner
10:54:49 AM Sen. Simpson
10:57:32 AM Sen. Negron
10:58:04 AM Sen. Joyner
10:59:19 AM Sen. Simpson
10:59:28 AM Sen. Joyner
11:00:57 AM Sen. Ring
11:02:01 AM Sen. Simpson
11:02:23 AM Sen. Ring
11:02:33 AM Sen. Simpson
11:03:01 AM Sen. Ring
11:03:22 AM Sen. Simpson
11:03:52 AM Sen. Ring
11:04:02 AM Sen. Montford
11:04:52 AM Sen. Simpson
11:05:12 AM Sen. Montford
11:06:00 AM Sen. Simpson
11:06:24 AM Sen. Margolis
11:08:31 AM Sen. Simpson
11:08:55 AM Sen. Margolis
11:09:40 AM Sen. Latvala
11:10:15 AM Sen. Simpson
11:10:20 AM Sen. Latvala
11:10:43 AM Sen. Simpson
11:10:51 AM Sen. Lee
11:11:22 AM Sen. Simpson
11:11:29 AM Sen. Lee
11:11:51 AM Sen. Simpson
11:12:01 AM Sen. Negron
11:12:24 AM Sen. Joyner
11:12:42 AM Sen. Simpson
11:13:10 AM Sen. Joyner
11:13:40 AM Sen. Simpson
11:14:07 AM Sen. Simpson
11:15:28 AM Sen. Simpson
11:15:53 AM Sen. Negron
11:15:56 AM Am. 388390
11:16:06 AM Sen. Simpson
11:16:22 AM Sen. Latvala
11:16:45 AM Sen. Negron
11:18:30 AM Am. 343792 (cont.)
11:19:18 AM S 1114 (cont.)
11:19:59 AM Jim Tolley, Florida Professional Firefighters
11:21:13 AM Linda Edson, Legislative Co-Chair, Florida Retired Educators Association (waives in opposition)
11:21:27 AM Alan Strowd, Retired, Retirees & Benefit Members
11:23:51 AM John Parker, President Florida Building Trader, citizen (waives in opposition)
11:23:56 AM Leticia Adams, Senior Policy Director, Florida Chamber of Commerce
11:24:38 AM Dennis Bonilla, Retired Letter Carrier, citizen (waives in opposition)
11:24:53 AM Curtis Bissing, Electrician, citizen (waives in opposition)
11:25:00 AM William McNelely, Electrician, citizen (waives in opposition)
11:25:06 AM Wendy Paser, UniServ Director, citizen (waives in opposition)
11:25:12 AM Jerimiah Tattersall, Field Staff North Central Florida Central Labor Councils, citizen (waives in opposition)
11:25:16 AM Aaron Carmella, Field Staff West Florida Central Labor Councils, citizen (waives in opposition)

11:25:21 AM Jeff Levinson, Teacher, Palm Beach County
11:26:53 AM Donald Persson, Teacher/Coach, West Palm Beach
11:26:57 AM Les Cantrell, State Coordinator, Florida Correctional Officers (waives in opposition)
11:27:39 AM Jesse Croskey, City of Clearwater, citizen (waives in opposition)
11:28:38 AM Steve Wisniewski, Digital Technician (waives in opposition)
11:28:45 AM Alice-Marie Tucker, Walt Disney World (waives in opposition)
11:28:57 AM Kimberly Henriquez, Hillsborough County School Teacher, citizen (waives in opposition)
11:29:05 AM Jean Clements, Teacher, citizen (waives in opposition)
11:29:14 AM JoAnne Alvarez, Communications Operator/911, citizen (waives in opposition)
11:29:21 AM Jane Roach, citizen (waives in opposition)
11:29:26 AM David Holmes, Teacher, United School Employees of Pasco (waives in opposition)
11:29:31 AM Stan CoHen, Retired Teacher, Retired Teachers (waives in opposition)
11:29:35 AM Ellis Canty Sr, Business Agent, citizen (waives in opposition)
11:29:42 AM Beverly Ledbetter, Educator
11:30:29 AM Carl Waldron, Extended Day Enrichment Program- Retired Teacher, Public Education
11:32:17 AM Steve Hall, citizen (waives in opposition)
11:32:29 AM Felecia Bruce, Retiree, Teachers Retired in Florida (waives in opposition)
11:33:39 AM Robert Kriete, Teacher, citizen (waives in opposition)
11:33:45 AM Albert Carroll, Congressional District Liaison, Florida State Association of Letter Carriers (waives in opposition)
11:33:53 AM O. D. Elliott, State Legislative Liaison, Florida State Association of Letter Carriers (waives in opposition)
11:34:01 AM Frank Marinacci, Letter Carrier, Florida State Association of Letter Carriers (waives in opposition)
11:34:18 AM Matty Rose, Retired, Florida State Association of Letter Carriers (waives in opposition)
11:34:27 AM Mike Riley, Retired Correctional Officer Captain, citizen (waives in opposition)
11:34:38 AM Norm Sherck, Retired, Working Family Lobby Corp (waives in opposition)
11:34:46 AM Ken Williams, citizen (waives in opposition)
11:35:06 AM Larry Dupree, citizen (waives in opposition)
11:35:30 AM Gail Marie Perry, Chair Council of Florida, Communications Workers of America
11:36:56 AM Jim Tolley, Florida Professional Firefighters (waives in opposition)
11:37:06 AM Rick Templin, Legislative & Political Director, Florida American Federation of Labor and Congress of Industrial Organizations
11:40:11 AM Sen. Latvala
11:40:42 AM R. Templin
11:41:45 AM Lynda Russell, Florida Education Association
11:43:20 AM Sen. Richter
11:44:20 AM L. Russell
11:45:05 AM Ron Bilbao, Political Director, citizen (waives in opposition)
11:45:13 AM Mike Fewless, Captain, Orange County Sheriff's Office
11:48:23 AM Sen. Ring
11:48:57 AM M. Fewless
11:49:12 AM Abigail MacIver, Policy Director, Americans for Prosperity
11:50:26 AM Melanie Andrade, Student, citizen (waives in opposition)
11:50:35 AM Katherine Hiley, Clerk, citizen (waives in opposition)
11:50:47 AM Delores Kelly, Retired, citizen (waives in opposition)
11:50:50 AM Robert Jenkins, National Trustee of Florida (waives in opposition)
11:51:00 AM Lisa Henning, Director, Fraternal Order of Policy
11:52:38 AM Sen. Montford
11:52:54 AM Sen. Negron
11:53:01 AM Sen. Montford
11:53:34 AM Robert Ash, State Board of Administration
11:54:04 AM Sen. Montford
11:54:14 AM R. Ash
11:54:21 AM Sen. Joyner
11:54:49 AM R. Ash
11:55:05 AM Sen. Joyner
11:55:13 AM R. Ash
11:55:39 AM Sen. Joyner
11:55:58 AM R Ash
11:56:04 AM Sen. Joyner
11:56:44 AM R. Ash
11:56:59 AM Sen. Joyner
11:57:12 AM R. Ash

11:58:09 AM Sen. Joyner
11:58:20 AM R. Ash
11:58:29 AM Sen. Latvala
11:58:53 AM Sen. Negron
11:59:04 AM Sen. Latvala
12:00:54 PM Sen. Montford
12:02:32 PM Sen. Joyner
12:07:54 PM Sen. Margolis
12:09:12 PM Sen. Lee
12:12:11 PM Sen. Ring
12:15:37 PM Sen. Sobel
12:17:35 PM Sen. Negron
12:17:37 PM Sen. Simpson
12:20:16 PM Sen. Negron
12:21:21 PM Recording Paused
1:06:50 PM Recording Resumed
1:07:19 PM
1:07:21 PM S 1292
1:07:24 PM Sen. Legg
1:07:51 PM Sen. Negron
1:07:59 PM Am. 824504
1:08:06 PM Sen. Latvala
1:10:21 PM Sen. Negron
1:10:31 PM Sen. Bradley
1:10:48 PM Sen. Negron
1:10:51 PM Sen. Thrasher
1:13:58 PM Sen. Negron
1:14:05 PM Sen. Latvala
1:16:26 PM Sen. Negron
1:17:23 PM Victor Herrora-Ramirez, Students Working for Equal Rights (waives in support)
1:17:35 PM Maricela Remirez-Lemus, Palm Beach State County (waives in support)
1:17:47 PM Julio Colderon, Students Working for Equal Rights (waives in support)
1:18:00 PM Joey San Javier, Student, Raising Awareness through Student Action (waives in support)
1:18:12 PM Francesca Meues, Policy and Advocacy Coordinator, Florida Immigrant Coalition (waives in support)
1:19:00 PM S 1292 (cont.)
1:19:05 PM Sen. Negron
1:19:13 PM
1:19:15 PM S 1030
1:19:23 PM Sen. Bradley
1:19:53 PM Sen. Bean
1:20:36 PM Sen. Negron
1:21:43 PM Am. 617332
1:22:06 PM Sen. Bradley
1:24:43 PM Sen. Negron
1:24:49 PM Am. 379848
1:24:54 PM Sen. Bradley
1:25:32 PM Sen. Negron
1:25:36 PM Am. 617332 (cont.)
1:25:58 PM S 1030 (cont.)
1:26:00 PM Gary Stein, citizen (waives in support)
1:26:06 PM Ron Watson, Lobbyist, citizen
1:29:15 PM Sen. Negron
1:29:23 PM Tim Stanfield, Florida Police Chiefs Association (waives in support)
1:29:29 PM Holley Moseley, Co-Founder, Caring 4 Florida (waives in support)
1:29:34 PM Brian Pitts, Trustee, Justice-2-Jesus
1:32:21 PM Louis Rotundo, Florida Medical Cannabis Association (waives in support)
1:32:42 PM Sen. Sobel
1:33:40 PM Sen. Bradley
1:33:48 PM Sen. Bean
1:34:50 PM Sen. Negron
1:35:27 PM
1:35:29 PM S 948

1:35:34 PM Sen. Thrasher
1:35:55 PM
1:35:57 PM S 484
1:36:24 PM Sen. Braynon
1:37:01 PM Sen. Negron
1:37:09 PM PCS 350166
1:37:29 PM Sen. Hays
1:37:49 PM Nelson Diaz, President of the Board, Kristi House (waives in support)
1:38:48 PM
1:38:50 PM S 640
1:38:55 PM Sen. Braynon
1:39:25 PM Sen. Negron
1:39:57 PM
1:39:59 PM S 768
1:40:03 PM Sen. Braynon
1:40:44 PM Am. 578560
1:40:53 PM Sen. Braynon
1:41:34 PM Sen. Negron
1:42:04 PM S 768 (cont.)
1:42:28 PM Sen. Smith
1:42:44 PM Sen. Negron
1:43:29 PM
1:43:31 PM S 948 (cont.)
1:43:37 PM Sen. Ring
1:44:35 PM Sen. Negron
1:44:38 PM Am. 257722
1:44:49 PM Sen. Ring
1:45:01 PM S 948 (cont.)
1:45:02 PM Sen. Negron
1:45:28 PM
1:45:30 PM S 744
1:46:22 PM Sen. Detert
1:47:13 PM Sen. Negron
1:47:22 PM Myndi Gould, Legislative Chair, Florida Parent-Teacher Association (waives in support)
1:47:29 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
1:47:43 PM Alan Abramawir, Executive Director, GAL (waives in support)
1:47:46 PM Christina Spudeas, Executive Director, Florida's children First & Florida Youth Shine (waives in support)
1:48:27 PM
1:48:29 PM S 1018
1:48:33 PM Sen. Detert
1:49:39 PM Sen. Negron
1:49:43 PM Am. 494376
1:49:48 PM Sen. Detert
1:49:58 PM Sen. Negron
1:50:03 PM Am. 365778
1:50:09 PM Sen. Detert
1:50:20 PM Sen. Negron
1:50:31 PM David Sigerson, Capital Pawn (waives in support)
1:50:40 PM Jonathan Rees, Deputy Legislative Affairs Director, DACS (waives in support)
1:50:52 PM Am. 771774
1:50:58 PM Sen. Detert
1:51:20 PM Sen. Negron
1:51:22 PM S 1018 (cont.)
1:52:06 PM Sen. Negron
1:52:08 PM
1:52:10 PM S 1634
1:52:16 PM Sen. Detert
1:53:40 PM Sen. Negron
1:53:43 PM Am. 878364
1:54:02 PM Sen. Detert
1:54:48 PM Sen. Negron
1:54:51 PM Am. 449296

1:54:57 PM Sen. Detert
1:55:14 PM Sen. Negron
1:55:21 PM Am. 420500
1:55:26 PM Sen. Detert
1:55:40 PM Sen. Negron
1:55:47 PM David Cruz, Assistant General Counsel, Florida League of Cities
1:56:41 PM Sen. Negron
1:56:52 PM Sen. Joyner
1:57:14 PM Sen. Detert
1:59:15 PM Sen. Joyner
1:59:57 PM Sen. Detert
2:00:12 PM Sen. Negron
2:00:21 PM Am. 103032
2:00:31 PM Sen. Richter
2:01:57 PM Sen. Negron
2:02:03 PM S 1634 (cont.)
2:02:10 PM Carolyn Johnson, Policy Director, Florida Chamber of Commerce (waives in support)
2:02:19 PM Taylor Hatch, Deputy Legislative Affairs Director, DEO (waives in support)
2:03:11 PM
2:03:13 PM S 698
2:03:17 PM Sen. Stargel
2:03:56 PM Sen. Negron
2:04:06 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in opposition)
2:04:48 PM
2:04:50 PM S 950
2:04:52 PM Sen. Stargel
2:05:08 PM PCS 675198
2:05:56 PM Sen. Joyner
2:06:25 PM Sen. Stargel
2:06:54 PM Sen. Joyner
2:07:07 PM Sen. Stargel
2:07:23 PM Sen. Joyner
2:07:30 PM Sen. Stargel
2:07:46 PM Sen. Joyner
2:08:09 PM Sen. Stargel
2:08:19 PM Sen. Joyner
2:08:43 PM Sen. Negron
2:09:02 PM Sen. Brandes
2:09:53 PM Sen. Joyner
2:10:12 PM Sen. Brandes
2:10:35 PM Sen. Joyner
2:10:55 PM Sen. Brandes
2:11:21 PM Sen. Joyner
2:12:02 PM Sen. Negron
2:12:19 PM Am. 589062
2:12:25 PM Sen. Latvala
2:12:37 PM S 950 (cont.)
2:12:51 PM Jim Horne, Associated Industries of Florida (waives in support)
2:12:58 PM Sara Clements, Legislative Analyst, Foundation for Florida's Future (waives in support)
2:13:41 PM Sen. Negron
2:13:47 PM
2:13:49 PM S 1632
2:13:53 PM Sen. Stargel
2:14:31 PM Sen. Negron
2:14:36 PM Am. 704556
2:14:42 PM Sen. Stargel
2:14:50 PM Am. 851674
2:15:00 PM Sen. Galvano
2:15:25 PM Sen. Negron
2:15:31 PM Sen. Joyner
2:15:50 PM Sen. Galvano
2:16:29 PM Sen. Negron

2:16:36 PM S 1632 (cont.)
2:16:38 PM Sen. Negron
2:17:19 PM
2:17:21 PM S 1354
2:17:29 PM Sen. Grimsley
2:18:12 PM Sen. Negron
2:18:17 PM Am. 782304
2:19:35 PM Am. 782034
2:19:38 PM Sen. Negron
2:20:26 PM Alisa LaPolt, Florida Nurses Association (waives in support)
2:20:37 PM Stephen Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
2:20:43 PM Chris Fisher, Florida Policy and Advocacy Coordinator, AIDS Institute & AIDS Alliance for Women, Infants, Children, Youth and Families (waives in support)
2:20:50 PM Chris Nuland, Florida Chapter, American College of Surgeons/Physicians (waives in support)
2:20:56 PM Pam Langford, President, HEALS of the South
2:23:22 PM Audrey Brown, CEO & President, Florida Association of Health Plans
2:24:18 PM Joy Ryan, Shareholder Meenan P.A., America's Health Insurance Plans
2:25:56 PM Karen Moore, Patients Access for Florida (waives in support)
2:26:01 PM Courtney Cox, Florida Breast Cancer Foundation (waives in support)
2:26:11 PM Fely Curva, Partner, Curva & Associate LLC (waives in support)
2:26:17 PM Austin Corry, President, Elder Care Advocacy of Florida (waives in support)
2:26:41 PM Anne Swerlide, Deputy Director, Florida Legal Services Inc (waives in support)
2:29:10 PM Ashley Weber, Alzheimer & Dementia Resource Center (waives in support)
2:29:20 PM Eric Pounder, Lupus Foundation of Florida (waives in support)
2:29:27 PM David Christian, Vice President Government Affairs, Florida Chamber of Commerce (waives in support)
2:29:30 PM Monica Fernandez-Hermo, United States Pain Foundation (waives in support)
2:29:37 PM Kayla Krause, Community Health Charities of Florida (waives in support)
2:29:44 PM Nanette Schimpf, Florida State Hispanic Chamber of Commerce (waives in support)
2:29:52 PM Paul Sanford, Florida Insurance Council, Florida Blue
2:31:06 PM Sen. Negron
2:31:24 PM P. Sanford
2:31:46 PM Sen. Negron
2:31:48 PM P. Sanford
2:32:12 PM Tammy Perdue, General Counsel, Associated Industries
2:32:48 PM S 1354 (cont.)
2:32:57 PM Sen. Hays
2:33:51 PM Sen. Joyner
2:35:31 PM Sen. Negron
2:36:20 PM
2:36:22 PM S 1666
2:36:25 PM Sen. Sobel
2:42:17 PM Sen. Negron
2:42:53 PM PCS 616958
2:43:14 PM Am. 465622
2:43:21 PM Sen. Sobel
2:43:23 PM Sen. Negron
2:43:27 PM Am. 525374
2:43:39 PM Sen. Richter
2:44:08 PM Sen. Negron
2:44:20 PM Am. 862870
2:44:21 PM Sen. Sobel
2:44:25 PM Sen. Negron
2:44:35 PM Cynthia Henderson, LSA (waives in support)
2:45:10 PM Am. 862870
2:45:13 PM Sen. Latvala
2:46:21 PM Am. 798384
2:46:31 PM Sen. Latvala
2:46:35 PM Am. 502372
2:46:44 PM Sen. Sobel
2:47:37 PM Sen. Negron
2:47:41 PM Brigita Johnson, Florida Sheriff support
2:47:53 PM Ron Book, Lauren's Kids (waives in support)

2:48:00 PM Am. 465622 (cont.)
2:48:27 PM Esther Jacobo, Secretary, Department of Children and Families
2:51:44 PM Ryan Reiter, Government Affairs Manager, Children's Service's Council of Broward County (waives in support)
2:51:54 PM Jim Akin, Executive Director, National Association of Social Workers-Florida (waives in support)
2:54:33 PM Brian Pitts, Trustee, Justice-2-Jesus
2:58:15 PM Sen. Sobel
2:59:21 PM S 1666 (cont.)
2:59:23 PM Sen. Negron
3:00:18 PM Sen. Gardiner
3:00:22 PM
3:00:24 PM S 1394
3:00:27 PM Sen. Legg
3:00:54 PM Am. 616272
3:01:13 PM Sen. Grimsley
3:01:49 PM PCS 672552
3:02:09 PM Am. 919272 (cont.)
3:02:09 PM S 1394 (cont.)
3:02:11 PM Sen. Negron
3:03:14 PM
3:03:16 PM S 1702
3:03:19 PM Sen. Legg
3:03:57 PM Am. 576812
3:04:05 PM Sen. Legg
3:04:27 PM Sen. Gardiner
3:04:30 PM Am. 706886
3:04:53 PM Sen. Legg
3:04:55 PM Sen. Gardiner
3:05:00 PM Am. 576812 (cont.)
3:05:08 PM Sen. Joyner
3:06:14 PM Sen. Gardiner
3:06:21 PM S 1702 (cont.)
3:06:47 PM
3:06:49 PM S 1394 (cont.)
3:07:50 PM Sen. Legg
3:08:00 PM Jim Horne Support, Associated Industries of Florida (waives in support)
3:09:14 PM Sen. Gardiner
3:09:16 PM
3:09:18 PM S 956
3:09:27 PM Sen. Bean
3:10:15 PM Am. 481224
3:10:24 PM Sen. Richter
3:10:32 PM Jon Menendez, Legislative Affairs Director, DJJ (waives in support)
3:10:55 PM Sen. Gardiner
3:11:18 PM Am. 640218
3:11:21 PM Sen. Bean
3:11:33 PM S 956 (cont.)
3:11:41 PM Donald Forgione, Director of the Florida Park Service
3:12:41 PM Sen. Joyner
3:13:01 PM D. Forgione
3:13:42 PM Sen. Montford
3:13:45 PM D. Forgione
3:13:47 PM Sen. Montford
3:13:57 PM Sen. Gardiner
3:14:04 PM Sen. Joyner
3:14:15 PM Sen. Gardiner
3:14:37 PM Sen. Bean
3:15:27 PM Sen. Gardiner
3:16:40 PM Sen. Margolis
3:17:20 PM Sen. Gardiner
3:17:26 PM
3:17:28 PM S 634

3:17:28 PM Sen. Brandes
3:17:46 PM Sen. Gardiner
3:17:52 PM Am. 569002
3:17:52 PM Sen. Thrasher
3:17:58 PM Sen. Brandes
3:18:17 PM Sen. Gardiner
3:18:24 PM S 634 (cont.)
3:19:20 PM
3:19:22 PM S 638
3:19:29 PM PCS 932242
3:19:40 PM Sen. Brandes
3:19:47 PM Sen. Gardiner
3:19:58 PM Sen. Joyner
3:20:14 PM Sen. Gardiner
3:20:24 PM Am. 423540
3:20:27 PM Sen. Galvano
3:20:36 PM Sen. Brandes
3:20:46 PM Sen. Galvano
3:20:59 PM Am. 804678
3:21:06 PM Sen. Brandes
3:21:22 PM Sen. Gardiner
3:21:30 PM Sen. Joyner
3:21:48 PM Sen. Brandes
3:22:12 PM Sen. Joyner
3:22:18 PM Sen. Gardiner
3:22:25 PM Am. 590334
3:22:36 PM Sen. Hays
3:22:43 PM Sen. Gardiner
3:22:54 PM Cary Baker, Lake County Property Appraiser, Florida Association of Property Appraisers (waives in support)
3:23:07 PM S 638 (cont.)
3:23:15 PM Brian Pitts, Trustee, Justice-2-Jesus
3:24:06 PM Grace Lovett, Director of Legislative Affairs, DACS (waives in support)
3:24:21 PM Sen. Gardiner
3:25:24 PM
3:25:26 PM S 1260
3:25:31 PM PCS 722116
3:25:41 PM Sen. Brandes
3:27:57 PM Sen. Joyner
3:28:15 PM Sen. Brandes
3:28:18 PM Sen. Joyner
3:28:24 PM Sen. Brandes
3:28:35 PM Sen. Joyner
3:28:43 PM Sen. Gardiner
3:28:51 PM Am. 524914
3:28:56 PM Sen. Hays
3:29:08 PM Sen. Joyner
3:29:17 PM Sen. Hays
3:29:33 PM Sen. Gardiner
3:29:42 PM Am. 192956
3:29:56 PM Sen. Richter
3:30:03 PM Sen. Brandes
3:30:21 PM Sen. Latvala
3:30:47 PM Sen. Brandes
3:31:09 PM Sen. Latvala
3:31:13 PM Sen. Brandes
3:31:19 PM Sen. Latvala
3:31:27 PM Sen. Gardiner
3:31:34 PM Sen. Joyner
3:31:48 PM Sen. Brandes
3:32:22 PM Sen. Joyner
3:32:49 PM Gerald Wester, Lobbyist, American Insurance Association (waives in support)

3:33:01 PM S 1260 (cont.)
3:33:13 PM Logan McFaddin, Director of Legislative Affairs, Office of the Chief Financial Officer (waives in support)
3:33:51 PM Sen. Gardiner
3:34:32 PM Sen. Bradley
3:34:38 PM Sen. Gardiner
3:35:17 PM
3:35:19 PM S 1272
3:35:24 PM PCS 376118
3:35:35 PM Sen. Brandes
3:36:44 PM Sen. Gardiner
3:36:51 PM Am. 390854
3:37:14 PM Sen. Hays
3:38:00 PM Ryan Padgett, Assistant General Counsel, Florida League of Cities (waives in opposition)
3:38:10 PM Sen. Joyner
3:38:26 PM Am. 316646
3:38:37 PM Sen. Hays
3:39:33 PM Am. 501294
3:39:41 PM Sen. Hays
3:39:45 PM Sen. Gardiner
3:39:53 PM Am. 489780
3:40:01 PM Sen. Bean
3:40:53 PM Am. 594154
3:40:58 PM Sen. Bean
3:41:03 PM Sen. Brandes
3:41:34 PM Am. 156168
3:41:42 PM Sen. Bradley
3:42:31 PM Sen. Joyner
3:42:49 PM Sen. Bradley
3:43:17 PM Sen. Joyner
3:43:30 PM Sen. Bradley
3:43:42 PM Sen. Joyner
3:44:57 PM Sen. Gardiner
3:45:07 PM Sen. Bradley
3:45:33 PM Am. 797362
3:45:38 PM Sen. Montford
3:46:32 PM Melissa Joiner Ramba, Director of Government Affairs, Florida Retail Federation (waives in support)
3:47:20 PM Sen. Gardiner
3:47:34 PM J.R. Harding, Advocate, Disabled Community in Leon County (waives in support)
3:50:01 PM Sen. Gardiner
3:50:10 PM Jeffrey Sharkey, Owner, Leon County (waives in support)
3:51:47 PM Marty Cassini, Legislative Counsel, Broward County (waives in support)
3:51:52 PM Molly Gosline, Executive Director, citizen (waives in support)
3:52:32 PM Am. 417534
3:52:38 PM Sen. Bradley
3:52:40 PM S 1272 (cont.)
3:53:48 PM Sen. Gardiner
3:54:34 PM Sen. Negron
3:54:44 PM
3:54:46 PM S 1576
3:55:05 PM Sen. Dean
3:55:26 PM Am. 356190
3:55:36 PM Sen. Dean
3:58:00 PM Am. 571098
3:58:10 PM Sen. Dean
3:58:15 PM Am. 103328
3:58:17 PM Sen. Dean
3:58:21 PM Am. 361488
3:58:27 PM Sen. Dean
3:58:42 PM Sen. Joyner
3:58:55 PM Sen. Dean
4:00:00 PM Sen. Joyner
4:00:09 PM Sen .Dean

4:00:28 PM Sen. Negron
4:00:36 PM Am. 966234
4:00:41 PM Sen. Dean
4:01:12 PM Sen. Negron
4:01:19 PM Am. 844544
4:01:24 PM Sen. Dean
4:01:42 PM Am. 690158
4:01:54 PM Sen. Dean
4:02:13 PM Am. 356190 (cont.)
4:02:34 PM Dan Peterson, Executive Director, Coalition for Property Rights
4:04:46 PM Monitor has changed View
4:05:34 PM Sen. Negron
4:05:48 PM Charles Pattison, President, 1000 Friends of Florida (waives in opposition)
4:06:04 PM Doug Mann, Associated Industries of Florida
4:07:06 PM Sen. Negron
4:07:26 PM David Collen, Sierra Club (waives in support)
4:07:36 PM Ryan Matthews, Legislative Advocate, Florida League of Cities
4:08:42 PM Stephen James, Florida Associates of Counties
4:08:47 PM Monitor has changed View
4:12:20 PM Janet Bowman, Director of Legislative Policy Strategies (waives in support)
4:12:26 PM Leticia Adams, Senior Policy Director, Florida Chamber of Commerce
4:13:12 PM Debbie Harrison Rumberger, Legislative Liaison, Florida League of Women Voters
4:14:30 PM Brian Pitts, Trustee, Justice-2-Jesus
4:14:54 PM Sen. Negron
4:15:07 PM B. Pitts
4:15:18 PM Sen. Negron
4:15:23 PM B. Pitts
4:15:39 PM Sen. Thrasher
4:15:52 PM B. Pitts
4:16:55 PM Amy Datz, Retired Environmental Scientist, Environmental Caucus of Florida
4:17:44 PM Frank Matthews, Attorney, Florida Waste Water Environmental Association
4:18:17 PM Sen. Negron
4:18:53 PM S 1576 (cont.)
4:19:07 PM Sen. Simmons
4:22:14 PM Sen. Negron
4:23:00 PM
4:23:01 PM S 1486
4:23:02 PM Sen. Garcia
4:24:22 PM Sen. Negron
4:24:29 PM
4:24:31 PM S 742
4:24:36 PM Sen. Sobel
4:26:15 PM Sen. Margolis
4:27:13 PM Sen. Negron
4:27:19 PM Am. 121868
4:27:25 PM Sen. Sobel
4:28:44 PM Sen. Latvala
4:30:04 PM Sen. Thrasher
4:31:53 PM Sen. Negron
4:31:59 PM S 742 (cont.)
4:32:27 PM Jack Cory, Florida Greyhound Association
4:33:47 PM Kate MacFall, Florida State Director, Humane Society of the United States (waives in support)
4:33:52 PM Cary Theil, Executive Director, USA (waives in support)
4:34:00 PM Sen. Richter
4:35:34 PM Sen. Sobel
4:37:16 PM Sen. Negron
4:37:52 PM
4:37:54 PM S 388
4:38:00 PM Sen. Bean
4:38:35 PM Paige Cater-Smith, Jacksonville Police Fire Pension (waives in support)
4:38:42 PM Sen. Negron
4:39:20 PM

4:39:22 PM S 1474
4:39:24 PM Sen. Abruzzo
4:39:57 PM
4:39:59 PM S 898
4:40:02 PM Sen. Abruzzo
4:40:25 PM PCS 933800
4:40:42 PM Sen. Negron
4:41:00 PM Richard Turner, General Counsel, Florida Restaurant & Lodging Association (waives in support)
4:41:04 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida
4:41:52 PM
4:41:54 PM S 1212
4:42:00 PM Sen. Bean
4:42:04 PM Am. 387820
4:43:14 PM Sen. Negron
4:43:43 PM Sen. Bean
4:44:08 PM Sen. Negron
4:44:28 PM Sen. Joyner
4:44:53 PM Sen. Bean
4:45:22 PM Sen. Joyner
4:45:42 PM Sen. Bean
4:46:09 PM Sen. Negron
4:46:12 PM Am. 893736
4:46:43 PM Sen. Bean
4:46:45 PM Sen. Negron
4:46:49 PM Am. 387820 (cont.)
4:47:00 PM S 1212 (cont.)
4:47:05 PM Ron Watson, Lobbyist, citizen (waives in support)
4:47:25 PM Dr. Carolyn Stimal, Psychologist, Florida Psychological Association
4:48:49 PM Connie Galietti, Executive Director, Florida Psychological Association
4:50:47 PM Dr. Liz Cambell, Clinical Psychologist, Florida Psychological Association
4:52:19 PM Dr. Mary Riordan, Board Certified Behavior Analyst, Florida Association of Behavioral Analysis
4:54:02 PM Brian Pitts, Trustee, Justice-2-Jesus
4:55:04 PM Donna Franklin, citizen
4:57:04 PM Michelle Dunham, citizen (waives in support)
4:57:27 PM Sen. Negron
4:58:14 PM
4:58:16 PM S 914
4:58:18 PM Sen. Latvala
4:59:26 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in opposition)
5:00:09 PM
5:00:11 PM S 1032
5:00:12 PM Sen. Latvala
5:01:01 PM Sen. Negron
5:01:06 PM Am. 804196
5:01:14 PM Sen. Latvala
5:01:18 PM Sen. Negron
5:01:27 PM S 1032 (cont.)
5:01:36 PM Amy Datz, Retired Environmental Scientist, Environmental Caucus of Florida
5:01:39 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
5:02:28 PM
5:02:30 PM S 1068
5:02:32 PM Sen. Latvala
5:03:20 PM Sen. Negron
5:03:23 PM Alex Spassoff, Legislative Chain, Florida State Massage Therapy Association (waives in support)
5:04:14 PM
5:04:16 PM S 1208
5:04:20 PM Sen. Latvala
5:04:38 PM Sen. Negron
5:04:43 PM Brigitta Johnson, Florida Sheriff's (waives in support)
5:05:39 PM
5:05:41 PM S 1328
5:05:46 PM Sen. Latvala

5:06:24 PM Sen. Negron
5:06:27 PM Am. 296028
5:06:33 PM Sen. Latvala
5:06:43 PM Am. 563654
5:06:48 PM Sen. Latvala
5:06:52 PM Sen. Negron
5:06:54 PM Am. 492374
5:07:02 PM Sen. Latvala
5:07:06 PM Sen. Negron
5:07:09 PM S 1328 (cont.)
5:07:17 PM
5:07:19 PM S 700
5:08:00 PM PCS 582052
5:08:21 PM Sen. Bradley
5:08:38 PM Brian Pitts, Trustee, Justice-2-Jesus
5:10:27 PM Jon Menendez, Legislative Affairs Director, DJJ (waives in support)
5:10:32 PM Chris Dawson, Florida Smart Justice Alliance (waives in support)
5:10:35 PM Greg Pound, citizen (waives in support)
5:12:08 PM Sen. Latvala
5:12:54 PM
5:12:56 PM S 780
5:13:54 PM Sen. Bradley
5:14:03 PM Sen. Negron
5:14:15 PM Tom Tatum, Sergeant, Florida Sheriff's Association (waives in support)
5:15:13 PM
5:15:15 PM S 1272 (cont.)
5:15:29 PM Am. 156168
5:15:38 PM Am. 119292
5:15:52 PM Sen. Bradley
5:16:30 PM Sen. Negron
5:16:50 PM Am. 156168 (cont.)
5:17:08 PM Am. 797362
5:17:15 PM Sen. Montford
5:17:46 PM Am. 417534
5:17:50 PM Sen. Bradley
5:18:30 PM Am. 755202
5:18:45 PM Sen. Negron
5:18:54 PM Am. 417534 (cont.)
5:19:06 PM S 1272 (cont.)
5:19:18 PM Angela Morrison, citizen (waives in opposition)
5:19:23 PM Max Lee, President of Koogler & Associates (waives in opposition)
5:19:24 PM Richard LaBelle, Executive Director, Family Network on Disabilities (waives in support)
5:19:27 PM JR. Harding, citizen (waives in support)
5:19:38 PM Hector DeValle, Persons with Disabilities (waives in opposition)
5:19:41 PM Claudia Frese, citizen (waives in opposition)
5:19:45 PM Staff Sergeant Patrick Worlds, United States Disabled Army Veteran
5:20:03 PM Sen. Negron
5:21:32 PM
5:21:34 PM S 1582
5:21:50 PM PCS 664100
5:21:52 PM Sen. Dean
5:22:46 PM Sen. Negron
5:22:49 PM Am. 414668
5:23:00 PM Sen. Dean
5:23:03 PM Sen. Negron
5:23:08 PM Am. 935264
5:23:14 PM Sen. Dean
5:23:37 PM Sen. Negron
5:23:42 PM S 1582 (cont.)
5:23:43 PM Jeff Littlejohn, Deputy Secretary, DEP (waives in support)
5:24:04 PM Sen. Negron
5:24:30 PM

5:24:32 PM S 1674
5:24:35 PM Sen. Dean
5:25:18 PM Sen. Negron
5:25:34 PM Pierce Schuessler, Legislative Affairs Director, DEP (waives in support)
5:25:37 PM Amy Datz, Retired Environmental Scientist, Environmental Caucus of Florida
5:26:17 PM Sen. Negron
5:26:48 PM
5:26:50 PM S 294
5:26:54 PM Sen. Hays
5:27:08 PM Am. 630790
5:27:15 PM Sen. Hays
5:27:20 PM Am. 195846
5:27:29 PM Sen. Hays
5:27:44 PM Am. 269546
5:27:52 PM Sen. Hays
5:28:01 PM Am. 490150
5:28:07 PM Sen. Hays
5:28:22 PM Sen. Joyner
5:29:12 PM Sen. Hays
5:29:22 PM Am. 645826
5:29:32 PM Sen. Hays
5:29:40 PM S 294 (cont.)
5:29:54 PM Jim Brainerd, Polk County (waives in support)
5:29:58 PM Woody Simmons, Vice President Government Affairs, Verizon (waives in support)
5:30:05 PM Diana Ferguson, Attorney, T-Mobile (waives in support)
5:30:09 PM Troy McNichols, Regional Director External Affairs, AT&T (waives in support)
5:30:11 PM Brian Sehnering, Florida Sheriff's Association (waives in support)
5:30:15 PM Amber Hughes, Legislative Advocate, Florida league of Cities (waives in support)
5:30:24 PM Jim Smith, Director, Century Link (waives in support)
5:30:31 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
5:31:03 PM
5:31:05 PM S 1126
5:31:08 PM Sen. Dean
5:32:13 PM Sen. Joyner
5:32:25 PM Sen. Dean
5:32:35 PM Sen. Joyner
5:32:38 PM Sen. Negron
5:32:49 PM Am. 638358
5:32:58 PM Sen. Margolis
5:33:52 PM Sen. Latvala
5:34:20 PM Sen. Margolis
5:34:53 PM Sen. Latvala
5:35:00 PM Sen. Dean
5:35:03 PM Sen. Latvala
5:35:24 PM Sen. Negron
5:36:25 PM S 1126 (cont.)
5:37:18 PM Sen. Negron
5:37:36 PM
5:37:38 PM S 1254
5:37:40 PM Sen. Grimsley
5:38:15 PM Am. 556020
5:38:24 PM Sen. Grimsley
5:38:49 PM Am. 888440
5:38:54 PM Sen. Grimsley
5:39:09 PM Am. 780912
5:39:18 PM Am. 661670
5:39:27 PM Sen. Grimsley
5:39:38 PM Am. 110536
5:39:41 PM Sen. Bean
5:39:56 PM Drew Smith, Homecare Association of America (waives in support)
5:40:10 PM S 1254 (cont.)
5:40:51 PM

5:40:53 PM S 1006
5:40:57 PM Sen. Hays
5:41:50 PM Sen. Negron
5:42:51 PM Frank Meiners, Florida Collectors Association (waives in support)
5:42:55 PM Joe Morris, Legislative Affairs Director, Office of Financial Regulation (waives in support)
5:43:30 PM
5:43:32 PM S 1012
5:43:35 PM Sen. Richter
5:44:00 PM Am. 858846
5:44:05 PM Sen. Richter
5:44:22 PM Am. 166230
5:44:28 PM Sen. Richter
5:44:40 PM Am. 182806
5:44:47 PM Sen. Richter
5:44:55 PM Sen. Negron
5:45:00 PM S 1012 (cont.)
5:45:04 PM Jo Morris, Legislative Affairs Director, Office of Financial Regulation (waives in support)
5:45:06 PM Jared Ross, Senior Vice President, Florida Credit Union Association (waives in support_
5:45:08 PM Anthony DiMarco, Vice President, Florida Bankers Association (waives in support)
5:45:43 PM
5:45:45 PM S 312
5:45:51 PM Sen. Simpson
5:46:09 PM PCS 832084
5:46:24 PM Am. 778398
5:46:31 PM Sen. Simpson
5:46:43 PM Am. 156972
5:46:50 PM Sen. Simpson
5:47:05 PM Sen. Negron
5:47:12 PM Sen. Joyner
5:47:17 PM Sen. Simpson
5:47:25 PM Sen. Joyner
5:47:36 PM Sen. Simpson
5:47:49 PM Doug Mann, Associated Industries of Florida (waives in support)
5:47:50 PM Adam Basford, Legislative Affairs Director, Florida Farm Bureau
5:47:52 PM Leticia Adams, Senior Policy Director, Florida Chamber of Commerce
5:47:58 PM S 312 (cont.)
5:48:05 PM Sen. Negron
5:48:34 PM
5:48:36 PM S 662
5:48:41 PM Sen. Bean
5:48:56 PM Am. 298952
5:49:07 PM S 662 (cont.)
5:49:12 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in opposition)
5:49:21 PM Sen. Negron
5:49:48 PM
5:49:50 PM S 1122
5:49:52 PM Sen. Bean
5:50:17 PM PCS 578150
5:50:31 PM Sen. Joyner
5:50:36 PM Sen. Bean
5:50:49 PM Amy Datz, Retired Environmental Scientist, Environmental Caucus of Florida
5:51:39 PM Sen. Negron
5:51:40 PM
5:51:42 PM S 872
5:51:44 PM Sen. Richter
5:52:01 PM Am. 459540
5:52:08 PM Sen. Richter
5:52:35 PM Am. 196780
5:52:41 PM Sen. Richter
5:52:48 PM Am. 795936
5:52:56 PM Sen Richter
5:53:03 PM Am. 910388

5:53:11 PM Sen. Richter
5:53:16 PM Am. 589436
5:53:25 PM Sen. Richter
5:53:35 PM Am. 569584
5:53:40 PM Sen. Richter
5:53:45 PM Sen. Negron
5:53:50 PM S 872 (cont.)
5:54:00 PM Natalie Kelly, Alzheimer's Association (waives in support)
5:54:08 PM Brian Pitts, Trustee, Justice-2-Jesus (waives in opposition)
5:54:49 PM Sen. Negron
5:54:54 PM
5:54:56 PM S 1474 (cont.)
5:55:04 PM Sen. Negron
5:55:43 PM
5:55:45 PM S 1630
5:55:50 PM Sen. Montford
5:56:10 PM Am. 476562
5:56:19 PM Sen. Latvala
5:56:25 PM Am. 952720
5:56:37 PM Sen. Sobel
5:56:56 PM Sen. Negron
5:57:09 PM Sen. Sobel
5:57:18 PM Sen. Negron
5:57:38 PM Am. 476562 (cont.)
5:58:34 PM Grace Lovett, Legislative Affairs Director, DACS (waives in opposition)
5:58:36 PM Missy Timmons, Tampa Bay Downs (waives in support)
5:58:40 PM Leticia Adams, Senior Policy Director, Florida Chamber of Commerce
5:59:08 PM S 1630 (cont.)
5:59:11 PM Sen. Negron